

Internal distribution code:

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

**Datasheet for the decision
of 13 March 2008**

Case Number: T 0773/04 - 3.5.04

Application Number: 99904056.1

Publication Number: 1046286

IPC: H04N 5/445

Language of the proceedings: EN

Title of invention:

Video program guide apparatus and method

Applicant:

Thomson Licensing

Opponent:

-

Headword:

-

Relevant legal provisions:

EPC Art. 123(2)

Relevant legal provisions (EPC 1973):

-

Keyword:

"Amendments - added subject-matter (yes)"

Decisions cited:

-

Catchword:

-



Case Number: T 0773/04 - 3.5.04

D E C I S I O N
of the Technical Board of Appeal 3.5.04
of 13 March 2008

Appellant: Thomson Licensing
46, quai Alphonse Le Gallo
F-92100 Boulogne-Billancourt (FR)

Representative: Kohrs, Martin
Thomson multimedia
46, quai Alphonse Le Gallo
F-92100 Boulogne-Billancourt (FR)

Decision under appeal: Decision of the Examining Division of the
European Patent Office posted 22 January 2004
refusing European application No. 99904056.1
pursuant to Article 97(1) EPC.

Composition of the Board:

Chairman: F. Edlinger
Members: A. Dumont
B. Müller

Summary of Facts and Submissions

- I. The appeal is directed against the decision of the examining division to refuse European patent application No. 99 904 056.1, published as WO 99/35830 A1.
- II. In the decision under appeal the examining division found that the subject-matter of claim 1 lacked inventive step. The examining division further observed that the meaning of the adverb "directly" in the "directly comparing" step was quite vague (see the paragraph bridging pages 2 and 3 of the decision).
- III. In the statement of grounds of appeal the appellant set out reasons why the subject-matter of the present invention was inventive with regard to the documents of the prior art cited in the decision. The appellant also filed the text of two independent claims 1 and 7 according to an auxiliary request.
- IV. In a communication accompanying the summons to oral proceedings the board observed that the features of directly comparing a characteristic and suggesting all programs substantially matching the characteristic of the program information of the highest rated program appeared to be both unclear and to constitute an extension of the subject-matter beyond the content of the application as filed (Articles 84 and 123(2) EPC). The board expressed the opinion that the subject-matter of the claims appeared to lack inventive step and further observed that substantially the same issues arose for both requests.

- V. In a letter dated 18 February 2008 the appellant informed the board that he would not attend the oral proceedings and that he had no more arguments concerning the present application.
- VI. Oral proceedings took place before the board on 13 March 2008.
- VII. The appellant requested in writing that the decision under appeal be set aside and, as a main request, that the application be granted on the basis of the same set of claims as that refused by the examining division. In the alternative the appellant requested that a patent be granted on the basis of amended claims 1 and 7, the text of which was recited in section II of the statement of grounds of appeal (pages 7 and 8).
- VIII. Claim 1 according to the main request reads as follows.

"A method for controlling a signal processing system, comprising the steps of:
receiving from a remote source a plurality of programs and associated program information, said program information including a plurality of characteristics concerning each respective program;
selecting numerous programs from said plurality of programs in response to user input;
receiving rating information for numerous programs from a user, the rating information being related to an impression of the user to each of the numerous programs (315, 325);
characterised in that it comprises moreover the steps of:
receiving a suggestion signal from a user (335);

directly comparing a characteristic of the program information of a highest rated one of the numerous programs for which rating information is received with a same characteristic of the program information for the plurality of programs in response to the suggestion signal (345); and suggesting all programs from the plurality of programs in which the characteristic of the program information substantially matches the characteristic of the program information of the highest rated one of the numerous programs."

