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**Datasheet for the decision
of 12 October 2010**

Case Number: T 0189/06 - 3.5.04

Application Number: 98931737.5

Publication Number: 0995307

IPC: H04N 5/228

Language of the proceedings: EN

Title of invention:
Method and apparatus for providing live view and instant
review in an image capture device

Applicant:
FlashPoint Technology, Inc.

Headword:
-

Relevant legal provisions:
RPBA Art. 15(3)(5)(6)

Relevant legal provisions (EPC 1973):
EPC Art. 84
EPC R. 71(2)

Keyword:
"Clarity - main and first to fifth auxiliary requests (no)"
"Change of starting time of oral proceedings (no)"
"Right to telephone interview (no)"

Decisions cited:
-

Catchword:
-

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Case Number: T 0189/06 **-** 3.5.04

D E C I S I O N
of the Technical Board of Appeal 3.5.04
of 12 October 2010

Appellant: FlashPoint Technology, Inc.
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San Jose, CA 95112   (US)

Representative: Brookes Batchellor LLP
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Decision under appeal: **Decision of the Examining Division of the
European Patent Office posted 27 September 2005
refusing European patent application
No. 98931737.5 pursuant to Article 97(1) EPC
1973.**

Composition of the Board:

Chairman: F. Edlinger
Members: M. Paci
T. Karamanli

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Summary of Facts and Submissions

I.   The appeal is against the decision of the examining
        division refusing European patent application
        No. 98 931 737.5, which was published as WO 99/03263 A1.

II.   The application was refused on the grounds that
        claims 1 and 19 were not clear, contrary to Article 84
        EPC 1973.

III.   With the notice of appeal and the statement of grounds
        of appeal the appellant requested that the decision
        under appeal be set aside and that a patent be granted
        on the basis of the claims according to the main
        request or at least one of four auxiliary requests, all
        filed with the grounds of appeal. Furthermore, the
        appellant requested oral proceedings on an auxiliary
        basis and that any oral proceedings be held as close to
        1.00 pm as possible in order to reduce the appellant's
        costs.

        In a communication annexed to the summons to oral
        proceedings the board gave a negative preliminary
        opinion in particular as to the clarity of the claims
        according to each of the requests. The board also
        informed the appellant that its request that the oral
        proceedings start as close as possible to 1.00 pm could
        not be granted.

IV.   With a letter dated 13 September 2010, the appellant
        filed sets of amended claims according to a main
        request and first to fifth auxiliary requests,
        replacing the claims of all previous requests, and

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replacement pages of the introductory part of the
description.

V.   With a letter dated 4 October 2010, the appellant
        informed the board that it would not be attending the
        oral proceedings. The appellant also invited the board
        to discuss any points on the telephone should there
        remain some minor problems although the appellant felt
        that all objections had been dealt with.

VI.   Oral proceedings were held on 12 October 2010 in the
        absence of the duly summoned appellant.

VII.   The appellant's final requests are that the decision
        under appeal be set aside and that a patent be granted
        on the basis of the set of revised claims according to
        the main request or the first to fifth auxiliary
        requests, all filed with letter dated 13 September 2010.

VIII.   Independent claim 1 according to **the main request** reads
        as follows:

        "A method for providing instant review of a last image
        captured by an image capture device, the image capture
        device including a viewfinder for displaying a live
        image and each image of a plurality of captured images,
        the method comprising the steps of:
            (a) allowing a user to select instant review of a
        last image captured by the image capture device (421);
            (b) determining a status and location of the last
        image (712); the status comprising how far along in
        processing the image is, the location comprising an
        input buffer or RAM disk; and

(c) providing the last image to the viewfinder for display;

wherein the image capture device is capable of displaying the last image substantially immediately after the last image has been captured,

wherein the image capture device is capable of accessing the last image before processing of the image is complete, wherein accessing comprises displaying and/or annotating the image."

