

Internal distribution code:

- (A) [-] Publication in OJ
- (B) [-] To Chairmen and Members
- (C) [-] To Chairmen
- (D) [X] No distribution

**Datasheet for the decision
of 25 November 2024**

Case Number: T 0865/22 - 3.5.04

Application Number: 16779717.4

Publication Number: 3284261

IPC: H04N21/234, H04N21/235

Language of the proceedings: EN

Title of invention:

SYSTEM AND METHOD FOR CREATING AND DISTRIBUTING MULTIMEDIA
CONTENT

Applicant:

W.S.C. Sports Technologies Ltd.

Headword:

Relevant legal provisions:

EPC Art. 84

RPBA 2020 Art. 12(6)

Keyword:

Main request - clarity (no)

First to third auxiliary requests - should have been submitted
in first-instance proceedings (yes)

Decisions cited:

T 0068/85, T 0238/88, T 0860/93, T 0190/99, T 1473/19,
T 0255/20, T 1734/20, T 0141/20

Catchword:



Beschwerdekammern
Boards of Appeal
Chambres de recours

Boards of Appeal of the
European Patent Office
Richard-Reitzner-Allee 8
85540 Haar
GERMANY
Tel. +49 (0)89 2399-0

Case Number: T 0865/22 - 3.5.04

D E C I S I O N
of Technical Board of Appeal 3.5.04
of 25 November 2024

Appellant:
(Applicant)

W.S.C. Sports Technologies Ltd.
14 Bar-Kochva Street
5126106 Bene Beraq (IL)

Representative:

Pearl Cohen Zedek Latzer Baratz UK LLP
The Gridiron Building
One Pancras Square
London N1C 4AG (GB)

Decision under appeal:

**Decision of the Examining Division of the
European Patent Office posted on 30 November
2021 refusing European patent application
No. 16779717.4 pursuant to Article 97(2) EPC.**

Composition of the Board:

Chair B. Willems
Members: F. Sanahuja
W. Ungler

Summary of Facts and Submissions

- I. The appeal is against the examining division's decision to refuse European patent application No. 16 779 717.4.
- II. The application was refused on the following grounds:
- (a) Claims 1 and 3 of the sole request which had formed the basis for the decision under appeal were not clear (Article 84 EPC).
 - (b) The subject-matter of claims 1, 3 and 5 of the sole request which had formed the basis for the decision under appeal extended beyond the content of the application as filed (Article 123(2) EPC).
 - (c) The subject-matter of claim 1 of the sole request which had formed the basis for the decision under appeal lacked inventive step over the disclosure of either document D1 or document D2 in combination with the common general knowledge of the person skilled in the art (Article 56 EPC).
- III. The applicant (appellant) filed notice of appeal. With its statement of grounds of appeal, the appellant filed a main request and first to third auxiliary requests, and indicated a basis for the amendments to the claims of these requests in the published application. Moreover, the appellant provided arguments as to why the examining division's findings were incorrect.
- IV. The appellant was summoned to oral proceedings. In a communication under Article 15(1) RPBA the board gave, *inter alia*, the following preliminary opinion:

- (a) It might be necessary to discuss whether, using only ordinary skill and common general knowledge, it was apparent how to use the generic textual content specified in claim 1 of the main request to identify events and to determine the claimed start and end times (Article 84 EPC).
- (b) The appellant should be prepared to discuss whether the board, in exercising its discretion, balancing all relevant circumstances of the case, should admit the first to third auxiliary requests into the appeal proceedings (Articles 12(4) and (6) RPBA).

- V. In its reply dated 25 October 2024, the appellant maintained its position that the application met all the requirements of the EPC, but without submitting any substantive comments on the board's preliminary opinion.
- VI. During the oral proceedings on 25 November 2024, the appellant presented new arguments, both orally and in writing.
- VII. 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 or, alternatively, on the basis of the claims of one of the first to third auxiliary requests, all requests filed with the statement of grounds of appeal, or that the case be remitted to the department of first instance for further prosecution.
- VIII. At the end of the oral proceedings, the chair announced the board's decision.

IX. Claim 1 of the **main request** reads as follows:

"A method of generating an output video content, the method comprising:

receiving (810) an input video content (420);

receiving data related to the input video content but not included in the input video content, wherein the received data comprises textual content collected from a website;

analyzing the input video content to identify an event in the input video content based on the textual content collected from the website;

determining (825) a start time and an end time of a segment of the input video content, the segment including the event, based on the textual content collected from the website; and

generating (830) an output video content by including the segment in the output video content."

