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D E C I S I O N
of 11 May 2000

Case Number: T 0912/99 - 3.5.1

Application Number: 92304396.2

Publication Number: 0514188

IPC: H04N 7/52

Language of the proceedings: EN

Title of invention:
Encoding/decoding apparatus

Applicant:
CANON KABUSHIKI KAISHA

Opponent:
-

Headword:
Encoding/decoding apparatus/CANON

Relevant legal provisions:
EPC Art. 84, 123(2), 111(1)

Keyword:
"Remittal for further prosecution"

Decisions cited:
-

Catchword:
-



Case Number: T 0912/99 - 3.5.1

D E C I S I O N
of the Technical Board of Appeal 3.5.1
of 11 May 2000

Appellant: CANON KABUSHIKI KAISHA
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Tokyo (JP)

Representative: Beresford, Keith Denis Lewis
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Decision under appeal: Decision of the Examining Division of the
European Patent Office posted 4 May 1999 refusing
European patent application No. 92 304 396.2
pursuant to Article 97(1) EPC.

Composition of the Board:

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

Summary of Facts and Submissions

- I. In the course of the oral proceedings before the examining division on 25 June 1998 the applicant submitted a main request and auxiliary requests A and B. At the end of the oral proceedings the examining division stated that the main request was not allowable, but that the auxiliary request A could be accepted. The applicant, however, maintained the main request as well as the auxiliary request A. On 14 August 1998 a communication under Rule 51(4) EPC was sent to the applicant based on the set of claims of the auxiliary request A.
- II. In response to this communication, the applicant, in a letter of 23 February 1999, stated its disapproval with the text proposed for grant and requested that a decision in accordance with Rule 68 EPC should be issued based upon the claims of the main request, filed on 29 May 1998.
- III. After an "Invitation pursuant to Article 96(2) and Rule 51(2) EPC", dated 19 March 1999, the applicant in a letter, filed on 30 March 1999, confirmed that it wished a patent to be granted on the basis of the claims of the main request and requested a decision according to the state of the file.
- IV. On 4 May 1999 the examining division refused the application on the basis of Article 97(1) EPC.
- V. The appellant (applicant) lodged a notice of appeal against this decision on 30 June 1999, paid the corresponding fee and requested that the decision of the examining division be set aside and the patent be

granted on the basis of the refused claims of the main request filed on 29 May 1998.

VI. With the statement of grounds of appeal, filed on 14 September 1999, the appellant filed a new set of claims 1 to 10 which replaces the set of claims (filed on 29 May 1998) refused by the examining division.

Claim 1 of that request reads as follows (the features within the brackets are features which have been deleted in relation to claim 1 of the refused main request and features in bold are features added to claim 1 in relation to claim 1 of the main request):

"An encoding apparatus comprising:

- (a) block forming means (4) for forming encoding blocks of sampled values of image data representing an input signal representative of [an image] **successive image frames;**
- (b) determining means (15) for determining control information (Fo) for controlling quantization steps for each successive plurality of said encoding blocks of sampled values representing [successive respective units of a predetermined amount of image data] **a predetermined amount of the image data;**
- (c) quantization means (7) for quantizing each of said encoding blocks of sampled values on the basis of the control information (Fo) determined by said determining means (15) [for the respective units of image data] to provide respective blocks of quantized data;

- (d) coding means (9) for coding each of said blocks of quantized data provided by the quantization means (7);

the apparatus being characterised by:

- (e) means for combining a plurality of the blocks of coded data [corresponding to each said unit of image data] to form respective transmission blocks, a plurality of the transmission blocks corresponding to said [unit of image data] **predetermined amount of the image data**; and
- (f) means (36) for adding the control information (Fo) determined for [each unit of image data to] **each said predetermined amount of the image data** to each transmission block of coded data corresponding to the respective [unit of image data] **predetermined amount of image data** to produce a data train

such that if a decoder detects any errors occurring in the quantizing step information in a transmission block it is possible to replace the quantizing step information in said transmission block with the quantizing step information of another transmission block. "

VIII. Thus, the appellant requests that a patent be granted on the basis of the claims 1 to 10 filed with the grounds of appeal on 14 September 1999. Auxiliarily oral proceedings are requested.

Reasons for the Decision

1. The appeal is admissible.
2. In passing it is noted that the last part (in bold) of feature f of claim 1 corresponds to the last feature of claim 1 of the auxiliary request A which feature apparently was critical for recognition of inventive step of the subject-matter of claim 1 of request A by the examining division.

It is, however, also noted that the examining division in the annexes of 19 March 1999 (see under III above) under the Article 84 reasoning held that certain expressions or identifications, concerning the image data being manipulated, used in claim 1 of the main request (e.g. in feature (b) - "representing successive respective units of a predetermined amount of image data") were not allowable, since according to the examining division the control information Fo of the invention as originally identified in the application documents was determined for one image frame. Another interpretation of the original application documents would have according to the examining division led to an infringement of Article 123(2) EPC.

The Board, however, takes the view of the appellant, in that the wording of present claim 1 in respect of the corresponding phrases (which are in bold in quoted claim 1 above) is allowable. The Board agrees with the appellant that the identification of the scope of the invention from the original application documents should be made in the light of the content of original claims 1 and 2. Original claim 1 only specifies that the coefficient information is attached to each of the

blocks divided from the image information of the picture. Claim 3, however, states that the coefficient information is determined for each picture. This apparently indicates that within the scope of claim 1, it is not necessary to determine the coefficient information for just one picture. Moreover, claim 9 specifies that the picture is composed of a plurality of data frames. This also does not indicate that the invention is restricted to control data determined on the bases of image frames. In fact a "data frame" according to claim 9 appears to be a part of an image frame. Therefore, it also appears to the Board that figure 5 in the application need not necessarily relate to an image frame as apparently the examining division has been arguing but might generally relate to a "data frame". Even, if the theory in relation to figure 5 of the present description relates to an image frame, it would in the opinion of the Board be implicitly known for a skilled person to use this theory for the calculation of the control information F_0 for an arbitrarily chosen data frame having regard to the scope to the original claims 1 and 2.

3. The Board notices that the examining division's refusal of applicant's main request because of Article 84 EPC considered only claim 1. It is, however, clear that the Board's considerations concerning the clarity of certain expressions in present claim 1 and the support for the features identified by said expressions to be found in the original documents must exist equally for the other claims of the present set of claims. Thus, the subject-matter of the claims need not be restricted to control data determined on the basis of image frames.

4. As has been shown above the Board found that the amendments relating to the features not allowed in claim 1 of the main request by the examining division, but introduced into present claim 1, are supported by the original documents. Thus, it appears that the new set of claims should now be examined in respect of the whole EPC taking into account the finding of the Board. Since the present claims have not been examined by the first instance, it appears to be appropriate to remit the case to the examining division for further prosecution.

5. Since the case is remitted to the first instance for further prosecution on the basis of the claims now requested by the appellant, oral proceedings are not necessary.

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.

2. The case is remitted to the first instance for further prosecution on the basis of the claims filed with the grounds of appeal.

The Registrar:

The Chairman:

M. Kiehl

P. K. J. van den Berg