IX.   Independent claim 1 according to **the first auxiliary request** reads as follows:

"A method for providing instant review of a last image captured by an image capture device, the image capture device including a viewfinder for displaying a live image and each image of a plurality of captured images; wherein the image capture device further includes an image processing system including a buffer for storing an image for display on the viewfinder; wherein the image processing system further provides a plurality of screennail images corresponding to the plurality of images, the method comprising the steps of:

(a) allowing a user to select instant review of a last image captured by the image capture device (421);

(b) determining a status and location of the last image, the status and location determining step (b) further including the steps of

(b1) determining if the last image is stored in the buffer;

(b2) checking a status of the last image in the image processing system if the last image is not stored in the buffer, the status checking step (b2) further including the step of

(b2i) determining if a screennail image
corresponding to the last image has been generated
wherein the screennail image is a medium resolution
version of the image; and

(c) providing the last image to the viewfinder for
display;

the last image providing step further including
the steps of

(c1) providing the last image from the buffer to
the viewfinder if the last image is stored in the
buffer; and

(c2) retrieving and resizing the screennail image
and providing the screennail image to the viewfinder if
the screennail image corresponding to the last image
has been generated; the retrieving and providing step
(c2) further including the step of

(c2i) creating the screennail image if the
screennail image has not been generated;

wherein if the location of the image data for the
last image captured is not the buffer (536), the last
image is accessible for display or annotation when the
status of the image is that processing of the image is
incomplete, and wherein the image capture device is
capable of displaying the last image substantially
immediately after the last image has been captured."

X.   Independent claim 1 according to **the second auxiliary
        request** reads as follows:

"A method for providing instant review of a last image
captured by an image capture device, the image capture
device including a viewfinder for displaying a live
image and each image of a plurality of captured images,
the method comprising the steps of:

(a) allowing a user to select instant review of a last image captured by the image capture device (421);

(b) determining a status and location of the last image (712); the status comprising how far along in processing the image is, the location comprising an input buffer or RAM disk; and

(c) providing the last image to the viewfinder for display;

wherein the image capture device is capable of displaying the last image substantially immediately after the last image has been captured,

wherein image capture device is capable of accessing the last image before processing of the image is complete, wherein accessing comprises displaying and/or annotating the image, and wherein annotating the image includes adding sound to the image."

XI.   Independent claim 1 according to **the third auxiliary request** reads as follows:

"A method for providing instant review of a last image captured by an image capture device, the image capture device including a viewfinder for displaying a live image and each image of a plurality of captured images, an input buffer for storing raw data, and a frame buffer for storing an image for display on the viewfinder; the method comprising the steps of:

(a) allowing a user to select instant review of a last image captured by the image capture device (421);

(b) determining a status and location of the last image (712); the status comprising how far along in processing the image is, the location comprising the input buffer (538), the frame buffer (536), or a RAM disk;

(c) providing the last image to the viewfinder for display;

wherein step (b) further comprises the step of:

(b1) determining if the last image is stored in the frame buffer;

wherein the image capture device is capable of displaying the last image substantially immediately after the last image has been captured,

wherein if the location of the image data for the last image captured is no longer the frame buffer (536), the image capture device is capable of accessing the last image when the status of the image is that processing of the image is incomplete, wherein accessing comprises displaying and/or annotating the image."

XII.   Independent claim 1 according to **the fourth auxiliary request** reads as follows:

"A method for providing instant review of a last image captured by an image capture device, the image capture device including a viewfinder for displaying a live image and each image of a plurality of captured images, an input buffer for storing raw data, and a frame buffer for storing an image for display on the viewfinder the method comprising the steps of:

(a) allowing a user to select instant review of a last image captured by the image capture device (421);

(b) determining a status and location of the last image (712); the status comprising how far along in processing the image is, the location comprising the input buffer (538), the frame buffer (536), or a RAM disk; and

(c) providing the last image to the viewfinder for display;

wherein step (b) further comprises the step of:

(b1) determining if the last image is stored in the frame buffer;

wherein the image capture device is capable of displaying the last image substantially immediately after the last image has been captured,

wherein if the location of the image data for the last image captured is not the frame buffer (536), the image capture device is capable of accessing the last image when the status of the image is that processing of the image is incomplete, wherein accessing comprises displaying and/or annotating the image, and wherein annotating the image includes adding sound to the image."

XIII.   Independent claim 1 according to **the fifth auxiliary request** reads as follows:

"A method for providing a review of a last image captured by an image capture device, the image capture device including a viewfinder for displaying a live image and each image of a plurality of captured images, the method comprising the steps of:

(a) allowing a user to select to review a last image captured by the image capture device (421) before the completion of the processing of a high resolution copy of the last image;

(b) determining a status and location of the last image (712); the status comprising how far along in processing the image is, the location comprising an input buffer or RAM disk; and

(c) providing the last image to the viewfinder for display;

the image capture device completing the processing of a lower resolution image of the last captured image before completing the processing of the high resolution copy of the last captured image so as to be capable of displaying for review the last image substantially immediately after the last image has been captured as a lower resolution image,

wherein the image capture device is capable of accessing the last image before processing of the image is complete, wherein accessing comprises displaying and/or annotating the image."

