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**Datasheet for the decision
of 17 March 2022**

Case Number: T 1804/19 - 3.5.07

Application Number: 07814265.0

Publication Number: 2054816

IPC: G11B27/034

Language of the proceedings: EN

Title of invention:

CAPTURING AND SHARING MEDIA CONTENT AND MANAGEMENT OF SHARED
MEDIA CONTENT

Applicant:

Sling Media L.L.C.

Headword:

Capturing and sharing media content/SLING MEDIA

Relevant legal provisions:

EPC Art. 123(2)
RPBA 2020 Art. 13(2)

Keyword:

Amendments - added subject-matter - main request and second
auxiliary request (yes)
Amendment after summons - exceptional circumstances - second
auxiliary request (yes)

Decisions cited:

T 2329/15, T 0032/16, T 1255/18



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Case Number: T 1804/19 - 3.5.07

D E C I S I O N
of Technical Board of Appeal 3.5.07
of 17 March 2022

Appellant: Sling Media L.L.C.
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Decision under appeal: **Decision of the Examining Division of the
European Patent Office posted on 17 January 2019
refusing European patent application No.
07814265.0 pursuant to Article 97(2) EPC**

Composition of the Board:

Chair J. Geschwind
Members: M. Jaedicke
R. de Man

Summary of Facts and Submissions

- I. The appellant (applicant) filed an appeal against the examining division's decision refusing European patent application No. 07814265.0, filed as international application PCT/US2007/076337 (published as WO 2008/024723). The application claims an earliest priority date of 21 August 2006.
- II. The documents cited in the contested decision included:
D1 US 2006/0184980 A1, published on 17 August 2006
- III. The examining division refused the application on the grounds that the subject-matter of independent claim 1 of the then pending sole request lacked inventive step over the prior art disclosed in document D1.
- IV. In its statement of grounds of appeal, the appellant requested that the contested decision be set aside and that a patent be granted on the basis of a sole request submitted for the first time with the grounds of appeal. It also stated that if admission of the amended request was refused, it submitted that the objections in the contested decision were incorrect, and that it appealed the decision on this basis.
- V. In a communication under Article 15(1) RPBA 2020 accompanying the summons to oral proceedings, the board expressed, among other things, its provisional opinion that claim 1 of the sole request submitted with the statement of grounds of appeal did not comply with Article 123(2) EPC and that the subject-matter of this claim lacked inventive step in view of document D1.

- VI. By letter of 17 February 2022, the appellant maintained the sole request filed with the statement of grounds of appeal as its main request, filed new first to third auxiliary requests and submitted arguments.
- VII. Oral proceedings were held as scheduled, and the appellant was heard on the issue of added subject-matter for the main request and the second auxiliary request. The appellant withdrew its first and third auxiliary request. At the end of the oral proceedings, the Chair announced the board's decision.
- VIII. The appellant's final requests were that the decision under appeal be set aside and that a patent be granted on the basis of the claims of the main request filed with the statement of grounds of appeal or, in the alternative, the second auxiliary request filed with the letter of 17 February 2022.
- IX. Claim 1 of the main request reads as follows:
"A method for sharing media content, the method comprising:
receiving a media stream from a placeshifting device via a digital network (440) for playback by a media device, wherein the placeshifting device receives broadcast media content from a source and selectively transmits the media content to the media device over the digital network as the media stream;
caching the received media stream as it is being played by the media device;
receiving a user command to capture a portion of the media stream via a user interface of the media device while playing the media stream;
responsive to receiving the user command, creating a clip comprising at least a portion of the cached media stream, characterised in that the method comprises, the

clip having a user selectable duration and/or encoding quality:

the media device automatically obtaining information describing the content of the clip from an electronic program guide;

the media device associating the information describing the content of the clip with the clip; and

the media device transmitting the clip and the associated information to a remote second device via a digital network,

wherein the second device identifies set restrictions applied to the clip based in the identity of the clip found from the associated information, the restrictions identifying the allowable length and/or the encoding quality of the clip recording, wherein the second device controls access to the clip by allowing access to the clip by other media devices connected to the network if the duration and/or encoding quality of the clip complies with the restrictions, and prevents access if the duration and/or encoding quality of the clip does not comply with the restrictions."

