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**Datasheet for the decision  
of 30 September 2008**

**Case Number:** T 0033/05 - 3.5.04

**Application Number:** 00930185.4

**Publication Number:** 1177686

**IPC:** H04N 5/445

**Language of the proceedings:** EN

**Title of invention:**

Advertisement selection based on user action in an electronic program guide

**Applicant:**

Thomson Licensing

**Opponent:**

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**Headword:**

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**Relevant legal provisions:**

EPC Art. 123(2)

**Relevant legal provisions (EPC 1973):**

EPC Art. 84

**Keyword:**

"Clarity (yes, after amendment)"

"Amendments - added subject-matter (no, after amendment)"

**Decisions cited:**

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**Catchword:**

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Case Number: T 0033/05 - 3.5.04

**D E C I S I O N**  
of the Technical Board of Appeal 3.5.04  
of 30 September 2008

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

**Representative:** Kohrs, Martin  
Thomson multimedia  
46, quai A. Le Gallo  
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**Decision under appeal:** Decision of the Examining Division of the  
European Patent Office posted 7 July 2004  
refusing European application No. 00930185.4  
pursuant to Article 97(1) EPC 1973.

**Composition of the Board:**

**Chairman:** F. Edlinger  
**Members:** A. Teale  
B. Müller

## **Summary of Facts and Submissions**

- I. This is an appeal against the decision by the examining division refusing European patent application No. 00 930 185.4, published as WO 0067473 A1.
  
- II. According to the appealed decision, claim 1 of the then main request was unclear, Article 84 EPC 1973, because of the expression "direction of navigation". Claim 1 of the then first and second auxiliary requests contained added subject-matter, Article 123(2) EPC 1973, in view of the expression "without selecting the highlighted position", this expression also being considered to be a contradiction in terms and thus unclear, Article 84 EPC 1973.
  
- III. The applicant appealed, requesting that the decision be set aside and a patent be granted on the basis of a new set of claims filed with a statement of grounds of appeal.
  
- IV. In a letter dated 2 August 2005 the appellant informed the EPO that it had changed its name.
  
- V. In a communication accompanying the summons to oral proceedings the board raised clarity objections under Article 84 EPC 1973.
  
- VI. With a letter dated 27 August 2008 the appellant filed amended claims and proposed an amendment to the description.

- VII. In a further communication the board again raised objections under Article 84 EPC 1973 regarding clarity and 123(2) EPC concerning added subject-matter.
- VIII. With a letter dated 23 September 2008 the appellant filed amended claims according to a main and a first auxiliary request.
- IX. At the oral proceedings held before the board on 30 September 2008 the board raised objections against the claims under Article 84 EPC 1973 (clarity) and 123(2) EPC (added subject-matter). The appellant then filed an amended set of claims 1 to 4, claims 2 to 4 being dependent claims. The appellant requested that the decision under appeal be set aside and that the case be remitted to the first instance for further prosecution on the basis of claims 1 to 4 filed in the oral proceedings.
- X. Claim 1 reads as follows:
- "Method of displaying a targeted advertisement automatically along with an electronic program guide based on navigation by a user, characterised in that it comprises the steps of:  
receiving a plurality of advertisements for display with the electronic program guide (501);  
identifying which advertisements are targeted advertisements for automatic display during navigation of the electronic program guide (502);  
storing the identified received advertisements along with a respective descriptor (503, 504), this descriptor associating the identified received advertisement with a channel or a program;

monitoring navigation by the user of the electronic program guide to identify a highlighted position (405); and  
if an identified targeted advertisement matches a channel or program associated with said highlighted position (405), displaying said identified targeted advertisement."

- XI. The appellant's arguments in the oral proceedings may be summarized as follows. The amended claims submitted in the oral proceedings overcame the objections raised by the board. The invention related to analysing advertisements for display in an EPG and putting those which were channel/program-specific (CPS) into a queue for display depending on the program highlighted by the user in the EPG.
- XII. At the end of the oral proceedings the board announced its decision.

## **Reasons for the Decision**

1. *Admissibility*

The appeal is admissible.

2. *The amendments, Article 123(2) EPC*

Editorial amendments aside, claim 1 differs from that as originally filed in that it now sets out that targeted advertisements are displayed automatically. A basis for this can be found on page 1, lines 4 to 7, of the published application. Claim 1 also now includes a

step of identifying which advertisements are targeted advertisements for automatic display during navigation of the electronic program guide, based on step 502 in figure 5 and page 7, lines 21 to 23, of the published application. Claim 1 now sets out that the descriptor associates the identified received advertisement with a channel or a program. This has a basis in page 7, lines 3 to 6, of the published application. Claim 1 now specifies in the monitoring step that a highlighted position is identified, this deriving from page 7, lines 28 to 31, of the published application. Finally, claim 1 now contains a step of displaying an identified targeted advertisement if it matches a channel or program associated with the highlighted position, as described on page 8, lines 3 to 8.

The board is consequently satisfied that claim 1 complies with Article 123(2) EPC.

3. *Clarity, Article 84 EPC 1973*

The amendments clarify the relationship between the position highlighted by the user in the electronic program guide and the display of particular advertisements. Claim 1 now makes clear that advertisements which are identified as targeted advertisements (see step 502 in figure 5) are stored along with a descriptor associating the advertisement with a channel or program and that a targeted advertisement is only displayed if it is associated with the same channel or program as the position highlighted by the user (see page 7, line 27, to page 8, line 10).

The board is consequently satisfied that claim 1 also complies with Article 84 EPC 1973 as to clarity.

4. *Remittal, Article 111(1) EPC 1973*

Claim 1 no longer contains either of the expressions ("direction of navigation" and "without selecting the highlighted position") objected to by the examining division in the appealed decision and thus overcomes the reasons for the decision. Since the appealed decision does not cite any prior art or discuss novelty and inventive step, the case is remitted to the first instance, Article 111(1) EPC 1973, to give the appellant the benefit of two instances.

Since further amendments may become necessary in the course of further prosecution, the board has not examined the dependent claims or the consistency of the claims with the description.

**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.

The Registrar:

The Chairman:

D. Sauter

F. Edlinger