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**Datasheet for the decision
of 27 January 2023**

Case Number: T 1199/18 - 3.5.04

Application Number: 11828288.8

Publication Number: 2624562

IPC: H04N19/52, H04N19/61,
H04N19/109

Language of the proceedings: EN

Title of invention:

DYNAMIC IMAGE ENCODING DEVICE, DYNAMIC IMAGE DECODING DEVICE,
DYNAMIC IMAGE ENCODING METHOD, AND DYNAMIC IMAGE DECODING
METHOD

Applicant:

Mitsubishi Electric Corporation

Headword:

Relevant legal provisions:

EPC Art. 54, 56, 111(1)
RPBA 2020 Art. 11, 13(1), 13(2)

Keyword:

Main request - novelty - (no)

Auxiliary request 1 - amendment to appeal case - amendment gives rise to new objections (yes)

Auxiliary request 2 - amendment to appeal case - amendment overcomes issues raised (no)

Auxiliary request 3 - inventive step - (no)

Auxiliary request 4 - amendment to appeal case - amendment overcomes issues raised (no)

Auxiliary request 5 - amendment after summons - taken into account (yes)

Appeal decision - remittal to the department of first instance (yes)

Decisions cited:

T 0989/15, T 0954/17

Catchword:



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Case Number: T 1199/18 - 3.5.04

D E C I S I O N
of Technical Board of Appeal 3.5.04
of 27 January 2023

Appellant:
(Applicant)

Mitsubishi Electric Corporation
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Representative:

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Decision under appeal:

**Decision of the Examining Division of the
European Patent Office posted on 12 December
2017 refusing European patent application
No. 11828288.8 pursuant to Article 97(2) EPC.**

Composition of the Board:

Chair B. Willems
Members: A. Seeger
T. Karamanli

Summary of Facts and Submissions

- I. The appeal is against the examining division's decision to refuse European patent application No. 11 828 288.8, published as international patent application WO 2012/042719 A1.

- II. The prior-art documents cited in the decision under appeal included the following:

D1: US 2010/0220790 A1

- III. The decision under appeal was based on the ground that the subject-matter of the independent claims of the main request and the then first and then second auxiliary requests did not involve an inventive step within the meaning of Article 56 EPC.

- IV. The applicant (appellant) filed notice of appeal. With the statement of grounds of appeal, the appellant filed claims of a main request and an auxiliary request. According to the appellant, these claims were identical to the claims of the main request and the first auxiliary request on which the impugned decision was based. The appellant requested that the decision under appeal be set aside and that a European patent be granted on the basis of the claims of the main request, or alternatively, on the basis of the claims of the auxiliary request. It provided arguments to support its opinion that the claims met the requirements of Article 56 EPC.

- V. On 17 December 2021, a summons to oral proceedings was issued. On 10 October 2022, a communication under Article 15(1) of the Rules of Procedure of the Boards

of Appeal in the 2020 version (RPBA 2020, see OJ EPO 2021, A35) was issued. In that communication, the board gave the following preliminary opinion.

- (a) The subject-matter of claim 1 of the main request was not new in view of the disclosure of document D1.
- (b) Even if the differences between the claimed subject-matter and the disclosure of document D1 were as argued by the appellant, the board had doubts that the indicated technical effect of reducing the processing load in the decoder would be achieved by the claimed subject-matter. No technical effect could be attributed to receiving the signalled number.
- (c) The subject-matter of claim 1 of the first auxiliary request did not involve an inventive step in view of the disclosure of document D1 combined with the common general knowledge of the person skilled in the art.

VI. By letter dated 27 December 2022, the appellant filed amended claims of new auxiliary requests 1, 3, 4 and 5, and submitted that the main request was maintained and the sole auxiliary request filed with the statement of grounds of appeal was to be reordered as auxiliary request 2. It indicated a basis for the amendments in the application as filed and provided reasons why it was of the opinion that the new auxiliary requests should be admitted into the appeal proceedings and that the subject-matter of claim 1 of all the requests met the requirements of Articles 54 and 56 EPC.

