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**Datasheet for the decision
of 11 September 2017**

Case Number: T 2136/16 - 3.5.04

Application Number: 03077693.4

Publication Number: 1381231

IPC: H04N21/422, H04N21/4788,
H04N21/475, H04N21/4782,
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H04N5/445

Language of the proceedings: EN

Title of invention:

Interactive television program guide with remote access

Patent Proprietor:

Rovi Guides, Inc.

Opponents:

Virgin Media Limited
Toshiba Corporation
Toshiba Europe Gmbh

Headword:

Relevant legal provisions:

EPC 1973 Art. 56, 87(1)

EPC Art. 112(1)

Keyword:

Inventive step - main request and third auxiliary request (no)

- fourth auxiliary request (no)

Admission of fourth auxiliary request - (yes)

Adjournment of the proceedings - (no)

Referral to the Enlarged Board of Appeal - (no)

Decisions cited:

G 0002/04, G 0001/14, T 0556/13

Catchword:

see Reasons, point 8



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Case Number: T 2136/16 - 3.5.04

D E C I S I O N
of Technical Board of Appeal 3.5.04
of 11 September 2017

Appellant: Rovi Guides, Inc.
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Decision under appeal: **Decision of the Opposition Division of the
European Patent Office posted on 15 July 2016
revoking European patent No. 1381231 pursuant to
Article 101(3) (b) EPC.**

Composition of the Board:

Chairman C. Kunzelmann

Members: R. Gerdes

 T. Karamanli

Summary of Facts and Submissions

I. The appeal is against the decision of the opposition division revoking European patent No. 1 381 231. The patent is based on divisional application No. 03 077 693.4 from earlier application No. 99 935 637.1 filed as an international application and published as

D13: WO 00/04709 A1.

The patent in suit and the earlier application claim priority from the following US patent applications

D14: US 60/093,292 and

D15: US 60/097,527.

II. The patent was revoked on the grounds that the subject-matter of claim 1 of the then main and first auxiliary requests did not involve an inventive step (Article 56 EPC) in view of international application

D11: WO 98/43416 A1

and the common general knowledge of the person skilled in the art. The then second auxiliary request was not admitted into the proceedings. Since the prior-art document D11 was in Japanese, the opposition division referred to

D10: EP 0 969 661 A

as the English translation of D11. D10 is the European patent application corresponding to international application D11 and was published in English. In the

following the board will refer to D11 except where explicit reference to the translation D10 is intended.

- III. The patent proprietor (appellant) filed an appeal against the opposition division's decision. The appellant requested that the decision under appeal be set aside and that the patent be maintained in amended form based on the claims of the main request or the first and second auxiliary requests submitted with the statement of grounds of appeal. These claims were essentially identical to those underlying the decision under appeal.
- IV. In their letters of reply, both dated 11 April 2017, opponents 1, 2 and 3 (respondents I, II and III) requested that the appeal be dismissed.
- V. The board summoned the parties to oral proceedings to be held on 11 September 2017.
- VI. The appellant and respondents II and III provided further arguments and evidence with their letters dated 11 August 2017 and 10 August 2017, respectively. The appellant re-filed the claims of the main request and the first and second auxiliary requests.
- VII. Oral proceedings were held on 11 September 2017. As announced beforehand, respondent I was not represented at the oral proceedings. The chairman noted that respondent I had requested in writing that the appeal be dismissed.

In the oral proceedings, the appellant submitted the following final requests in writing:

"Main Request

As a Main Request, the Proprietor requests the Decision be set aside and the Patent be maintained as amended in the claims of the Main Request as submitted with the written submissions on 11 August 2017.

First Auxiliary Request

As a First Auxiliary Request, the Proprietor requests an adjournment of the oral proceedings in order to gather evidence as to an argument raised for the first time during oral proceedings before the Board of Appeal. Specifically, the Proprietor wishes to gather evidence as to whether the alleged connotation of the translated term, "alarm" (i.e., the term alarm implies an emotional communication directed to a human user), in paragraphs 24 and 25 of D10, is consistent with the untranslated term as found in D11.

