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**D E C I S I O N**  
**of 13 May 2005**

**Case Number:** T 0165/04 - 3.5.1

**Application Number:** 00941095.2

**Publication Number:** 1228639

**IPC:** H04N 5/92

**Language of the proceedings:** EN

**Title of invention:**

Method for recording, reproducing or projecting digital or analogue, sampled or continuous audio and/or video records

**Applicant:**

Kellyér, Juraj

**Opponent:**

-

**Headword:**

Real time synchronisation/KELLYÉR

**Relevant legal provisions:**

EPC Art. 54, 56, 108, 122, 123(2)

EPC R. 65(1)

**Keyword:**

"Re-establishment of rights (yes - unforeseeable singular error) "

"Inventive step (yes) "

**Decisions cited:**

-

**Catchword:**

-



Case Number: T 0165/04 - 3.5.1

**D E C I S I O N**  
of the Technical Board of Appeal 3.5.1  
of 13 May 2005

**Appellant:** Kellyér, Juraj  
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**Representative:** Jeck, Anton, Dipl.-Ing.  
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**Decision under appeal:** Decision of the Examining Division of the  
European Patent Office posted 28 July 2003  
refusing European application No. 00941095.2  
pursuant to Article 97(1) EPC.

**Composition of the Board:**

**Chairman:** S. V. Steinbrener  
**Members:** K. J. K. Bumés  
G. E. Weiss

## Summary of Facts and Submissions

- I. The appeal lies from the Examining Division's decision to refuse European patent application 00 941 095.2 for lack of clarity and lack of inventive step.

The appellant requests that the decision under appeal be set aside and a patent be granted on the basis of claims 1 to 3 and description pages 1, 1a, 2 to 5 filed at oral proceedings before the Board on 13 May 2005. Like the underlying international application PCT/SK00/00010 (published as WO-A1-01/13631, denoted "A1" hereinafter), the current application documents do not comprise any drawing sheet.

The claim set reads:

"1. A method of reproduction or playback of digital or analogue, continuous or sampled, audio and/or video recordings, with synchronisation of at least one: audio and video or audio and audio or video and video recording characterised by the fact that audio and/or video recordings to be synchronised are locally independent from each other and that each recording comprises real time data comprising year, month, day, hour, minute and second, where the real time of recording serves as the synchronising element for the recordings during their reproduction; wherein the value of the data specifying real time is equal to the value of the date and the time of the instant when such piece of data specifying real time was added or inserted to the recording during the process of recording, and by the fact that the synchronisation is achieved automatically.

2. Method in accordance with Claim 1 characterised by the fact that audio and/or video recordings to be synchronised are functionally independent from each other.

3. Method in accordance with Claim 1 characterised by the fact that dependent or independent matched audio and/or video recordings are assigned an identification code."

II. The Examining Division has refused the application by its decision dated 28 July 2003 and deemed delivered on 7 August 2003 (Rule 78(2) EPC). Hence, the 2-month time limit for filing an appeal expired on 7 October 2003, and the 4-month time limit for filing the grounds of appeal expired on 8 December 2003 (Article 108 EPC; Rule 85(1) EPC).

The appellant filed a notice of appeal by fax on 6 October 2003 and paid the appeal fee on the same day. However, the statement setting out the grounds of appeal was received on 16 December 2003, i.e. after expiry of the aforementioned 4-month term, in the form of a letter marked "Bestätigung / Confirmation".

By a communication dated 11 March 2004, pursuant to Article 108 and Rule 65(1) EPC, the registrar of the Board informed the appellant of the late receipt of the grounds of appeal and drew the appellant's attention to the provisions of Rule 84a and Article 122 EPC.

The appellant responded on 10 May 2004 by requesting reestablishment of rights, paying the corresponding fee

and putting forward grounds on which the request was based.

The appellant's representative sent a printout from his fax machine's despatch memory and declared that the statement of grounds of appeal had been sent by fax on 5 December 2003 but to a wrong number (including an excessive leading zero in the area code). That error was not detected until the Board's communication of 11 March 2004 arrived.

