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**Datasheet for the decision
of 17 October 2019**

Case Number: T 2371/15 - 3.5.03

Application Number: 06790752.7

Publication Number: 1929737

IPC: H04L29/02, H04L12/16

Language of the proceedings: EN

Title of invention:

SYSTEM AND METHOD FOR PROGRESSIVE DELIVERY OF MULTIMEDIA
OBJECTS

Applicant:

Slipstream Data Inc.

Headword:

Progressive delivery of multimedia objects/SLIPSTREAM

Relevant legal provisions:

EPC Art. 123(2)

Keyword:

Added subject-matter (no)

Decisions cited:

G 0010/93

Catchword:



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Case Number: T 2371/15 - 3.5.03

D E C I S I O N
of Technical Board of Appeal 3.5.03
of 17 October 2019

Appellant: Slipstream Data Inc.
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Decision under appeal: **Decision of the Examining Division of the
European Patent Office posted on 10 July 2015
refusing European patent application No.
06790752.7 pursuant to Article 97(2) EPC.**

Composition of the Board:

Chairman K. Schenkel
Members: T. Snell
J. Geschwind

Summary of Facts and Submissions

- I. This appeal is against the decision of the examining division refusing European patent application No. 06790752.7 (international publication no. WO 2007/036032 A1).
- II. The refusal is based on the ground that claim 1 respectively of a main request and first and second auxiliary requests does not comply with Article 123(2) EPC, i.e. these claims comprise subject-matter which extends beyond the content of the application as filed.
- III. With the statement of grounds of appeal, the appellant filed claims respectively of a main request and first to sixth auxiliary requests.
- IV. In a communication accompanying a summons to oral proceedings, the board gave, inter alia, a negative preliminary opinion as to compliance of claim 1 of each request with Articles 84 and Article 123(2) EPC. The board indicated also that if a request was finally held to comply with Articles 84 and 123(2) EPC, it would remit the case for further prosecution in order to be examined with respect to novelty and inventive step.
- V. Together with a written response dated 4 October 2019, the appellant filed a new main request to replace the main request on file.
- VI. Oral proceedings before the board were held on 17 October 2019.

During the oral proceedings, the appellant submitted an amended main request to replace that on file.

The appellant requested that the decision under appeal be set aside and that a patent be granted on the basis of the claims of the main request as filed during the oral proceedings, or, in the alternative, on the basis of the claims of one of the first to sixth auxiliary requests, all as filed with the statement of grounds of appeal.

At the end of the oral proceedings, the chairman announced the board's decision.

VII. Claim 1 of the main request reads as follows:

"A method for sending multimedia content for display on a web page in a client (220; 310,320; 410,415) -server (205b; 305,335; 405) system in a network (325), the web page being rendered on a web browser provided on a client device, wherein the multimedia content comprises a plurality of image objects originating from a web server, the method comprising:

in a first step, sending (545) a first predetermined portion of each of the plurality of image objects from the server (205b; 305,335; 405) through the network (325), and

after sending (545) the first predetermined portion of each of the plurality of image objects, successively sending (585) subsequent predetermined portions of each of the plurality of image objects, characterised in

the first predetermined portion for at least one of the plurality of image objects being reconstructable to produce an image at a lower quality level than a quality of the image reconstructable from the complete image object; and

the subsequent predetermined portions for the at least one of the plurality of image objects comprising image refinement data at a progressively higher quality level."

VIII. Claim 13 reads as follows:

"A method for receiving multimedia content for display on a web page in a client (220; 310,320; 410,415)-- [sic]server (205b; 305,335; 405) system in a network (325), the web page being rendered on a web browser provided on a client device, wherein the multimedia content comprises a plurality of image objects originating from a web server, the method comprising:

in a first step, receiving (550) a first predetermined portion of each of the plurality of image objects through the network (325) at the client device (220; 310,320; 410,415); and

after receiving (550) the first predetermined portion of each of the plurality of image objects, successively receiving (590) subsequent predetermined portions of each of the plurality of image objects,

characterised in:

the first predetermined portion for at least one of the plurality of image objects being reconstructed to produce an image at a lower quality level than a quality of the image reconstructable from the complete image object; and

the subsequent predetermined portions for the at least one of the plurality of image objects comprising image

refinement data for reconstructing that image object at progressively higher quality level."

- IX. Claim 23 is a system claim with a server side sub-system and a client side sub-system essentially corresponding respectively to method claims 1 and 5.
- X. In view of the board's decision, there is no need to recite claims of the auxiliary requests.

Reasons for the Decision

1. *Main request - clarity (Article 84 EPC)*

During the oral proceedings, the appellant submitted clarifying amendments to several claims in response to objections raised by the board. The board is satisfied that the claims are now clear within the meaning of Article 84 EPC.