Second Auxiliary Request

As a Second Auxiliary Request, the Proprietor request[s] referral to the Enlarged Board of Appeals to ask whether:

In an argument raised for the first time during oral proceedings before a Board of Appeal, it is [sic] allowable to form an opinion of the presence of direct and unambiguous disclosure with regard to a translated term in a foreign language prior art document based on an alleged connotation of that translated term without first gathering evidence on the connotation of that term in the native language? If this is generally allowable is it also allowable where there is

disclosure elsewhere in that translated document that is inconsistent with that connotation?

Third Auxiliary Request

As a Third Auxiliary Request, the Proprietor requests the Patent be maintained as amended in the claims of the First Auxiliary Request as submitted with the written submissions on 11 August 2017.

Fourth Auxiliary Request

As a Fourth Auxiliary Request, the Proprietor requests the Patent be maintained as amended in the claims of the Second Auxiliary Request as submitted with the written submissions on 11 August 2017."

In the oral proceedings, respondents II and III submitted the following final requests in writing:

- "1. The appeal is dismissed.*
- 2. The request for adjournment of the oral proceedings is refused.*
- 3. The request for referral to the Enlarged Board of Appeals is refused."*

At the end of the oral proceedings the chairman announced the decision of the board.

VIII. Claim 1 of the appellant's main request reads as follows:

"A program guide system comprising:

television program guide equipment (17), including user equipment (22), and implementing a first interactive program guide enabling a user to navigate through displayed program listings and select a listing, and having a reminder function for a selected listing;

a remote program guide access device (24) implementing a second interactive program guide enabling a user to navigate through displayed program listings and select a listing, and having a reminder function for a selected listing; and

a remote access link (19) between the television program guide equipment and the remote guide access device, wherein the second interactive program guide enables the user to access the reminder function of the second interactive program guide to schedule the reminder for the selected listing, wherein the second interactive program guide is configured to transfer a setting for the reminder over the remote access link so that the reminder is set in the first interactive program guide on the television program guide equipment, and the first interactive program guide generates the reminder for the program corresponding to the listing."

- IX. Claim 1 according to the appellant's third auxiliary request reads as follows (amendments as compared with claim 1 of the main request are underlined):

"A program guide system comprising:

television program guide equipment (17), including user equipment (22), and implementing a first interactive program guide enabling a user to navigate through displayed program listings and select a listing, and having a reminder function for a selected listing, the

displayed program listings being program titles displayed in a grid, the grid being divided into a number of columns which correspond to broadcast times and having program listings rows, wherein the listing is selected by highlighting a cell of the grid where the listing is located;

a remote program guide access device (24) implementing a second interactive program guide enabling a user to navigate through displayed program listings and select a listing, and having a reminder function for a selected listing; and

a remote access link (19) between the television program guide equipment and the remote guide access device, wherein the second interactive program guide enables the user to access the reminder function of the second interactive program guide to schedule the reminder for the selected listing, wherein the second interactive program guide is configured to transfer a setting for the reminder over the remote access link so that the reminder is set in the first interactive program guide on the television program guide equipment, and the first interactive program guide generates the reminder for the program corresponding to the listing for display in the form of a pop-up window or message on the user equipment (22)."

- X. Claim 1 according to the appellant's fourth auxiliary request differs from claim 1 of the third auxiliary request in that the following additional feature is appended to it:

", wherein the second interactive program guide is further configured to obtain program listings information from the first interactive program guide

over the remote access link (19) and to provide the program listings information to the user".

XI. In the decision under appeal the opposition division held that the patent in suit could not validly claim priority from US applications D14 and D15. It construed claim 1 of the main request such that it specified that "the reminder is set (stored) at both the guide at the television program guide equipment and the guide at the remote program guide access device". Neither D14 nor D15 disclosed the combination of the steps of setting a reminder at the remote program guide access device, transmitting the reminder to and setting the reminder at the television program guide equipment, and generating said reminder at the television program guide equipment (see Reasons, points 13.5, 13.6 and 13.10).

Since the claim to priority was not valid, document D11 constituted prior art within the meaning of Article 54(2) EPC.