XIV.   The examining division's reasoning in the decision under appeal with respect to claims 1 and 19 according to the main request then on file reads as follows:

"Lack of clarity of claims 1 and 19"

"Claim 1 includes a step of 'determining a status and location of the last image'. In the opinion of the Examining Division the terms 'status' and 'location' are vague and unclear. In the context of claim 1 it is completely obscure what is meant by status of the last image and what the location of the last image could be."

"The Applicants submitted that figure 7 and the associated text at page 12, line 31 to page 13, line 25 describe the way in which the status and location of the image are determined."

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"In the given passage it appears that the 'status'
means how far the image processing has progressed, and
that the input buffer and the RAM disc are meant by the
term 'location'. However, the more precise definition
of status and location in the description does not
render claims 1 and 19 themselves clear. Moreover, in
claims 1 and 19 it is not clear how the determined
status and location are interrelated to the remaining
features of the claims. Therefore, the Examining
Division has come to the conclusion that the meaning of
claims 1 and 19 is not clear from the wording used in
these claims."

XV.   Regarding Article 84 EPC 1973 the appellant essentially
       argued as follows:

Main request

The independent claims (original claims 1 and 19) have
been amended so as to overcome the objections of lack
of clarity raised in the reasons of the appealed
decision, by identifying that a status of the last
image comprises how far along in the processing the
image is, and that a location of the last image
comprises an input buffer or RAM disk (see wording of
claim 1).

As to the objections raised by the board under
Article 84 EPC 1973 in the communication annexed to the
summons to oral proceedings, the appellant submitted
the following arguments:

The terms "instant review" and "substantially
immediately after" are clear terms. The method and

apparatus relate to something which is operated
manually by a human user and would be clear in that
context. It is unnecessary to define them in a more
accurate way (e.g. "within 0.1 second" or whatever).
Sometimes even in technical patent claims words should
take their natural meaning. In this case it relates to
a human asking, by pressing a button or whatever, for
the last picture and being shown the best available
last image, for example the lower-resolution image,
even before the processing of the high resolution image
is complete.

As to the objection that the expression "wherein the
image capture device is capable of accessing the last
image before processing of the image is complete"
defines the result to be achieved without indicating by
which (combination of) technical features the result is
achieved, the appellant believes that claim 1 is quite
clear. The above expression defines the relevant step.
This arrangement is novel and it is not necessary to
define the exact method by which it is carried out. In
the present application, the preferred method of
carrying out the invention is by generating a lower-
resolution image of the captured high-resolution image
before completing the processing of the high-resolution
image. Nevertheless, other ways of achieving the
results set out in claim 1 might be provided.

First auxiliary request

The expression "screennail image" deemed unclear by the
board has been defined in the claim as a "medium
resolution image".

Contrary to the board's objection, the meaning of the
word "status" is clear. So far as the word "status" is
concerned, step (b1) is a step determining if the last
image is stored in the buffer, and (step (b2)) if the
last image is not stored in the buffer, then
determining if a screennail image corresponds to the
last image that has been generated and, if it has,
providing the screennail image to the viewfinder. In
other words, there are two aspects to be determined: is
the last image in the buffer (in which case that image
can be used) and, if not, determining whether there is
a screennail image and providing that image to the
viewfinder. There is no suggestion that more than one
image is to be displayed in the viewfinder. Effectively,
the best available image of the last image is provided
to the viewfinder.

Second to fourth auxiliary requests

See the above arguments regarding similar objections
raised against the main and first auxiliary requests.

Fifth auxiliary request

The claims according to this request are based on the
claims of the main request with more comprehensive
amendments.

In claims 1 and 20 the expression "instant review" has
been amended to "review". This deals with one of the
board's objections. The expression "substantially
immediately after" has been retained because the image
to be displayed is defined as a lower-resolution image
and this makes the use of such words quite clear.

However, if necessary, the appellant "would accept deletion of these three words in claims 1 and 20 and the addition of the words 'before completion of the processing of the high resolution image' at the end of that paragraph."

Moreover, the appellant has added in claim 1 the technical step of generating a lower-resolution image of the captured high-resolution image before completing the processing of the high-resolution image. As a result, another of the board's objections has been overcome. Finally, the expression "screennail image" has been replaced by "medium resolution image" (see page 8, lines 19-21, of the application).