- IX. Claim 1 according to the auxiliary request differs from claim 1 according to the main request in that the last two paragraphs have been modified as follows (the passages between square brackets being deleted):

"directly comparing descriptive information associated with an aspect [a characteristic] of the program information of a highest rated one of the numerous programs for which rating information is received with a corresponding descriptive information associated with the same aspect of the program information for each of [a same characteristic of the program information for] the plurality of programs in response to the suggestion signal; and suggesting all programs from the plurality of programs in which the descriptive information associated with the aspect [characteristic] of the program information substantially matches the descriptive information associated with the aspect [characteristic] of the program information of the highest rated one of the numerous programs."

Reasons for the Decision

1. The appeal is admissible.
2. *Main request*
 - 2.1 The present invention relates to a method and an apparatus for suggesting, for instance in the form of an Electronic Program Guide for video programs, a list of programs best matching the preferences of a user, relying on "rating information" entered by the user for some of the programs. Programs are associated with "program characteristics", such as channel number, program title, start time, end time, elapsed time, time remaining, rating (if available), topic, theme, a brief description of the program's content, actor(s) and producer (see page 2, lines 4 to 8; page 7, lines 5 to 10; "auxiliary text display" 120 in figure 1).
 - 2.2 The claims as originally filed set out methods and an apparatus in which "second" programs were selected on the basis of the rating information entered for selected programs. They did not set out particulars as to how the second programs were selected.
 - 2.3 The last two paragraphs of present claim 1 set out the steps of directly comparing at least one characteristic of a highest rated one of the programs with the same characteristic of the program information for the plurality of programs and suggesting all substantially matching programs. These amendments have been introduced in order to establish a difference with respect to the prior art teaching an indirect comparison of factors derived from the characteristics

(see the statement of grounds of appeal, page 2, third paragraph and page 4, first paragraph).

- 2.4 The board observes that the adverbs "directly" and "substantially" were not disclosed for the comparing and suggesting steps in the application documents as originally filed. In order to comply with Article 123(2) EPC the technical information these terms convey must be directly and unambiguously derivable from the methods according to the description.
- 2.5 The description (see page 6, line 26 to page 7, line 21) contains general statements that various methods may be implemented for selecting and suggesting programs based on a comparison with programs with which user-entered rating information is associated. It outlines a first method referred to as a "simple suggestion algorithm" (see page 7, lines 5 to 10) and other alternative methods ("Another method"; "Other suggestion methods"). The alternative methods for suggesting programs may resort to histograms to detect preference trends or weighting factors for each characteristic (see page 7, lines 11 to 21). They do not mention a particular use of the highest rated program in doing so. The application also does not mention that the features of the various methods may be combined.
- 2.6 The reference to the highest rated program indicates therefore that the invention according to claim 1 exclusively relates to the "simple suggestion algorithm" referred to above. According to the description, this algorithm results in suggesting all the programs where at least one value (for instance the "ACTION/ADVENTURE" value) of a characteristic (for

instance the "THEME" characteristic shown in the auxiliary text display (120) in figure 1) (exactly) matches the values of the same characteristic of the highest rated program ("same characteristics"; "which may have the same actor, producer, and/or theme..." (emphasis by the board)). In the board's view, a "substantial match" departs from the exact match implied in the "simple suggestion algorithm" and may even hint at features borrowed from the alternative methods.

2.7 The board therefore judges that the combination of the expressions ("directly comparing" and "substantially matches") suggests method steps which are not directly and unambiguously derivable from the application as originally filed. Consequently claim 1 is not allowable under Article 123(2) EPC.

2.8 The main request must therefore be rejected.

3. *Auxiliary request*

3.1 The amendments according to the auxiliary request amount to the replacement of the expression "characteristic of the program information" according to the main request by the expression "descriptive information associated with an aspect of the program information". They aim to clarify that the method directly compares the descriptive information and suggests those programs in which the descriptive information directly matches (see the statement of grounds of appeal, page 8, penultimate paragraph). They do not change the substance of the claim, in particular

as regards the combination of expressions objected to in the foregoing.

3.2 Consequently claim 1 does also not comply with Article 123(2) EPC for the same reasons as those set out for claim 1 according to the main request.

3.3 The auxiliary request must therefore also be rejected.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar

The Chairman

D. Sauter

F. Edlinger