The opposition division held that the wording "giving notice by issuing an alarm" in D10 (see paragraph [0025]) addressed the user of the device and that setting a reminder was inherent in selecting recording. Hence, the feature of a reminder was disclosed in D11. Claim 1 of the main request differed from the disclosure of D11 in that it specified that the reminders were set in the interactive program guides whereas D11 stored a list of reservation data in the timed reservation section 104 of the satellite receiver and the timed reservation section 114 of the recording apparatus.

The technical effect associated with this difference was that the reminder data were stored together with the guide data in a memory. The objective technical problem was to provide an alternative manner of storing the reminder, i.e. the reservation data. The skilled person would have been aware of numerous manners of creating a logical link between the reservation data and the schedule data. Hence, the subject-matter of claim 1 of the main request lacked inventive step in view of D11 and the common general knowledge of the skilled person (see Reasons, section 14).

The additional features of claim 1 of the then first auxiliary request (now the third auxiliary request) were known from D11, figure 6, or well known in the art (see Reasons, point 16.6).

The then second auxiliary request (now the fourth auxiliary request) was not admitted into the proceedings, because it was late-filed and did not *prima facie* address the objections to the main and first auxiliary requests (see Reasons, point 18.3).

XII. The appellant's relevant arguments may be summarised as follows.

Validity of the claimed priorities

The overarching principle presented in the priority applications D14 and D15 concerned the co-ordination of several electronic program guides and guide-to-guide communication (see for example D15, page 1, lines 1 to 4 and 37). The feature of setting a reminder at both the television program guide equipment and the guide at the remote program guide access device was disclosed in D15, page 1, lines 19 to 21, and D14, page 1, lines 17

to 31. D15 referred to "scheduled events", which implied that the reminder was set at the remote program guide and then transferred to the local program guide. The use of the past tense "scheduled" meant that the scheduling was completed when the event was transmitted. D14 disclosed that a reminder might be set for all televisions, which implied setting it in one EPG and then transferring it to the others. Hence, the subject-matter of claim 1 related to the same invention as was disclosed in D14 and D15. Priority was therefore validly claimed from either of US applications D14 and D15.

Main request

The differences between D11 and the claimed invention focused on two points:

D11 did not disclose reminders and did not disclose an EPG on both devices, the satellite receiver 100a and the video tape recorder (VTR) 110.

D11 disclosed a communication on a "timed reservation layer", but not between guides. There was no second guide on the VTR. To schedule a recording the communication was effected between the EPG on the satellite receiver and the timed reservation section on the VTR via the timed reservation section on the satellite receiver. Reservation management was carried out without any contribution or use of a second guide at the VTR 110.

D11, paragraph [0010], described the purpose of the invention in that document. According to that passage D11 was concerned with automating the co-ordination of two AV apparatus (see also D10, paragraph [0008]). The

solution to this technical problem was described in D11, paragraph [0015], according to which the first AV apparatus notified the second at the appropriate time. The passages in paragraphs [0024] and [0025] had to be understood in that context as referring to an electronic communication by "giving a notice" when the appropriate time arrived. There was no disclosure that an alarm was issued to the user. Nor would that have made sense, because D11 concerned unattended recording. There was no scheduled reminder that was issued to the user at a specified time.

D11 was not a suitable starting point for assessing the inventive step of the claimed subject-matter since it concerned unattended recording, i. e. the AV devices were intended to operate without requiring the user's presence. It did not disclose reminders and there was no reason to provide a guide-to-guide communication in D11. D11 was concerned with the technical problem of avoiding access conflicts to a shared resource (e.g. a recording apparatus 110). The technical problem was alternatively formulated as how to reliably and consistently handle program operations regardless of a user's location. The skilled person would not be encouraged to implement the reservation functionality of D11 in an EPG because this would require technical compatibility between multiple different types of program guides among multiple different types of TV program recording devices.

First auxiliary request

The word "alarm" had to be understood in line with usual practice in the technical field of computer science, where it did not have an emotional connotation but simply referred to an electronic notification. However, the respondents gave the word "alarm" an

emotional connotation that was neither present nor intended in the Japanese text D11. It was also inconsistent with other parts of the translation D10. The interpretation of the English term "alarm" in paragraph [0025] of D10 by the opposition division was accepted. It was also not contested that D10 was a correct translation of D11, but it was contested that the term "alarm" could be interpreted such that it had an emotional connotation, i.e. the alarm was issued to a user. Since the respondents had given the term "alarm" this emotional connotation for the first time in the oral proceedings, the appellant had been surprised by this new interpretation of that term. It therefore could not reply to the respondents' new argument without further investigation into how the term used in the original Japanese text had to be understood. The appellant should be given appropriate time to gather evidence on the connotation of the terms used in the English and Japanese versions. Therefore, the oral proceedings should be adjourned for that purpose.