VII. The board held oral proceedings on 27 January 2023.

The appellant's final requests were that the decision under appeal be set aside and that a European patent be granted on the basis of the claims of the main request filed with the statement of grounds of appeal or, alternatively, on the basis of the claims of auxiliary request 1 filed at the oral proceedings on 27 January 2023, or auxiliary request 2 filed as auxiliary request 1 by letter dated 27 December 2022, or auxiliary request 3 filed as sole auxiliary request with the statement of grounds of appeal, or any of auxiliary requests 4, 5 or 6 filed as auxiliary requests 3, 4 or 5, respectively, by letter dated 27 December 2022.

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

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

"A moving image decoding device comprising:
a variable length decoding unit for performing a variable-length decoding process on coded data multiplexed into a bitstream to obtain index information and control information, the index information specifying selected one of motion vector candidates and the control information for specifying the number of motion vector candidates to be selected based on the index information; and
a motion compensation prediction unit for performing a motion compensation prediction process on a current prediction block to generate an inter prediction image when said coding mode is an inter coding mode, said motion compensation prediction unit generating said inter prediction image using a motion vector selected from one or more selectable motion vector candidates

when said inter coding mode is a direct mode, said motion compensation prediction unit selecting one of said motion vector candidates specified by said index information, wherein
said one or more motion vector candidates include a spatial motion vector or a temporal motion vector based on the control information,
said spatial motion vector is obtained from one of neighboring blocks being located around said prediction block, and
said control information specifies the number of said motion vector candidates to be selected for each block or each slice."

- IX. Claim 1 of auxiliary request 1 differs from claim 1 of the main request in that the former contains the following definition of the control information (features added compared with claim 1 of the main request are underlined and deleted features are ~~struck through~~):

~~"and~~ said control information specifies the number of said motion vector candidates to be selected for each block or each slice and is multiplexed into each block to be encoded or into each slice header."

- X. Claim 1 of auxiliary request 2 differs from claim 1 of the main request in that the former contains the following definition of the variable length decoding unit (features added compared with claim 1 of the main request are underlined and deleted features are ~~struck through~~):

"a variable length decoding unit for performing a variable-length decoding process on coded data multiplexed into a bitstream to obtain index

information and control information from the bit stream, the index information specifying selected one of motion vector candidates and the control information showing ~~for specifying~~ the number of the motion vector candidates to be selected based on the index information; and"

- XI. Claim 1 of auxiliary request 3 differs from claim 1 of the main request in that the former contains the following definition of the control information (deleted features are ~~struck through~~):

"said control information specifies the number of said motion vector candidates to be selected for ~~each block~~ ~~or~~ each slice."

- XII. Claim 1 of auxiliary request 4 differs from claim 1 of the main request in that the former contains the following definitions of the variable length decoding unit and the control information (features added compared with claim 1 of the main request are underlined and deleted features are ~~struck through~~):

"a variable length decoding unit for performing a variable-length decoding process on coded data multiplexed into a bitstream to obtain index information and control information from the bit stream, the index information specifying selected one of motion vector candidates and the control information showing ~~for specifying~~ the number of the motion vector candidates to be selected based on the index information; and"

"said control information specifies the number of said motion vector candidates to be selected for ~~each block~~ ~~or~~ each slice."

XIII. Claim 1 of auxiliary request 5 differs from claim 1 of the main request in that the former contains the following definitions of the variable length decoding unit and the control information (features added compared with claim 1 of the main request are underlined and deleted features are ~~struck through~~):

"a variable length decoding unit for performing a variable-length decoding process on coded data multiplexed into a bitstream to obtain index information and control information from the bit stream, the index information specifying selected one of motion vector candidates on a block basis and the control information showing ~~for specifying~~ the number of the motion vector candidates to be selected based on the index information; and"

"said control information specifies the number of said motion vector candidates to be selected for ~~each block~~ ~~or~~ each slice."