The error was said to be due to inadvertence by a clerk who had worked in a reliable manner in the representative's office for 22 years. The clerk had been supervised without ever making a similar error before. Only after that incident, the representative became aware of serious health problems of the clerk who even died on 27 February 2004, as published in an obituary notice of 2 March 2004. While her attention and concentration must have been affected already in December 2003, she kept her disease confidential at that time. Those unique and tragic circumstances resulted in an isolated failure explaining the erroneous fax despatch and the fact that this went unnoticed.

III. The Board summoned the appellant to attend oral proceedings scheduled for 13 May 2005. In an annex to the summons, the Board stated its willingness to allow the request for reestablishment of rights. However, objections under Articles 54, 56 and 123(2) EPC were raised to the claim set then on file. The prior art discussion referred to two documents:

D1: EP-A-0 602 943

D2: US-A-5 812 736

D1 had been cited by the decision under appeal, D2 was introduced by the Board to illustrate an aspect of the technical background.

- IV. At the oral proceedings, the appellant argued that the gist of the application was to store precise real time data together with a first video or audio record and to store precise real time data together with a second video or audio record, independent of the first record, and to reproduce or play back both records in synchronism using the real time data as a synchronising element in an automatic parallel reproduction or playback mode. Conversely, the application was not concerned with how to generate the real time data; such data might be obtained over the Internet, from a satellite or radio transmitted clock signal ("Funkuhr"), an atomic clock or any other source.

To bring out his contribution more clearly, the appellant amended claim 1 during the oral proceedings (see point I supra). In particular, the recordings were defined as being locally independent from each other, and the synchronised reproduction was defined as being achieved automatically. Local independence meant that (i) the recorded data were stored at separate places of one or several storage media and (ii) the recordings were taken at separate places (e.g. using two cameras monitoring one site from two positions).

An advantage pointed out by the appellant was that independent real time data stored with each video or audio record allowed plural records to be synchronised during reproduction even where some or all of the records were fragmentary, either intentionally (e.g. camera stopped to save storage capacity during idling periods) or unintentionally (e.g. camera stopped to exchange a storage medium; temporary camera malfunction; power failure, etc). That advantage was also referred to as functional independence (see claim 2).

The cited prior art (D1, D2) was said to encode recordings with ambiguous time data (hours, minutes, seconds) rather than time and date. Time data alone did not enable an exact retrieval and synchronous replay of two archived recordings. Conversely, the dates superimposed on images taken by conventional video cameras did not lend themselves to an automatic extraction for synchronisation purposes.

- V. At the end of the oral proceedings, the chairman pronounced the Board's decision.

## **Reasons for the Decision**

### *Reestablishment of rights*

1. According to Article 122(1) EPC, the applicant for a European patent who, in spite of all due care required by the circumstances having been taken, was unable to observe a time limit vis-à-vis the European Patent Office shall, upon application, have his rights re-established if the non-observance in question has the

direct consequence, by virtue of the EPC, of causing the loss of a means of redress.

In the present case, the appellant applicant has missed the time limit for filing the grounds of appeal (Article 108 EPC) which normally results in the appeal being rejected as inadmissible (Rule 65(1) EPC) and, thus, in the loss of a means of redress.

2. The main question is whether the appellant's representative took all due care required by the circumstances to observe the 4-month time limit laid down in Article 108 EPC.

In the light of the extraordinary circumstances detailed above (point II), the Board assumes that the erroneous fax despatch was due to an isolated failure in an otherwise reliable monitoring system overseen by the representative. There is no indication of earlier warning signs that would have necessitated a closer control by the representative to an extent including a check of fax numbers dialled by his long-standing clerk. Therefore, the present case represents an example of a situation that the legislator had in mind when providing Article 122(1) EPC as a remedy for unforeseeable singular errors.

The Board thus accepts that the appellant missed the 4-month time limit for filing the grounds of appeal in spite of all due care having been taken.