Second auxiliary request

The present case hinged on the interpretation of the term "alarm", which the respondents had given an emotional connotation such that it implied that the alarm was issued to the user of the device. Therefore, a referral to the Enlarged Board of Appeal was necessary to clarify whether, in the event that an argument was raised for the first time in the oral proceedings before the board, it was allowable to form an opinion on the direct and unambiguous disclosure of a document on the basis of an alleged connotation of a translated term without first gathering evidence on the connotation of that term in the native language.

Third auxiliary request

With respect to claim 1 of the third auxiliary request the appellant argued that D11 did not disclose that the VTR was equipped with an EPG to select listings. It also did not show that the alarm was displayed as a pop-up window or a message. The additional feature relating to the pop-up window served to distinguish the reminder of claim 1 from D11, which only disclosed an electronic communication.

Fourth auxiliary request

The additional feature of claim 1 of the fourth auxiliary request was not disclosed in D11. There was no disclosure of listing information going from the recording device 110 to the satellite receiver 100a. The satellite receiver had its own listing information, so that there was no need to transfer listings. The information exchanged in D11 might be timer information, but not listings information. According to paragraph [0059] of the patent in suit, information for scheduling recordings was distinguished from listings information. It was also apparent from figure 1 of D11 that all devices had separate antennas to receive listings information. So there was no need to transfer listings between the devices. Figure 4 of D11 just showed reservation data, but no listings information.

XIII. The respondents essentially argued as follows.

Priority document D15 did not disclose whether the reminder was set at the remote guide or the remote computer and then transferred to the local guide, or whether it was set and only transferred when the time

came to issue the reminder to the user. D15 could also be understood such that the reminder was not set at the remote guide. D15 did not exclude the further alternative that a setting for the reminder was entered by a user at the remote guide and that this setting was transmitted to both guides at the same time. A reminder could also be set at the remote guide and be issued at the local guide without setting it there. Document D14 similarly did not exclude these interpretations. There was no direct and unambiguous disclosure of the reminder being set at both the guide at the television program guide equipment and the guide at the remote program guide access device. Therefore, priority was not validly claimed.

Claim 1 of the main request lacked novelty in view of D11. D11 disclosed an EPG implemented on the VTR, which issued a reminder. The interpretation of the opposition division that an alarm was directed to the user was correct (see paragraphs [0026], [0027], [0033], [0037], [0038], [0052] and [0090]).

Even if it was assumed that the storage for storing the reminders was separate from the EPG, then the subject-matter of claim 1 at least lacked inventive step in view of D11 and the common general knowledge. The skilled person would have known that it made no difference whether reminder settings were stored internally or externally to an EPG. Many options were described in the patent in suit, but there were no details in the description of the patent that showed a clear distinction or advantage of the invention over D11.

The display of program listings as specified in claim 1 of the third auxiliary request was disclosed in D11

(see paragraph [0033] and figure 6). Displaying the reminder in the form of a pop-up window or a message on the user equipment was well known and obvious from D11.

D11, paragraphs [0042], [0050] and [0090] and figure 4, disclosed the additional feature of claim 1 of the fourth auxiliary request.

The request for adjournment of the oral proceedings should be refused. It was far too late in the proceedings to question the validity of the translation D10. The appellant should have contested it many years ago. An adjournment would delay the proceedings significantly.

The request for a referral to the Enlarged Board of Appeal should also be refused. It was normal for a term in a claim to be construed during the debate at the oral proceedings. There was also no reason to concern the Enlarged Board of Appeal with the interpretation of the specific term "alarm" in this case since its interpretation was not necessary to ensure uniform application of the law or settle a point of law of fundamental importance.