XIV. Claim 1 of auxiliary request 6 is of no relevance to this decision.

XV. The appellant's arguments, in so far as they are relevant to the present decision, may be summarised as follows:

(a) Main request

The subject-matter of claim 1 was novel over the disclosure of document D1. Previous index values indicating selected motion vectors for previous blocks could not be equated with the control information as defined in claim 1 because in the feature mapping

provided by the board these index values were already equated with the index information defined in claim 1.

(b) Auxiliary request 1

Auxiliary request 1 was to be admitted into the appeal proceedings because it had been filed in reaction to a new argument made by the board during the oral proceedings. The feature of claim 1 "*said one or more motion vector candidates include a spatial motion vector or a temporal motion vector*" was clear to the person skilled in the art and did not need to be formulated in a more restrictive manner.

(c) Auxiliary request 2

Auxiliary request 2 was to be admitted into the appeal proceedings because it had been filed in reaction to a new objection under Article 54 EPC raised by the board in its communication under Article 15(1) RPBA 2020. Furthermore, the amendment to claim 1 overcame the objection of lack of novelty raised by the board against claim 1 of the main request because past motion vectors in document D1 might be regarded as "*specifying*" a set of motion vector candidates for a current block but these past motion vectors were not "*showing*" the set of motion vector candidates for a current block.

(d) Auxiliary request 3

The subject-matter of claim 1 of auxiliary request 3 was not obvious. The person skilled in the art would never have applied the motion vector set which was valid for a single block in document D1 to an entire

slice since this would have caused a massive loss in coding efficiency.

(e) Auxiliary requests 4 and 5

Auxiliary requests 4 and 5 were to be admitted into the appeal proceedings because they had been filed in reaction to the new objection under Article 54 EPC raised by the board in its communication under Article 15(1) RPBA 2020.

Reasons for the Decision

1. The appeal is admissible.
2. Main request - novelty (Article 54 EPC)
 - 2.1 Document D1 discloses a moving image decoding device (see Figure 2) comprising:

a variable length decoding unit (see Figure 2: "*Entropy decoding unit*" 210) for performing a variable-length decoding process on coded data multiplexed into a bitstream to obtain index information and control information (see paragraphs [0079] and [0080]), the index information specifying selected one of motion vector candidates (see paragraph [0168]: "*motion vector predictor information (MVPI) relevant to the determined motion vector predictor*") and the control information (see paragraphs [0186] to [0188], in particular formula 3 in paragraph [0187], setting out how it is determined at the receiver which one of sets 1 to 4 to use based on mv_col (T_x , T_y), a motion vector of a block co-located with a current block in a previous frame, and mv_med (S_x , S_y), which is a median of motion vectors a , b , c and d in a current frame) for

specifying the number of motion vector candidates (see paragraph [0176] in which, according to Table 3, set 1 has one motion vector candidate, sets 2 and 3 have two motion vector candidates and set 4 has four motion vector candidates) to be selected based on the index information (see paragraph [0169]: "*most efficient motion vector predictor (mvp) of the motion vector candidate set*"); and

a motion compensation prediction unit (see Figure 2: "*Inter prediction unit*" 250) for performing a motion compensation prediction process on a current prediction block to generate an inter prediction image when said coding mode is an inter coding mode (see paragraph [0080]), said motion compensation prediction unit generating said inter prediction image using a motion vector selected from one or more selectable motion vector candidates when said inter coding mode is a direct mode (see paragraphs [0179] and [0180]), said motion compensation prediction unit selecting one of said motion vector candidates specified by said index information (see paragraph [0168]), wherein

said one or more motion vector candidates include a spatial motion vector or a temporal motion vector based on the control information, said spatial motion vector is obtained from one of neighboring blocks being located around said prediction block (see paragraphs [0171] and [0172]), and

said control information specifies the number of said motion vector candidates to be selected for each block or each slice (see paragraph [0176]).