Reasons for the Decision

1.   The appeal is admissible.

Main request

2.   The board considers that claim 1 according to the main request does not meet the requirements of Article 84 EPC 1973 for each of the following reasons:

        (a) The expressions "*instant review*" and
             "*substantially immediately after*" do not have a
             clear technical meaning in the context of claim 1.
             Each of these expressions implies a (very) short
             delay between two successive actions. However, the
             duration of the delay remains vague even when
             account is taken of the other features of the
             claimed method. The skilled person is therefore

left in doubt as to how short the delay is and to
what extent it distinguishes the claimed method
from prior-art methods in which an image is
displayed for review shortly after it has been
captured. It must be understood that the duration
of such delays in image capture devices can vary
greatly, from very short to rather long, depending
on many factors such as the size of the image, the
size of the display, the processing speed of the
image processor, the access time of the memory,
the type of processing performed on the image (e.g.
compression or not) and the algorithm used.

(b)   The expression "*wherein the image capture device
       is capable of accessing the last image before
       processing of the image is complete*" defines the
       result to be achieved without indicating by which
       combination of technical features this result is
       achieved. This, however, is not acceptable
       according to the established case law (see section
       II.B.1.2.2 of Case Law of the Boards of Appeal of
       the EPO, 6th edition 2010). Moreover, at least
       some of the essential technical features are
       missing in claim 1. In particular, a step of
       generating a lower-resolution image of, or
       corresponding to, the captured high-resolution
       image before completing the processing of the
       high-resolution image is essential because the
       application discloses no alternative way of
       achieving the above result and the board does not
       see one which would have been obvious to the
       skilled person from common general knowledge.
       However, the indication of all essential features
       is one of the requirements of clarity (see section

II.B.1.1.4 of Case Law of the Boards of Appeal of the EPO, 6th edition 2010).

3.   The appellant's arguments

As to reason (a) *supra*, the appellant argued that the expressions "instant review" and "substantially immediately after" are clear because they should be construed from the point of view of a person using the method and apparatus of the invention, who has pressed the image capture button and is waiting to be shown the captured image on the viewfinder.

The board is not convinced by this argument because the skilled person would understand that even from the point of view of such a human user these expressions have a relative meaning which may vary from one user to the next. For instance, one user might consider that the expressions "instant review" and "substantially immediately after" cover a one-second delay between capture and display of an image, whereas another user will regard such a delay as too long to be covered by these expressions.

As to reason (b) *supra*, the appellant argued that the expression objected to by the board is clear as it is and that generating a lower-resolution image of the captured high-resolution image before completing the processing of the high-resolution image is not essential because the same result could be achieved in other ways.

The board cannot share the appellant's view because the application does not disclose any alternative way of

"*accessing the last image before processing of the image is complete*" to a step of generating two different versions of the last image captured, one at a lower resolution which is rapidly provided to the viewfinder before completing the processing of the high-resolution image and one at high resolution (the resolution set by the user; see e.g. page 10, lines 6 to 9 of the published application) which is stored for later usage. The appellant has not proposed any alternative way of achieving the above result, and the board does not see one which would have been obvious to the skilled person from common general knowledge. The phrase objected to is therefore a functional feature defining a technical result of a type not permissible under the established case law (see section II.B.1.2.2 of Case Law of the Boards of Appeal of the EPO, 6th edition 2010).

4.   For the above reasons, the appellant's main request is not allowable.

First auxiliary request

5.   Claim 1 according to the first auxiliary request does not meet the requirements of Article 84 EPC 1973 for the following reasons:

   (a)   The use of the expressions "*instant review*" and "*substantially immediately after*" in claim 1 causes a lack of clarity for the reasons set out under point 2(a) *supra*. The fact that step (b) has been further defined by steps (b1), (b2) and (b2i) and that step (c) has been further defined by steps (c1), (c2) and (c2i) does not change this

conclusion because these additional steps do not
clearly constrain the values that the very short
delay implied in the relative expressions "*instant
review*" and "*substantially immediately after*" may
take.

(b)   Claim 1 uses the terms "*the last image*" and "*the
image*" to refer sometimes indiscriminately to
different occurrences of the most recent captured
image of a scene, namely to refer to the image as
such in any form (see in particular feature (a)),
in the form of the last image data stored in the
buffer (with an unspecified resolution; see in
particular feature (c1)) and in the form of its
different (medium) resolution version in a resized
form, i.e. the screennail image (see steps (b2i)
and (c2)). The method of claim 1 comprises a step
allowing a user to select a last image as such (in
any form; feature (a)), a determining step for
determining in which form (as stored in the buffer
or its screennail version) this image is available
(feature (b)) and a providing step (feature (c))
which provides the buffer image version (if
available) to the viewfinder (feature (c1)) **and**
(emphasis by the board) which provides the
retrieved and resized screennail version to the
viewfinder if it has been generated (feature (c2))
and otherwise creates the screennail version (if
it has not been generated; feature (c2i)).