Reasons for the Decision

1. The appeal is admissible.

This decision deals first with the substantive issues (entitlement to priority; main, third and fourth auxiliary requests) and subsequently with the appellant's requests for adjournment of the oral proceedings and referral to the Enlarged Board of Appeal (first and second auxiliary requests).

Validity of the claimed priorities

2. Claim 1 specifies that "the second interactive program guide enables the user to access the reminder function of the second interactive program guide to schedule the reminder for the selected listing, wherein the second interactive program guide is configured to transfer a setting for the reminder over the remote access link so that the reminder is set in the first interactive program guide on the television program guide equipment, and the first interactive program guide generates the reminder for the program corresponding to the listing."
- 2.1 The opposition division interpreted claim 1 such that it implied a combination of the steps of setting a reminder at the remote program guide access device, transmitting the reminder to and setting the reminder at the television program guide equipment, and generating said reminder at the television program guide equipment (see Reasons, points 13.5, 13.6 and 13.10). This interpretation was not contested by the parties and is also accepted by the board.
- 2.2 It was disputed whether D14 or D15 disclosed the above features. The appellant contended that the feature of setting a reminder at both the television program guide equipment and the guide at the remote program guide access device was disclosed in D15, page 1, lines 19 to 21, and D14, page 1, lines 17 to 31.
- 2.3 The board is not convinced that, if properly interpreted in their context, the cited passages of D15 and D14 directly and unambiguously disclose these features.

D15, page 1, lines 15 to 18, refers to a reminder which is sent by a guide running on the television viewing station to "a PC or other computing device (such as a hand-held PC, palmtop computer or auto PC)." It is not apparent from D15 that these devices implement an EPG. This assessment is confirmed by the final sentences of that paragraph, which state that the reminder may appear as an email message or may be sent to a pager.

The next paragraph of D15, page 1, lines 19 to 24, comes closest to disclosing the above features of claim 1. It refers to setting a reminder from a remote computer and specifies that: "These scheduled events would be transmitted to the television viewing station, where they would be acted upon at the appropriate time." The appellant interpreted the reference to "these scheduled events" as implying that a reminder has been set/scheduled at the remote guide prior to being transferred to the local guide. The board is not convinced that the passage is unambiguous in its context. It could also mean that the setting of the reminder is effected at the same time in both guides or that no scheduling is effected in the remote guide. The latter interpretation is supported by the last sentence of that paragraph, which specifies that: "These requests might also be made via a touch-tone phone". Obviously, an EPG running on a touch-tone phone was not envisaged by D15. The general statement that "there is no means to coordinate the guides in these locations" on page 1, lines 1 to 4, when read in context, makes reference to means allowing communication between devices (settop/receiver, television equipment, PCs, etc.) but does not disclose details of the transmission of reminders.

The appellant also argued that D14 disclosed that a reminder might be set "for all televisions" (see page 1, lines 27 and 28), which implied setting it in one EPG and then transferring it to the others. The board was not convinced by this reasoning. As in D15, other implementations might be considered, such as a simultaneous setting of the reminder in both EPGs.

2.4 Since the above features of claim 1 are not directly and unambiguously disclosed in either of priority documents D14 and D15, the "same invention" requirement of Article 87(1) EPC 1973 is not fulfilled in the present case. In this case, it need not be examined whether the appellant was the successor in title to the applicants who filed the priority applications D14 and D15.

2.5 It follows from the above that neither of the two priorities is validly claimed and the relevant date of the claimed subject-matter is the filing date of the earlier application. This finding applies not only to claim 1 of the appellant's main request but equally to claim 1 of its first and second auxiliary requests submitted with the written submissions on 11 August 2017 (now the third and fourth auxiliary requests) because the latter requests are distinguished only by additional features that do not affect the interpretation of the above features (see point 2. above).

Main request - inventive step in view of D11

3. Since the priority claims of the patent in suit are not valid, D11 is prior art within the meaning of Article 54(2) EPC 1973 and can be used for the

assessment of novelty and inventive step of the claimed subject-matter.