X. Claim 1 of the **first auxiliary request** differs from claim 1 of the main request in that the following features have been amended as shown below (additions underlined and omissions ~~struck through~~):

"analyzing the input video content;~~to~~

identifying an event in the input video content based on semantic analysis of the textual content collected from the website;"

XI. Claim 1 of the **second auxiliary request** differs from claim 1 of the main request in that the following features have been amended as shown below (additions underlined and omissions ~~struck through~~):

"receiving data related to the input video content but not included in the input video content, wherein the received data comprises timestamped textual content collected from a website;

analyzing the input video content;~~to~~

identifying an event in the input video content based on semantic analysis of the timestamped textual content collected from the website;

~~determining (825) a start time and an end time of a segment of the input video content, the segment including the event, based on the textual content collected from the website; and~~

generating (830) an output video content by including the ~~segment~~ event in the output video content."

XII. Claim 1 of the **third auxiliary request** differs from claim 1 of the main request in that the following features have been amended as shown below (additions underlined and omissions ~~struck through~~):

"receiving data related to the input video content but not included in the input video content, wherein the received data comprises timestamped textual content collected from a ~~website~~ social network;

analyzing the input video content;~~to~~

identifying an event in the input video content based on semantic analysis of the timestamped textual content collected from the ~~website~~ social network;

~~determining (825) a start time and an end time of a segment of the input video content, the segment including the event, based on the textual content collected from the website; and~~

generating (830) an output video content by including the ~~segment~~ event in the output video content."

Reasons for the Decision

1. The invention

The invention relates to a method of generating output video content including a video segment of input video content. The segment includes an event identified on the basis of textual content collected from a website or social network.

2. Main request - clarity (Article 84 EPC)

2.1 Under Article 84 EPC, the claims must be clear.

Rule 43 EPC stipulates that the claims must define the matter for which protection is sought in terms of the technical features of the invention. A technical feature is one that can be read by a skilled person as an instruction as to the technical procedure to be followed to achieve a given result (see T 68/85, point 8.4.1 of the Reasons).

- 2.2 In point 1.2 of the decision under appeal, the examining division considered that claim 1 was not clear.

The features "*analyzing the input video content to identify an event in the input video content based on the textual content collected from the website*" and "*determining a start time and an end time of a segment of the input video content, the segment including the event, based on the textual content collected from the website*" attempted to define the subject-matter in terms of the result to be achieved, rather than defining the necessary technical features.

Furthermore, it was not clear what information the textual content contained, as it had not been previously defined.

- 2.3 The features quoted in point 2.2 above are defined as functional technical features, i.e. in terms of a technical result (identification of an event and determination of start and end times of a segment) rather than in terms of concrete steps to arrive at the result.

- 2.3.1 The appellant argued that these functional features were clear either in view of their ordinary technical definitions in the relevant art or when interpreted in view of the disclosure of the description and drawings. The person skilled in the art would be able to implement them without undue burden (see section "CLARITY (ARTICLE 84 EPC)" of the statement of grounds of appeal). In this context, during the oral proceedings the appellant referred to decisions T 255/20, T 68/85, T 238/88, T 0860/93, T 190/99 and T 1473/19 to support its opinion that:

- functional features were permissible in a claim,
- claim 1 of the main request was clear because the person skilled in the art was able to understand and implement its teaching without undue burden, if necessary following reasonable experiments, and
- the claims must be interpreted in the light of the description and drawings.

2.3.2 The appellant further submitted that it was implicit, from paragraphs [0148] and [0160] of the description and from the overall disclosure of the application, that textual data had to be associated with timing information.

2.3.3 A functional feature defining a technical result is allowable in a claim as long as the person skilled in the art knows, without exceeding their normal skills and knowledge, what they have to do in order to obtain said result (see Case Law of the Boards of Appeal of the European Patent Office, 10th edition, 2022, "Case Law", II.A.3.4). The board is not convinced that the functional features identified in point 2.2 above meet this criterion.

2.3.4 The embodiments described in the application consider only textual content associated with or containing timestamps or time information (see paragraphs [00045], [00145], [00148], [00155], [00156] and [00157]). Paragraph [0160] describes an example of event detection based on text in a social network or user chatter as previously described (see e.g. paragraph [0148]) and therefore its disclosure is only as relevant as that of the previously cited passages.

The board notes that the textual content in claim 1 is undefined: in particular it is not associated with timing information of an event in an input video content, either in the form of timestamps or otherwise. Hence the board fails to see why the claim should be read as implicitly limited to textual data associated with timing information. The appellant has not provided convincing arguments as to how the person skilled in the art, using only reasonable experiments, could use any textual content related to the input video content from a webpage to identify an event in an input video content.

Therefore, even when taking account of the content of the description and drawings, the board is not convinced that the person skilled in the art would know how to identify events or start and end times, and hence the related segments, in input video content on the basis of unspecified textual content (see point 2.2 above), in particular textual content devoid of timing information, without exceeding their normal skills and knowledge.

2.4 In view of points 2.2 and 2.3 above, the board is of the opinion that claim 1 of the main request is not clear (Article 84 EPC).

