

Internal distribution code:

- (A) Publication in OJ
(B) To Chairmen and Members
(C) To Chairmen

D E C I S I O N
of 15 September 2000

Case Number: T 0998/98 - 3.5.1

Application Number: 92305851.5

Publication Number: 0520789

IPC: H04N 7/26

Language of the proceedings: EN

Title of invention:
Video coder and coding method

Applicant:
SONY CORPORATION

Opponent:
-

Headword:
-

Relevant legal provisions:
EPC Art. 54

Keyword:
"Novelty (main request - no)"

Decisions cited:
-

Catchword:
-



Case Number: T 0998/98 - 3.5.1

D E C I S I O N
of the Technical Board of Appeal 3.5.1
of 15 September 2000

Appellant: SONY CORPORATION
7-35 Kitashinagawa 6-chome
Shinagawa-ku
Tokyo 141 (JP)

Representative: Cotter, Ivan John
D. YOUNG & CO.
21 New Fetter Lane
London EC4A 1DA (GB)

Decision under appeal: Decision of the Examining Division of the
European Patent Office posted 17 April 1998
refusing European patent application
No. 92 305 851.5 pursuant to Article 97(1) EPC.

Composition of the Board:

Chairman: P. K. J. van den Berg
Members: R. S. Wibergh
S. C. Perryman

Summary of Facts and Submissions

I. This appeal is against the decision of the Examining Division to refuse European patent application No. 92 305 851.5.

II. The Examining Division argued that the subject-matter of claim 1 filed on 22 August 1996 was not new having regard to the document

D4: EP-A-0444918.

III. Claim 1 read as follows (omitting the reference signs):

A video coder for compressing the data amount of input video data and encoding said input video data, the video coder comprising:

encoder means for encoding said input video data in accordance with a coding parameter to provide first coded video data;

control means for varying in response to said first coded video data said coding parameter which is necessary for the processing by said encoder means to form a varied coding parameter; and

memory means for storing said varied coding parameter; characterised by:

means for storing said input video data; and

characterised in that said encoder means encodes again at least a portion of said input video data stored in said means for storing and identical to that encoded to produce said first coded video data in accordance with said varied coding parameter to provide second coded video data.

IV. The patentee appealed against this decision. On 14 August 1998, together with the grounds of appeal, a set of claims 1 to 9 relating to an auxiliary request were filed.

Claim 1 according to this request contained additionally the feature that the coding parameter includes frame structure information which specifies one of an intraframe coding system and a predictive coding system for every frame of said input video data.

V. The appellant has argued that the invention is a coder for compressing *video* data whereas in D4 only *image* data, such as a colour still picture, are processed. The part of D4 relied on by the Examining Division did not suggest that moving pictures could be processed in the described way.

VI. The appellant requests that the decision under appeal be set aside and that a patent be granted on the basis of the claims filed on 22 August 1996 (main request) or on the basis of the claims filed on 14 August 1998 (auxiliary request). Unless at least the auxiliary request is allowed or remitted for further prosecution, oral proceedings are requested.

Reasons for the Decision

1. Claim 1 of the main request corresponds to the main claim considered by the Examining Division. As set out in this claim, the invention is a video coder for compressing and encoding video data. This is done in accordance with a "coding parameter". Depending on the

result of a first coding step, the value of the coding parameter may be varied and the coding performed a second time on the same input data. In this way the final result can be optimised.

2. *The prior art*

The Examining Division referred only to the document D4, and in particular to the introductory description of the prior art at that time.

3. *Novelty*

3.1 As acknowledged by the appellant, D4 is prior art according to Article 54(3) EPC. This means that the document cannot be considered in deciding whether the invention involves an inventive step (Article 56 EPC, second sentence). Thus the present decision will deal only with the issue of novelty.

3.2 The Examining Division held that all the features of claim 1 are known from D4. This is denied by the appellant, who has argued that the passage in D4 relied on by the Examining Division (column 1, lines 13 to 41) does not concern "video data ie moving pictures".

The Board, however, takes the view that the term "video" does not necessarily imply "moving pictures" but can also be used in particular for still pictures. The word in itself only implies visual information, often as opposed to audio information.

3.3 Furthermore, even if the word "video" in claim 1 of the present application were taken to mean "moving pictures", it is doubtful whether this feature would serve to define

the matter for which protection is sought, which is an *apparatus*. As also the Examining Division observed, claim 1 fails to define any particular features which limit the video coder to moving pictures and therefore the claimed apparatus is only *suitable* for processing data representing moving pictures. The mere information content of a signal cannot normally limit an apparatus to which the signal is applied.

- 3.4 For the reasons given the Board is not able to accept the argumentation of the appellant. Thus, the invention is regarded as not new and the main request must be rejected.

4. *The auxiliary request*

Claim 1 of the auxiliary request corresponds to claim 3 of the set of claims considered by the Examining Division. A novelty objection based on D4 has not been raised against this claim and the Board sees no reason to do so either. It is therefore decided that the invention as defined by claim 1 of the auxiliary request is new with respect to the document D4.

5. The application is not yet ready for grant, in particular because the description has not been adapted to the claims of the auxiliary request and contains no acknowledgement of D4. The case is therefore remitted to the first instance for further prosecution.
6. Since the appellant's auxiliary request is not refused there is no need to hold oral proceedings before the Board.

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.
2. The main request is refused.
3. The case is remitted to the first instance for further prosecution on the basis of the auxiliary request.

The Registrar:

The Chairman:

M. Kiehl

P. K. J. van den Berg