3. The request for reestablishment of rights, the grounds and facts supporting the request, and an order to debit the corresponding fee have been filed within two months



from the removal of the cause of non-compliance with the unobserved 4-month time limit and within one year immediately following the expiry of the unobserved time limit. The omitted act (filing of grounds of appeal) has been completed inherently in good time in that the letter setting out the grounds of appeal (meant to be a confirmation letter) arrived at the European Patent Office on 16 December 2003. Hence, the requirements of Article 122(2)(3) EPC are also met.

4. Therefore, the Board considers the request for reestablishment of rights allowable (Article 122(4) EPC). The grounds of appeal are thus deemed to have been filed in due time.

Hence, the appeal is admissible.

*Admissibility of amendments (Article 123(2) EPC)*

5. The amended claim 1 is based on original claims 1 and 2 and the embodiments. For example, the independence of the recordings from each other is expressed in embodiment 1 in the following way: "Image records are sampled at a rate of one image a minute, with the image record capturing real time information. Sound is recorded in a connected continuous fashion, also capturing real time information" (A1, page 3, last line to page 4, line 2).

The added feature that the synchronisation during reproduction is achieved automatically (i.e. not manually) reflects the operation and purpose common to the disclosed embodiments. The introductory portion of the description states that "the proposed solution will

not require a special start but images will be launched during playback (reproduction) when the sound time mark matches the time mark of the respective image etc" (original page 3, lines 13 to 15). The description of the first embodiment mentions that an operator may choose a real time interval and then the monitor will display a sequence of images "from the selected time interval and associated with replayed sound" (original page 4, lines 5 to 8).

The word "connected" has been replaced by "continuous" in accordance with original page 4, lines 2 and 13, for example. Finally, the term "audio and/or video recordings to be synchronised" has been substituted for the original wording "synchronised audio and/or video recordings" to clarify that the recordings are not synchronised until they are reproduced or played back.

The amended claims 2 and 3 correspond to original claims 3 and 4, respectively.

The Board is thus satisfied that the subject-matter of the amended claims does not extend beyond the content of the application as filed.

*Novelty and inventive step (Articles 54 and 56 EPC)*

6. D1 discloses a prior art method of synchronising the playback of an audio record and a video record which have been stored according to the MPEG standard described in relation to Figure 7 of D1: Audio and video data packets are interleaved on a track of a storage medium such that a video packet and an audio packet comprise a common pack header which includes a

time code (SCR) corresponding to the time at which the packets were recorded (D1, column 1, lines 14 to 21). During playback, the time code is used to synchronise related video and audio data (D1, column 1, lines 54/55, and column 2, lines 9 to 12).

D1 thus covers the preamble of claim 1.

7. Claim 1 in substance specifies the following differences over D1.

7.1 The recorded video or audio data are locally independent of each other whereas the video and audio records according to D1 are stored in an interleaved manner on one track of a storage medium.

7.2 Each record comprises real time data comprising the year, month, day, hour, minute and second. While the time code mentioned in D1 may represent real time in one implementation (D1, column 1, lines 21 to 23), the real time data contained in the pack header of Figure 7 in D1 consists of "hours, minutes, seconds, etc." (D1, column 1, lines 22/23); that set of time data is sufficient for the technical purpose sought by the MPEG standard, i.e. synchronising video and audio records which are stored closely together anyway. In D1, the synchronisation of those records during playback does not depend on a recording date (year, month, day).

8. The distinguishing features interact to achieve the following technical effects.

8.1 The two records can be recorded at different places and stored on different media. For example, one site can be

monitored by two separate cameras each having its own storage medium.

- 8.2 Storing a complete set of real time data with each record allows two old records to be synchronised in an unambiguous manner. A plurality of records may be retrieved from an archive for synchronous reproduction without any risk of chronological confusion. The same applies to records that are longer than 24 hours, e.g. having monitored a site for a week for security reasons. Moreover, chronological consistency can be maintained automatically during playback even where one or both records are fragmentary; the operator replaying the records will always see/hear a chronological sequence of parallel events (or parallel records of one event).
9. The objective technical problem may thus be formulated as how to synchronise the reproduction of two separate records in a reliable manner.