2.2 The appellant submitted that in the current application and in a system according to document D1 the set of

candidate motion vectors was independently derived by the encoder and the decoder. Furthermore, the MVPI disclosed in document D1, paragraph [0168] corresponded to the index information defined in claim 1 of the current application. However, according to this claim 1, additional control information about the transmitted number of vectors was transmitted in direct mode.

The appellant argued that previous index values indicating selected motion vectors for previous blocks could not be equated with the control information defined in claim 1 because in the feature mapping provided by the board these index values were already equated with the index information defined in claim 1 (see point XV.(a) above).

The board is not convinced by this argument since claim 1 does not specify that the control information needs to be signalled on a block-per-block basis.

Hence the MVPI in document D1 for a current block can be regarded as index information specifying one of motion vector candidates for the current block, while MVPIs of previous blocks can be regarded as control information based on which a set of motion vector candidates for the current block is derived at an image decoding device. Moreover, before motion vectors can be referred to in document D1 via MVPIs an initial set of motion vectors has to be signalled from the encoder to the decoder. At least this initial set can be regarded as control information as defined in claim 1.

2.3 Therefore the board finds that the subject-matter of claim 1 of the main request lacks novelty over the disclosure of document D1 (Article 54 EPC).

3. Auxiliary request 1 - admittance (Article 13 RPBA 2020)

3.1 The summons to oral proceedings was notified after the date on which the RPBA 2020 entered into force, i.e. 1 January 2020 (Article 24(1) RPBA 2020). Thus, in accordance with Article 25(1) and (3) RPBA 2020, Article 13(2) RPBA 2020 applies to the question of whether to admit auxiliary request 1, which was filed during the oral proceedings and thus after notification of the summons to those oral proceedings. Auxiliary request 1 is therefore an amendment within the meaning of Article 13(2) RPBA 2020.

3.2 Article 13(2) RPBA 2020 states that any amendment to a party's appeal case after notification of a summons to oral proceedings is, in principle, not to be taken into account unless there are exceptional circumstances, which have been justified with cogent reasons by the party concerned. If such circumstances are shown to exist, the board of appeal may, in exercising its discretion, decide to admit an amendment made to the appeal case at this advanced stage of the proceedings (see document CA/3/19, section VI, explanatory remarks on Article 13(2) RPBA 2020, third paragraph, last sentence).

3.3 The explanatory remarks on Article 13(2) RPBA 2020 also contain the following guidance: "*At the third level of the convergent approach, the Board may also rely on criteria applicable at the second level of the convergent approach, i.e. as set out in proposed new paragraph 1 of Article 13*" (see document CA/3/19, section VI, explanatory remarks on Article 13(2) RPBA 2020, fourth paragraph). The board takes the view that, at the third level of the convergent approach,

the boards of appeal are free to use or not use the criteria set out in Article 13(1) RPBA 2020 when deciding, in exercising their discretion in accordance with Article 13(2) RPBA 2020, whether to admit an amendment made at this stage of the proceedings (see also decisions T 989/15, point 16.2 of the Reasons, and T 954/17, point 3.10 of the Reasons).

3.4 Under Article 13(1) RPBA 2020, the board exercises its discretion in view of, inter alia, whether the party has demonstrated that any such amendment, prima facie, does not give rise to new objections.

3.5 Claim 1 of auxiliary request 1 was amended to specify that "*control information specifies the number of said motion vector candidates to be selected for each block or each slice and is multiplexed into each block to be encoded or into each slice header*".

By defining that the control information is multiplexed into each block to be encoded or into each slice header, this control information which specifies the number of motion vector candidates can no longer be understood as information specifying the whole set of available motion vector candidates. The person skilled in the art would have understood that such information about the whole set of available motion vector candidates is too large to be multiplexed into each block or to be encoded into each slice header.