2. *Main request - claim 1 - Article 123(2) EPC*

2.1 Claim 1 as originally filed reads as follows:

"A method for sending multimedia content in a client-server system in a network, wherein the multimedia content comprises a plurality of objects, the method comprising:

concurrently sending a first predetermined portion of each of the plurality of objects from the server through the network, wherein the first predetermined portion is less than a complete object for at least one of the plurality of objects; and

after sending the first predetermined portion of each

of the plurality of objects, successively sending subsequent predetermined portions of each of the plurality of objects until all portions of the plurality of objects have been sent."

2.2 The amendments made with respect to this claim are the following:

(i) the multimedia content is a web page content for being rendered on a web browser of the client;

(ii) the objects are image objects originating from a web server;

(iii) the term "concurrently" in the second clause has been replaced by "in a first step";

(iv) The following features are added:

"the first predetermined portion for at least one of the plurality of image objects being reconstructable to produce an image at a lower quality level than a quality of the image reconstructable from the complete image object"; and

"the subsequent predetermined portions for the at least one of the plurality of image objects comprising image refinement data for reconstructing that image object at progressively higher quality level".

2.3 These amendments all concern a method for sending image objects which is summarised in paragraph [0038] of the description (referring to the published application WO 2007/036032). This paragraph reads as follows:

"According to this exemplary embodiment, it is possible to accelerate **web browsing** through the concurrent delivery of portions of progressive **images from web servers to web browsers**. For example, **in a first step**, several images up to a certain low quality level are received first (in this case, **a lower quality image can be considered a portion of the multimedia object**, being the full quality image). **As the next step, the quality of these images is improved to the next selected level of quality by receiving additional image data for these images. These steps can be repeated until all images have been received to a desired level of quality.** This step-wise progressive delivery of all images in a given **web page/document** has the potential of providing enhanced user-satisfaction as the end user has the perception of being able to view the complete document sooner" (Board's emphasis).

2.4 This passage, when considered in combination with claim 1 as originally filed, fairly reflects the subject-matter claimed in claim 1 of the main request. That the images have to be "reconstructable" is implicit considering the basic nature of image object transmission and display, noting however in any case that the verb "reconstruct" is used in the description for this aspect (cf. paragraphs [0008] and [0062] ff.).

2.5 It has also to be considered whether combining claim 1 as filed and paragraph [0038] results in an unallowable intermediate generalisation. The board considers that here this is not the case, because paragraph [0038] describes a concept which is by itself complete and easily comprehensible without reference to any other implementation details of the "exemplary embodiment" described in the preceding paragraphs [0035] and [0036]. In this respect, paragraph [0038] can easily be

understood as disclosing a client-server based method as claimed in claim 1 as originally filed which is adapted to the specific case of image object transmission from a web server to a client browser with progressively improving quality.

2.6 The examining division argued essentially that the applicant relied on paragraph [0038] in combination with other passages (paragraphs [0048], [0062] and [0068]), although these other passages did not form part of the same embodiment as paragraph [0038], since paragraph [0038] was based on the embodiment of Fig. 2 and the other passages on the different embodiment of Figs. 4 and 5.

2.7 The board firstly does not agree that Figs. 2, 4 and 5 are concerned with different embodiments, considering the passages of the description on to page 7, lines 22-24 and page 20, lines 22-29. That notwithstanding, there is no need to rely on the embodiments of Figs. 4 and 5 for the disclosure of claim 1, for the reasons given above.

2.8 The board concludes that claim 1 complies with Article 123(2) EPC.

3. *Main request - claims 13 and 23 - Article 123(2) EPC*

The same considerations apply, *mutatis mutandis*, to claims 13 and 23.

4. *Remittal (Article 111(1) EPC)*

4.1 As claims 1, 13 and 23 of the main request comply with Articles 84 and 123(2) EPC, they have to be examined for compliance with the other requirements of the EPC,

in particular novelty and inventive step. These issues have not been decided on by the examining division. The other claims and the description have also to be examined for compliance with the EPC.

4.2 The primary purpose of ex parte appeal proceedings is to review the correctness of the contested decision (cf. G 10/93, point 4 of the reasons), but not to examine issues that have not been decided by the first instance. In point 2.9 of the decision, the examining division comments: "prima facie the subject-matter of independent claim 1 ... appears to be not inventive over the teaching of D1 without giving any detailed analysis". However, as no reasons are given, the appellant (and the board) are not in a position to review whether the examining division's opinion is correct. Instead, the board would have to perform the entire examination itself, which as stated is not the purpose of appeal proceedings, especially as the appellant would then only be able to defend its case before one instance of jurisdiction.

4.3 Consequently, the board decides that the case is to be remitted to the examining division for further prosecution.

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.
2. The appeal is remitted to the department of first instance for further prosecution.

The Registrar:

The Chairman:



G. Rauh

K. Schenkel

Decision electronically authenticated