3.1 D10, which is undisputedly a translation of D11, discloses a program guide system in the sense of claim 1 comprising television program guide equipment, including user equipment (recording apparatus 110), and implementing a first interactive program guide enabling a user to navigate through displayed program listings and select a listing, and having a reminder function ("alarm") for a selected listing (see figures 1 and 6 together with paragraphs [0024], [0025], [0033] and [0090]). The program guide system also comprises a remote program guide access device (satellite broadcast receiver 100a) implementing a second interactive program guide enabling a user to navigate through displayed program listings and select a listing, and having a reminder function ("alarm") for a selected listing (see paragraphs [0023], [0024], [0032] and [0033]).

D11 also discloses a remote access link (bus 10) between the television program guide equipment and the remote guide access device, wherein the second interactive program guide enables the user to access the reminder function of the second interactive program guide to schedule the reminder for the selected listing, wherein the second interactive program guide is configured to transfer a setting for the reminder over the remote access link and the first interactive program guide generates the reminder for the program corresponding to the listing (figure 1 and paragraphs [0024], [0025], [0032], [0033], [0037] and [0038]).

3.2 Hence, the board agrees with the decision under appeal that the subject-matter of claim 1 differs from that of

D11 in that it specifies that reminders are set in the interactive program guides (see Reasons, point 14.4). According to D11 reminders are stored in the timed reservation sections 104 and 114 of the satellite receiver and the recording apparatus (see paragraphs [0070] and [0090]).

- 3.3 The technical effect associated with this difference is that an alternative manner of storing the reminder is provided. Accordingly, the technical problem is to provide an alternative manner of storing the reminder (see also decision under appeal, Reasons, point 14.5).
- 3.4 The board also holds that the decision under appeal was correct in its assessment of inventive step. In order to resolve conflicts it was necessary to manage schedule data in conjunction with reservation data and, hence, also together with the associated alarm settings. It would have been obvious to provide that necessary logical link by storing the reservation data together with the guide data.
- 3.5 The appellant argued that D11 disclosed a communication on a "timed reservation layer", but not between guides. There was no second guide on the video tape recorder (VTR).

The board does not interpret claim 1 as specifying a direct communication between guides. Claim 1 actually refers to a remote access link for transferring the setting of the reminder. According to the patent in suit this remote access link may be implemented in different ways involving complex communications between application constructs running on the devices involved (see paragraphs [105] to [0107] of the patent in suit). The board also concurs with the respondents' argument

that D11 discloses guides on both devices that communicate in order to resolve programming conflicts (see paragraphs [0023], [0024], [0027], [0033], [0036] to [0039] and [0090]).

The appellant also argued that D11 was concerned with automating the co-ordination of two AV apparatuses. The passages in paragraphs [0024] and [0025] had to be understood in that context as referring to an electronic communication by "giving a notice" when the appropriate time arrived. There was no disclosure that an alarm was issued to the user. This would have made no sense, because D11 concerned unattended recording. There was also no scheduled reminder that was issued to the user at a specified time. The appellant further argued that the word "alarm" had been given an emotional connotation that was neither present nor intended in the Japanese text D11. It did not contest that the translation of the corresponding word in D11 was correct, but this did not imply that the alarm was issued to a user. Instead, the word "alarm" was also used in computer science, where it did not have an emotional connotation but simply referred to an electronic notification.

The board was not convinced by these arguments. It is correct that D11 is directed to the co-ordination of several AV devices (see paragraph [0001]). This co-ordination requires an electronic communication between the devices, which is described as being effected when the reservation is made. The reservation is made in a timely manner to check for any reservation conflicts (see figures 5 and 10 together with paragraphs [0044] to [0047]). In contrast, the alarm of paragraphs [0024] and [0025] is issued "when the time of reserved operation arrives", i.e. it serves no apparent

technical purpose because the reservation data have already been transmitted to the timed reservation sections of the involved devices. The alarm is therefore distinguished from the transmission of the reservation data and conflict resolution. Hence, the board confirms the interpretation that an alarm "addresses the user of the device" as stated in the decision under appeal (see Reasons, point 14.9). The board takes the fact that user interface elements are described in conjunction with the alarm (see paragraph [0024]) as a further indication that the alarm is directed to the user.