Neither that problem nor a solution to it can be gathered from D1. According to the MPEG standard described in D1 (Figure 7), the packets of video and audio data are recorded in an interleaved manner, i.e. the records are locally dependent on each other and referenced to one and the same system clock that was turned on when the information was recorded (D1, column 1, lines 19 to 21).

10. Nor does document D2 hint at the problem and its solution. The method taught by D2 synchronises two records in the following manner: An audio track is recorded continuously from a starting time (defined zero), and the times of image snapshots (e.g.

1.3 seconds, 3.8 seconds, 4.9 seconds) are referenced in the audio track in relation to the start on the time line in order to be able to play back the images and sound in proper correlation (D2, Figures 5 and 6; column 5, lines 19 to 29). The video and audio records of D2 are thus stored together (D2, column 2, lines 25 to 27), i.e. the video and audio records are not independent of each other.

Moreover, similar to D1, the timing data in D2 is relative, i.e. defined in relation to a user's starting time rather than a real time comprising the date. Hence, if two MPEG records according to D1 were to be reproduced in automatic synchronism using the method of D2, the (relative) time codes included in the pack headers of the two MPEG records might be utilised as synchronisation elements for a parallel chronological reproduction, those time codes however consisting only of hours, minutes, seconds etc.

Hence, even if combining the teachings of D1 and D2 was considered obvious in view of the general synchronisation goal they have in common, the resulting method would not fall within the definition of claim 1 (which requires the year/month/day to be included in locally independent records) and would not achieve synchronism on an absolute time scale (see the effects mentioned at point 8 supra).

11. Using D1 in conjunction with a skilled person's general knowledge, the following considerations would apply. As D1 does not need a complete set of real time data (comprising the date) to synchronise its video and audio packets, the skilled person would have to modify

not only the purpose but also the solution of D1 in order to arrive at the claimed method: He would have to develop the desire of synchronising two separate MPEG records, and he would have to add the date (year/month/day) to the so-called real time code mentioned in D1. The Board does not consider such a dual modification to be an obvious path from D1 toward the claimed method.

Enhancing D2 with general knowledge results in the same conclusion since D2 does not deal with two separate records either.

In the Board's view, both documents D1 and D2 serve a fundamentally different purpose, i.e. synchronising video and audio samples of one multi-media event recorded together and bearing time stamps derived from an internal clock started at the beginning of the event.

12. It may be added that the general wording of claim 1 as originally filed reminded the Board of commercially available common video cameras which enable the time and date of a record to be superimposed on the recorded images. Two such cameras may record one event (e.g. a soccer game) from different angles and then an operator (e.g. referee) may decide to watch the records in parallel using the times displayed on two screens to synchronise the reproduction manually/visually (e.g. to resolve an off-side situation). No additional technical feature would be required beyond the conventional equipment for recording and replaying video sequences.

However, even if a general desire to automate the manual/visual matching of time marks for

synchronisation purposes were considered to constitute a natural trend, the conventional time information superimposed on camera images would be hard to extract automatically at sufficient speed from the running images. The Board is not aware of the existence of any such system. Therefore, the Board does not regard the aforementioned scenario as a realistic and specific pointer to an automatic synchronisation of two records by means of real time data added or inserted to the recordings.

13. Hence, on the basis of the prior art available to the Board, the method according to claim 1 is found to be novel and involve an inventive step.

The description has been adapted to the amended claim set to comply with the requirements of Article 84 and Rule 27 EPC.

**Order**

**For these reasons, it is decided that:**

1. The appellant is re-established in his rights.
2. The decision under appeal is set aside.
3. The case is remitted to the first instance with the order to grant a patent in the following version:  
claims 1 to 3 and description pages 1, 1a, 2 to 5 filed at the oral proceedings.

The Registrar:

The Chairman:

M. Kiehl

S. V. Steinbrener