Hence this amendment means that the feature of claim 1 "*control information specifying the number of motion vector candidates*" needs to be interpreted in the sense that the control information is an actual number which can be multiplexed into each block to be encoded or into each slice header.

However, this interpretation gives rise to the following objection of lack of clarity (Article 84 EPC).

- 3.6 Claim 1 specifies that *"said one or more motion vector candidates include a spatial motion vector or a temporal motion vector based on the control information"*.

In the event that the "control information" is interpreted as an actual number, this quoted feature of claim 1 means that this number determines whether the set of motion vector candidates includes spatial motion vectors or temporal motion vectors.

However, this only applies under the following two conditions:

- (a) the set of motion vector candidates is sorted in such a manner that all the spatial motion vector candidates come first, followed by all the temporal motion vector candidates, or vice versa
- (b) the number is lower than or equal to the number of those types of motion vector candidates (spatial or temporal) that are listed first in the set of motion vector candidates

In other common situations, for example if the motion vector candidates are sorted according to their likelihood of occurrence, the number of motion vector candidates to be selected for each block does not determine whether there are only spatial or only temporal motion vectors.

Since claim 1 does not specify the order of motion vector candidates, the board finds that it is unclear how the result specified in the quoted feature of claim 1 is achieved (Article 84 EPC).

- 3.7 The appellant referred to Figure 33 and the corresponding paragraph [0185] in the description showing an example in which all the spatial motion vector candidates were listed first, followed by one temporal motion vector candidate. The appellant argued that the quoted feature was thus clear to the person skilled in the art and did not need to be formulated in a more restrictive manner (see point XV.(b) above).

The board is not convinced by these arguments, because the set of spatial motion vector candidates in Figure 33 is just an example. The subject-matter of claim 1 is not limited to such an ordering of motion vector candidates.

- 3.8 In view of the above, the board finds that the appellant has not demonstrated that the amendments to claim 1 of auxiliary request 1, prima facie, do not give rise to a new objection of lack of clarity (Article 84 EPC).

Therefore the board exercised its discretion under Article 13(2) RPBA 2020, taking into account the criteria set out in Article 13(1) RPBA 2020, and decided not to admit auxiliary request 1 into the appeal proceedings.

4. Auxiliary request 2 - admittance (Article 13 RPBA 2020)

4.1 Auxiliary request 2 was filed after notification of the summons to oral proceedings. Hence it is an amendment within the meaning of Article 13(2) RPBA 2020.

4.2 As mentioned under point 3.3 above, the board may use the criteria set out in Article 13(1) RPBA 2020 when deciding, in exercising its discretion in accordance with Article 13(2) RPBA 2020, whether to admit an amendment made at this stage of the proceedings.

Under Article 13(1) RPBA 2020 the board exercises its discretion in view of, *inter alia*, whether the party has demonstrated that any such amendment, *prima facie*, overcomes the issues raised by the board.

4.3 Claim 1 of auxiliary request 2 differs from claim 1 of the main request in that the former specifies:

(a) *"to obtain index information and control information from the bitstream"*

(b) *"the control information showing"* instead of *"the control information specifying"*

4.4 Amendment a) cannot resolve the objection of lack of novelty raised against claim 1 of the main request (see section 2. above) because in that objection it had already been assumed that index information, *i.e.* MVPIs, and control information, *i.e.* information about past motion vectors, was obtained from the bitstream.

The appellant did not present counter-arguments in this respect.

4.5 The appellant submitted that the term *"showing"* in feature b) quoted under point 4.3 above implied that

something was immediately apparent from certain data, while "*specifying*" also encompassed indirect consequences derived from the data. The appellant argued that past motion vectors in document D1 might be regarded as "*specifying*" a set of motion vector candidates for a current block, but these past motion vectors were not "*showing*" the set of motion vector candidates for a current block (see point XV.(c) above).