- X. Claim 1 of the second auxiliary request differs from claim 1 of the main request in that it amends the expression "and/or encoding quality" in the step of creating a clip to "and/or encoding parameters" and in that its last two steps read as follows:

"the media device, responsive to a user instruction, transmitting the clip and the associated information to a remote community website via a digital network,

wherein the community website identifies restrictions set by content owners applied to the clip based in the identity of the clip found from the associated information, the restrictions identifying the allowable length and/or the quality of the clip recording, wherein the quality is selected from a group

consisting of a resolution, a frame rate of a video content and a bit rate of an audio content, wherein the community website controls access to the clip by allowing access to the clip by other media devices connected to the network if the duration and/or quality of the clip complies with the restrictions, and prevents access if the duration and/or quality of the clip does not comply with the restrictions."

- XI. The appellant's arguments, where relevant to the present decision, are discussed in detail below.

Reasons for the Decision

The invention

1. The application relates to capturing and sharing media content, for example using websites or peer-to-peer computer networks (description as published, paragraphs [0001] to [0008]). According to the application, there is a need for a system and process that allows users to share media content and that grants the content owners rights to control the use of their media content (description, paragraph [0009]).

Main request

2. *Admissibility*

Claim 1 according to the main request differs from claim 1 of the sole request considered by the examining division in that each step of automatically obtaining information, associating the information and transmitting the clip is performed by the media device and in that the second device to which the clip is

transmitted is remote. The board agrees with the appellant that these amendments merely clarified what was implicit in the request considered by the examining division. In view of this, the board admits the main request into the proceedings under Article 12(4) RPBA 2007.

3. *Added subject-matter*

Claim 1 of the main request specifies that the media device automatically obtains information describing the content of the clip from an electronic programme guide and that the media device transmits the clip and the associated information to a remote second device via a digital network. The appellant indicated paragraphs [0040] and [0044] of the description as a basis for these features.

Both paragraphs [0040] and [0041] of the description concern the embodiment of Figure 2. Paragraph [0041] of the description discloses that the transmission to another device is responsive to a user instruction, and paragraph [0044] discloses a user-operated upload button for this purpose. However, claim 1 of the main request does not mention such a user instruction. Consequently, claim 1 covers a transmission by the media device not based on a user instruction as explicitly disclosed in the embodiments on which the appellant relied as a basis. Moreover, the board is not convinced that the skilled person would generalise these embodiments, which rely on human-machine interaction for media editing, to an automated transmission initiated by the media device. The appellant did not submit any further arguments on this issue in the oral proceedings.

In view of the above, the board is not convinced that the application as filed provides a basis for claim 1 of the main request (Article 123(2) EPC).

Second auxiliary request

4. Admissibility

The second auxiliary request was filed for the first time after oral proceedings had been arranged and comprises a number of amendments when compared with the main request. As these amendments constitute a legitimate response at the earliest opportunity to objections under Article 123(2) EPC raised by the board for the first time in its communication pursuant to Article 15(1) RPBA 2020, the board considers that there are exceptional circumstances (see decision T 32/16, Reasons 1.3; T 2329/15, Reasons 4.4; T 1255/18, Reasons 6.1) which justify the admission of the newly filed requests into the appeal proceedings (Article 13(2) RPBA 2020).

5. Added subject-matter

5.1 In the oral proceedings, in view of the objection made in the board's communication pursuant to Article 15(1) RPBA 2020, point 8.3, the board asked the appellant for a basis in the application as filed for the last feature of claim 1 in the overall technical context specified in claim 1. The board pointed out that the claim included also the steps of receiving a media stream from a placeshifting device using a media device, automatically obtaining (with the media device) information describing the content of the clip from an electronic programme guide and associating this information with the clip. According to claim 1, the

associated information was transmitted from the media device to the community website. According to the last feature of claim 1, the community website identified "restrictions set by content owners applied to the clip based in the identity of the clip found from the associated information". In the oral proceedings, the board explained that there were doubts that this aspect of claim 1 was directly and unambiguously derivable from the application as filed.

5.2 The appellant argued that the overarching aims of the invention were to allow users to make clips of media content and share clips with others and to allow content owners to maintain some control over how those clips were used, as disclosed, for example, in paragraphs [0012], [0013] and [0022] to [0024] of the description. The detailed embodiments in the application had to be read in light of these overarching aims.

5.2.1 According to the appellant, the last feature of claim 1 of the second auxiliary request was based on the description, paragraphs [0024] and [0082] and original claims 28 and 29. Moreover, according to paragraph [0093] of the description, metadata in the clip was used to enforce restrictions.

The media device performed the clipping of the media content as disclosed in paragraph [0028]. According to paragraph [0040], the media device automatically tagged the clip with metadata using an electronic programme guide as a source. This was agnostic as to the source of the media content. As disclosed in paragraphs [0043] and [0044] of the description, the media device received placeshifted content and automatically associated metadata with the clip. As mentioned in

paragraphs [0029] and [0033], the media device could be provided in various forms, for example as part of a placeshifting system or a personal video recorder. This affected how it received the media content. Nonetheless, the clipping and tagging functionality was clearly applicable to each of these forms.