In the appellant's view, this interpretation of the wording "alarm" was based, at least in part, on an alleged emotional connotation of the term and was incorrect. According to the established case law of the boards of appeal, determining the information content means interpreting what comprises the state of the art. For this purpose the technical disclosure in a prior-art document must be considered as a whole or in its overall context (see Case Law of the Boards of Appeal of the European Patent Office, 8th edition, 2016, section I.C.4.1). The board did exactly this, i.e. it arrived at its interpretation by determining the information content of paragraphs [0023] and [0024] of D11 in their context.

The appellant's argument that D11 was not a suitable starting point for assessing inventive step also did not convince the board. Like the patent in suit, D11 is directed to the co-ordination of and communication between audio/video devices in a multimedia system using electronic program guides (see patent in suit, paragraphs [0001] to [0008], and D11, paragraphs [0001] to [0010]).

Moreover, the board cannot agree with the appellant's formulations of the objective technical problem as avoiding access conflicts to a shared resource (e.g. a recording apparatus 110) or how to reliably and consistently handle program operations regardless of a user's location. It may be that these problems are technical problems addressed by D11; however, the objective technical problem has to be based on the difference between the claimed subject-matter and the closest prior art and the technical effect which is caused by this difference. In the present case storing the reminder in the interactive program guides has no influence on program operations regardless of the user's location or on access conflicts to a shared resource such as the VTR. Essentially, therefore, the board adopts the formulation of the objective technical problem in the decision under appeal and the related reasoning for the finding of a lack of inventive step.

- 3.6 Hence, the subject-matter of claim 1 lacks inventive step in view of D11 and the common general knowledge of the skilled person (Article 56 EPC 1973).

Third auxiliary request - Inventive step

4. Compared with claim 1 of the main request, claim 1 of the third auxiliary request contains the following additional features:

(a) "the displayed program listings being program titles displayed in a grid, the grid being divided into a number of columns which correspond to broadcast times and having program listings rows, wherein the listing is selected by highlighting a cell of the grid where the listing is located" and

(b) the first interactive program guide generates the reminder for the program corresponding to the listing "for display in the form of a pop-up window or message on the user equipment (22)".

4.1 Feature (a) is disclosed in D11, figure 6 together with paragraphs [0033] and [0090]. The board considers feature (b) to relate to a well-known means of presenting a reminder or a user alarm (see also decision under appeal, Reasons, point 16.6).

4.2 The appellant argued that feature (b) served to distinguish the reminder in claim 1 from D11, according to which an alarm was only an electronic communication transmitted from one AV device to the other. However, this interpretation of the alarm as a mere electronic communication was not adopted by the board (see point 3.5 above).

4.3 Hence, the additional features do not combine with the remaining features of claim 1 such that they render the claimed subject-matter inventive (Article 56 EPC 1973).

Fourth auxiliary request - Admission

5. In the proceedings before the opposition division the then second auxiliary request, now the fourth auxiliary request, was not admitted because it was late-filed and because it did not *prima facie* overcome the objections to the higher-ranking requests (Rule 116(1) EPC).

5.1 The board agrees with decision T 556/13 (see Reasons, points 2.1.5 to 2.1.7), which considered that, under Article 12(4) RPBA, the board had its own discretionary power to hold a request admissible.

5.2 In the present case, the board decided to admit the fourth auxiliary request into the appeal proceedings for the following reasons:

- (a) The additional feature of claim 1 of the fourth auxiliary request was based on dependent claim 11 of the patent as granted. Its insertion into claim 1 therefore could not take the respondents by surprise.
- (b) All parties had already commented on the patentability of the claimed subject-matter during the appeal proceedings (see respondent I's letter of 11 April 2017, section 8; respondents II and III's letter of 11 April 2017, section H.IV; and appellant's statement of grounds of appeal, point 8.2, and letter dated 11 August 2017, section 3).
- (c) The fourth auxiliary request was re-filed as the second auxiliary request together with the statement of grounds of appeal. Therefore, in contrast to the situation before the department of first instance, where the request was late-filed, no party could be taken by surprise by the re-filing of this request.

5.2 In view of the above, the fourth auxiliary request was admitted into the proceedings (Article 12(4) RPBA).

Fourth auxiliary request - Inventive step

6. Claim 1 of the fourth auxiliary request contains the following additional features appended to claim 1 of the third auxiliary request:

(c) "wherein the second interactive program guide is further configured to obtain program listings information from the first interactive program guide over the remote access link (19) and to provide the program listings information to the user".