- 4.6 The board is not convinced by these arguments because in document D1 a set of motion vector candidates for a current block is derived from motion vectors used for previous blocks (see point 2.1 above). The board is not convinced that a different meaning should be attributed to the phrases "*specifying the number... to be selected*" or "*showing the number...to be selected*" in the context of claim 1. The vector candidate set has a number of candidates, this number being derived from motion vectors of previous blocks.
- 4.7 In view of the above, the board finds that the appellant has not demonstrated that the amendments to claim 1 of auxiliary request 2, *prima facie*, resolve the objection of lack of novelty (Article 54 EPC) raised by the board against claim 1 of the main request.
- 4.8 Therefore the board exercised its discretion under Article 13(2) RPBA 2020, taking into account the criteria set out in Article 13(1) RPBA 2020, and decided not to admit auxiliary request 2 into the appeal proceedings.
5. Auxiliary request 3 - inventive step (Article 56 EPC)

5.1 Claim 1 of auxiliary request 3 differs from claim 1 of the main request in that in the former the control information specifies the number of motion vector candidates to be selected for each slice, and not for each block.

5.2 The board takes the view that for the person skilled in the art it would have been an obvious trade-off between complexity and coding efficiency to make the motion vector computation less granular and perform it once per slice instead on a block level, i.e. to apply a motion vector set valid for a first block in a slice to the entire slice.

By doing so, the person skilled in the art would have arrived at the subject-matter of claim 1 of auxiliary request 3 in a straightforward manner.

5.3 The appellant argued that the person skilled in the art would never have applied the motion vector set which was valid for a single block in document D1 to an entire slice since this would have caused a massive loss in coding efficiency (see point XV.(d) above).

The board is not convinced by this argument since document D1, paragraph [0219] discloses "*the related art skip mode has a single motion vector per 16*16 block*". Hence the board finds that using a single motion vector for a larger area - such as a slice - is a common trade-off between complexity and coding efficiency.

5.4 The appellant further argued that claim 1 defined a motion compensation prediction on a block level and referred to neighbouring blocks being located around a prediction block. This was not compatible with the

assumption of a single motion vector per slice being used.

The board sees no such incompatibility because a prediction on a block level does not rule out the same motion vector being used for multiple blocks. Furthermore, neighbouring blocks can be the blocks of a neighbouring slice.

Moreover, claim 1 does not specify on what level a motion vector is selected from a set of candidates. Hence this level may be a slice level.

5.5 In view of the above, the board finds that the subject-matter of claim 1 of auxiliary request 3 does not involve an inventive step within the meaning of Article 56 EPC.

6. Auxiliary request 4 - admittance (Article 13 RPBA 2020)

6.1 Auxiliary request 4 was filed after notification of the summons to oral proceedings. Hence it is an amendment within the meaning of Article 13(2) RPBA 2020.

6.2 As mentioned under point 3.3 above, the board may use the criteria set out in Article 13(1) RPBA 2020 when deciding, in exercising its discretion in accordance with Article 13(2) RPBA 2020, whether to admit an amendment made at this stage of the proceedings.

Under Article 13(1) RPBA 2020, the board exercises its discretion in view of, *inter alia*, whether the party has demonstrated that any such amendment, *prima facie*, overcomes the issues raised by the board.