Similarly, paragraph [0082] of the description disclosed that the operation of the community website in enforcing restrictions on the use of clips based on duration and quality was not limited to the clip being produced from media content that had been placeshifted or recorded by a personal video recorder. In this regard, the overarching aim of the application to allow content owners to enforce restrictions (see also paragraph [0078] of the description and Figure 6) had to be considered when judging how the skilled person would read paragraph [0082]. Accordingly, the application supported a media device which created a clip and automatically tagged this clip with identifying information and a community website which applied restrictions based on the tagged identifying information as metadata.

- 5.2.2 The appellant further argued that the example given on pages 20 and 21, i.e. in paragraphs [0091] to [0096] of the description, was merely an illustration where the source of the media content was a personal video recorder. The skilled person would realise that the operation of the community website in applying restrictions based on the metadata associated with the clip was not based on the media source but only on the media content. Consequently, this operation would also apply to the situation described in paragraph [0040] where the clip was generated from placeshifted content. The operation of the community website in applying the

restrictions based on the clip's metadata was separate from how the metadata was applied to the clip by the media device and whether the media stream was placeshifted or recorded in a personal video recorder. In any event, the claim amendments had a basis in the application as filed even without the detailed example of pages 20 and 21.

5.2.3 As a basis for the feature "restrictions set by content owners applied to the clip based in the identity of the clip found from the associated information", the appellant referred to paragraphs [0082] and [0093] of the description. Even though the appellant admitted that these passages did not disclose the exact wording of the claim feature, this was merely a matter of the application disclosing two plus two and then claiming four. This was in part a result of describing the client and server of the invention separately and then claiming both together. The skilled person sensibly reading the application understood that the identity of the clip used on the server came from the metadata associated with the clip on the client and would therefore arrive at the claimed features.

5.3 The board is not convinced that the passages of the application as filed cited by the appellant provide a basis for claim 1 of the second auxiliary request.

5.3.1 The board agrees that the example process for the media device according to the description, paragraphs [0043] to [0045] discloses that the media device receives a video stream from a placeshifting device and creates a clip. While paragraph [0044] discloses that metadata

may be added to the clip manually or automatically, this paragraph discloses that the user adds a title to the clip and is silent about obtaining information from an electronic programme guide.

It is true that paragraph [0040] of the description discloses automatically tagging the clip with information which may be obtained from an electronic programme guide or other sources. The board agrees with the appellant that the skilled person could combine the example according to paragraph [0044] with the general teaching of paragraph [0040] to obtain metadata from an electronic programme guide. However, even when taking this combination of different passages of the description into account, the board judges that the application as filed fails to specifically disclose the use of information obtained from an electronic programme guide to identify a created clip for identifying any restrictions associated with this clip. Moreover, the application as filed does not mention any advantage to obtaining information from an electronic programme guide, let alone to the reliable identification of created media clips as argued by the appellant. The board notes that the electronic programme guide is mentioned only in a single sentence in paragraph [0040] of the application as filed as an example of sources for metadata in the context of the automatic tagging of clips.

- 5.3.2 The application as filed discloses in the cited paragraph [0082] that, after identifying a piece of media content, the community server may allow access to the media content only if the restriction associated with that media content is not violated. This paragraph is silent about how this identification is achieved and does not refer to the use of metadata for this purpose.

Even if the skilled person concluded that the metadata associated with the clip was to be used for identifying the clip, it is not directly and unambiguously derivable that metadata obtained from an electronic programme guide is used. For example, there are other metadata, such as the title added by the user according to paragraph [0044], that could be used for identifying the clip.

The appellant also referred to paragraph [0093] of the application as filed. This paragraph discloses that the application server identifies the subject-matter of the received clip using the metadata stored during the vertical blanking interval of the video clip. This relates to a television programme recorded using a personal video recorder. It follows that this example is different from using metadata associated with the clip obtained from an electronic programme guide and is also not related to media content received from a placeshifting device. Consequently, the board does not agree with the appellant that paragraphs [0082] and [0093] provide a basis in the application as filed from which the last feature of claim 1 is directly and unambiguously derivable.

- 5.3.3 In view of the above, claim 1 of the second auxiliary request does not comply with Article 123(2) EPC.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chair:



S. Lichtenvort

J. Geschwind

Decision electronically authenticated