6.1 The board agrees with the decision under appeal that this feature was disclosed in D11. Figures 4 and 6 disclose program titles which have to be considered program listings information within the meaning of feature (c). D11 discloses that the program titles are transferred from the VTR to the satellite receiver as part of reservation data and provided to the user (see paragraphs [0033], [0034], [0042], [0050] and [0090]).

6.2 The appellant contested that program titles constituted listings information within the meaning of claim 1. According to paragraph [0059] of the patent in suit, information for scheduling recordings was distinguished from listings information.

The board endorses the reasoning given in the decision under appeal that "the wording 'program listing information' is broad and encompasses the title of the program selected for viewing/recording" (see decision under appeal, Reasons, point 18.3). Furthermore, claim 1 does not exclude that the listings information is transmitted as part of a scheduling operation for recordings.

6.3 Hence, the subject-matter of claim 1 lacks inventive step in view of D11 and the common general knowledge.

First auxiliary request - adjournment of the proceedings

7. As a first auxiliary request, the proprietor requested an adjournment of the oral proceedings in order to gather evidence as to whether the alleged connotation of the translated term "alarm" in paragraphs 24 and 25 of D10 was consistent with the original term in D11.

The appellant contested that the term "alarm" had an emotional connotation implying that it was directed to a human user. This alleged connotation was the basis of an argument raised by the respondents for the first time during oral proceedings before the board.

- 7.1 The board cannot accede to this request. It is based on the allegation that the word "alarm" disclosed in paragraphs [0024] and [0025] of D10 was given a new connotation or interpretation, i.e. that the alarm is issued to the user, for the first time during the oral proceedings. This allegation is incorrect, as is evidenced by the fact that the decision under appeal is clearly based on the same interpretation of "alarm" as the present decision, i.e. that the alarm of D11 "addresses the user of the device" (see Reasons, point 14.9). No other connotation was and is considered to be implied in the word "alarm". It follows from this and the findings on inventive step above that it was not during the oral proceedings that the word "alarm" was first given a new connotation or interpretation, i.e. that it implied an emotional communication directed to a human user.
- 7.2 Hence, the appellant's request for an adjournment of the oral proceedings cannot be allowed.

Second auxiliary request - referral to the Enlarged Board of Appeal

8. The appellant submitted the following question for referral to to the Enlarged Board of Appeal:

"In an argument raised for the first time during oral proceedings before a Board of Appeal, is it allowable to form an opinion of the presence of direct and unambiguous disclosure with regard to a translated term in a foreign language prior art document based on an alleged connotation of that translated term without first gathering evidence on the connotation of that term in the native language? If this is generally allowable is it also allowable where there is disclosure elsewhere in that translated document that is inconsistent with that connotation?"

- 8.1 According to Article 112(1) EPC 1973, a question may be referred to the Enlarged Board of Appeal in order to ensure uniform application of the law, or if a point of law of fundamental importance arises. A board of appeal may, during proceedings on a case and either of its own motion or following a request from a party to the appeal, refer any question to the Enlarged Board of Appeal if it considers that a decision is required for these purposes.

- 8.2 As set out under point 7.1 above the board did not base its findings on the term "alarm" on a new connotation or interpretation presented for the first time in the oral proceedings. Therefore, the board considers that the question according to the appellant's request does not contain a point of law which is relevant for the present case.

8.3 However, for a question to be referred to the Enlarged Board of Appeal, it must be relevant for deciding the case in question (G 1/14, OJ EPO 2016, A95 and G 2/04, OJ EPO 2005, 549). Since this not the case here, the appellant's request for a referral to the Enlarged Board of Appeal has to be refused for this reason alone.

Conclusion

9. Since none of the appellant's requests is allowable the appeal must be dismissed.

Order

For these reasons it is decided that:

1. The appellant's request for a referral to the Enlarged Board of Appeal is refused.
2. The appeal is dismissed.

The Registrar:

The Chairman:



G. Magouliotis

C. Kunzelmann

Decision electronically authenticated