- 6.3 Claim 1 of auxiliary request 4 differs from claim 1 of auxiliary request 3 by the same amended features as claim 1 of auxiliary request 2 does from claim 1 of the main request.
- 6.4 Since the board finds that these amended features are disclosed by document D1 (see point 4.6 above), claim 1 of auxiliary request 4 lacks inventive step for the same reasons as those set out for claim 1 of auxiliary request 3 (see section 5. above).
- 6.5 The appellant had no counter-arguments in this respect.
- 6.6 In view of the above, the board finds that the appellant has not demonstrated that the amendments to claim 1 of auxiliary request 4, *prima facie*, resolve the objection of lack of inventive step (Article 56 EPC) raised by the board against claim 1 of auxiliary request 3.
- 6.7 Therefore the board exercised its discretion under Article 13(2) RPBA 2020, taking into account the criteria set out in Article 13(1) RPBA 2020, and decided not to admit auxiliary request 4 into the appeal proceedings.
7. Auxiliary request 5 - admittance (Article 13(2) RPBA 2020)
- 7.1 Auxiliary request 5 was filed after notification of the summons to oral proceedings. Auxiliary request 5 is therefore an amendment within the meaning of Article 13(2) RPBA 2020.
- 7.2 Article 13(2) RPBA 2020 states that any amendment to a party's appeal case after notification of a summons to

oral proceedings is, in principle, not to be taken into account unless there are exceptional circumstances, which have been justified with cogent reasons by the party concerned.

- 7.3 In its communication under Article 15(1) RPBA 2020, the board did not confirm the examining division's finding that the subject-matter of claim 1 of the main request lacked inventive step. Instead, the board raised a new objection under Article 54 EPC for the first time. In response to this communication, the appellant filed auxiliary request 5 with the aim of overcoming this new objection (see point XV.(e) above). The board finds that this represents exceptional circumstances within the meaning of Article 13(2) RPBA 2020. Exercising its discretion under this provision, the board thus decided to admit auxiliary request 5 into the appeal proceedings.
8. Remittal to the department of first instance (Article 111(1), second sentence, EPC and Article 11 RPBA 2020)
- 8.1 According to Article 111(1), second sentence, EPC, the board may either exercise any power within the competence of the department of first instance or remit the case to that department for further prosecution. In exercising this discretion, the board takes account of the provisions of Article 11 RPBA 2020, which applies under Article 25(1) RPBA 2020 in the case at hand. According to Article 11, first sentence, RPBA 2020, the board is not to remit a case to the department whose decision was appealed for further prosecution, unless special reasons present themselves for doing so.
- 8.2 In the decision under appeal, the examining division held that explicit signalling of the number of motion

vector candidates was an obvious alternative to determining a selected candidate set at a receiver (see decision under appeal, point 2.1.1). Furthermore, the examining division held that the selection of the level of control of the candidate set within the coding hierarchy was a common trade-off between coding efficiency and flexibility (see decision under appeal, point 2.2). Hence the examining division held that the subject-matter of claim 1 of the main request and the then first auxiliary request on which the impugned decision was based lacked inventive step (Article 56 EPC) in view of the disclosure of document D1 combined with the common general knowledge of the person skilled in the art.

8.3 Claim 1 of auxiliary request 5 specifies that:

- (a) the index information specifies selected one of motion vector candidates on a block basis
- (b) control information specifies the number of said motion vector candidates to be selected for each slice

This means that for each block a motion vector is selected via the index information from a candidate set, wherein the candidate set may change from block to block but the number of candidates in each of these candidate sets is specified for each slice.

This situation is different from selecting a specific candidate set to be valid for an entire slice, which the examining division regarded as an obvious alternative to selecting such a candidate set per block (see point 8.1 above).

- 8.4 Hence the reasons provided by the examining division for refusing the application do not apply to the claims of auxiliary request 5. The decision under appeal must thus be set aside.
- 8.5 However, at this stage, the set of claims of auxiliary request 5 cannot be granted without being further examined. In the present case, the board does not find it appropriate to carry out such an examination itself because the claimed subject-matter has significantly changed and the assessment of novelty and inventive step may require the introduction of new prior-art documents. The board considers this a special reason within the meaning of Article 11 RPBA 2020.
- 8.6 Under these circumstances, the board considers it appropriate to remit the case to the department of first instance for further prosecution in accordance with Article 111(1), second sentence, EPC and Article 11 RPBA 2020.

Order

For these reasons it is decided that:

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

The Registrar:

The Chair:



K. Boelicke

B. Willems

Decision electronically authenticated