3. *First to third auxiliary requests - admittance (Article 12(6) RPBA)*

3.1 Under Article 12(6), second sentence, RPBA, "*the board shall not admit requests, facts, objections or evidence which should have been submitted, or which were no longer maintained, in the proceedings leading to the*

decision under appeal, unless the circumstances of the appeal case justify their admittance".

3.2 In response to the examining division's summons, the appellant filed a substantially amended set of claims. Subsequently, the appellant decided not to attend the oral proceedings but to request a decision according to the state of the file.

3.3 The appellant submitted the following arguments in support of admittance of the first to third auxiliary requests into the proceedings:

(a) The claim request underlying the decision under appeal was a *bona fide* attempt to address the objections in the communication annexed to the summons to oral proceedings before the examining division. The appellant cited decision T 141/20 (erroneously referred to as T 141/21) to support its view that it could not be expected from an appellant to counter in advance every permutation of unfounded objections by the examining division. In particular, the finding of equivalence between audio and textual content by the examining division could not have been expected. Moreover, the auxiliary requests addressed the examining division's misconception that "external metadata" in document D1 was textual content. It is the appellant's submission that this objection was not expressed until the oral proceedings and thus the appellant only became aware of it after the written decision had been issued. According to the appellant, the board in case T 1734/20 considered that such circumstances justified admittance under Article 12(6) RPBA.

- (b) The appellant considered that it would not be economic to attend the oral proceedings before the examining division and instead decided to rely on the written submissions, which the appellant considered overcame the objections raised by the examining division, and to request a decision according to the state of the file.

- (c) The amendments to claim 1 of the first to third auxiliary requests had been occasioned by the objections under Articles 84, 56 and 123(2) EPC raised by the examining division in the decision under appeal. The auxiliary requests in hand were thus filed at the earliest possible time in appeal proceedings.

3.4 The appellant's arguments did not convince the board for the following reasons.

3.4.1 The board considers that by filing substantially amended claims in reply to the summons to oral proceedings, the appellant should have expected that the issues of added subject-matter, clarity and patentability of the amended claims would have to be discussed at the oral proceedings. Yet the appellant decided not to attend the oral proceedings but requested a decision according to the state of the file.

By acting in this manner, the appellant discontinued the still-ongoing proceedings before the examining division and seems to have favoured prosecuting its case before the board. However, appeal proceedings are not a continuation of examination at first instance or a second, parallel procedure for the substantive examination otherwise to be carried out by the

examining division which applicants could freely opt to launch depending on the circumstances (see Case Law, V.A.5.11.4 a)).

Both decisions T 141/20 and T 1734/20 cited by the appellant relate to opposition cases.

In T 141/20, the patent proprietor countered an opponent's objection in opposition proceedings only by argument. The opposition division concurred with the patent proprietor's argument in its decision. The board considered that there had been no need to file a claim request addressing the objection in first-instance proceedings and admitted such a request. In the present case, the appellant filed amended claims prior to the oral proceedings, which it did not attend. Had the appellant attended the oral proceedings it could have countered the objections discussed by the examining division during the oral proceedings and set out in the decision under appeal. Not attending oral proceedings cannot be used as a pretext for discovering that an examining division's objection was unfounded only when presented with the appealed decision and delaying the filing of claim requests to the appeal proceedings.

In T 1734/20, the appellant-opponent filed a report with experimental data with its statement of grounds of appeal. The data provided in that report were identical to the data submitted during opposition proceedings, apart from some additional information which the appellant-opponent had not deemed necessary as it related to standard procedure. The appellant-opponent filed the additional information at the earliest possible stage, i.e. with its statement of grounds of appeal. The board in that case admitted the document with the additional information into the appeal

proceedings. The present board is of the opinion that in the case in hand filing auxiliary requests addressing the examining division's "misconception" that external metadata was textual content cannot be equated with providing additional information which a party deemed implicitly present in a report with experimental data.

Since the circumstances of the cited opposition cases are different from those of the case in hand, it is not apparent to the board that these decisions are relevant to the issue of admittance of the first to third auxiliary requests.

- 3.4.2 The appellant's considerations of whether it made economic sense to attend the oral proceedings in first instance in view of its budgetary constraints are wholly internal to the appellant and not a factor to be taken into account by the board when exercising its discretion under Article 12(6) RPBA.
- 3.4.3 Although the auxiliary requests in hand were filed at the earliest possible time in appeal proceedings, the board is of the opinion that, for the reasons set out above, they should already have been filed in the first instance.
- 3.5 In view of the above, the board, in exercising its discretion, balancing all relevant circumstances of the case, decided not to admit the first to third auxiliary requests into the appeal proceedings (Article 12(6) RPBA).

4. *Conclusion*

4.1 The main request is not allowable because claim 1 does not meet the requirements of Article 84 EPC. The first to third auxiliary requests were not admitted into the appeal proceedings. Since none of the appellant's requests is allowable, the appeal must be dismissed.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chair:



K. Boelicke

B. Willems

Decision electronically authenticated