The last feature of claim 1, starting with
"wherein if the location" refers to features of
the image capture device where the "last image is
accessible for display or annotation" and which

capture device is "capable of displaying the last
image substantially immediately after the last
image has been captured". This last feature is
worded such as to define the result obtained by
carrying out the determining and providing
steps (b) and (c), namely the last image as such
(in any form) is accessible for substantially
immediate display. The determining step (b) gives
priority to the buffer image in that it first
determines the presence of the image in the buffer
before it checks the status of the last image and
whether a corresponding screennail image has been
generated (feature (b2)). The providing step (c)
then provides the buffer image to the viewfinder
and provides the (retrieved, resized) screennail
image to the viewfinder. If the last image is not
stored in the buffer, an available screennail
image (feature (c2)), or one which has to be
created (feature (c2i)), would be provided to the
viewfinder. But the screennail image would also be
retrieved (if determined as generated or after
creating it) and resized if the last image is
stored in the buffer, thereby including the
possibility of providing both versions of the last
image to the viewfinder. The last feature of
claim 1 does not help to clarify how the
determining step (b) (determining a status and
location) and the providing step (c) are
interrelated since this last feature merely
specifies that the last image is accessible for
display or annotation and that the capture device
is capable of displaying the last image
substantially immediately after it has been
captured. Therefore, this feature does not clarify

how the determining step influences the providing
step. Although it may be understood from the
determining step that checking the status of the
last image is carried out only if the last image
is not stored in the buffer (feature (b2); as
shown in figure 9), the providing step does not
refer to the checking step or the determining step,
in which the checking step is included, but refers
to providing the screennail image to the
viewfinder if it has been generated, whether or
not this is the result of the determining
step (b2i).

6.   As a consequence, the first auxiliary request is not
        allowable.

Second auxiliary request

7.   Claim 1 according to the second auxiliary request
        differs from claim 1 of the main request only by the
        additional feature that "*annotating the image includes
        adding sound to the image*". The objections under
        Article 84 EPC 1973 raised against claim 1 of the main
        request therefore also apply to claim 1 of the second
        auxiliary request.

8.   Hence the second auxiliary request is not allowable.

Third auxiliary request

9.   Claim 1 according to the third request differs from
        claim 1 according to the main request essentially in
        that the image capture device includes an input buffer
        for storing raw data and a frame buffer for storing an

image for display on the viewfinder, and in that
step (b) includes a step (b1) of determining if the
last image is stored in the frame buffer.

10.   Claim 1 according to the third auxiliary request does
      not meet the requirements of Article 84 EPC 1973 for
      the following reasons:

      (a)   The use of the expressions "*instant review*" and
            "*substantially immediately after*" in claim 1
            causes a lack of clarity for the reasons set out
            under points 2(a) and 5(a) *supra*. The presence of
            a frame buffer in addition to the input buffer and
            step (b1) do not clarify the relative meaning of
            the above expressions because these features, as
            they are worded, do not necessarily imply
            different resolution versions of the last captured
            image (see point 2(b) above). Nor do these
            features imply that the frame buffer stores the
            last image in a version that has already been
            processed in a live view generation version and
            can thus quickly be accessed (see e.g. page 10,
            lines 12 to 19, of the application).

      (b)   The phrase "*wherein [...] the image capture device
            is capable of accessing the last image when the
            status of the image is that processing of the
            image is incomplete*" defines the result to be
            achieved without indicating by which technical
            features this result is achieved, for the reasons
            set out under point 2(b) *supra*.

11.   Accordingly, the third auxiliary request is not
      allowable.

Fourth auxiliary request

12.   Claim 1 according to the fourth auxiliary request
        differs from claim 1 according to the third request
        only by the additional feature that "*annotating the
        image includes adding sound to the image*". The
        objections under Article 84 EPC 1973 raised against
        claim 1 of the third request therefore also apply to
        claim 1 of the fourth auxiliary request.

13.   Hence the fourth auxiliary request is not allowable.

Fifth auxiliary request

14.   Claim 1 of this request leaves unclear how the
        determining step (b) is interrelated with the providing
        step (c) and the remaining features because the status
        and location of the last image which are determined in
        step (b) are not mentioned in the remaining steps of
        the method of claim 1. It is thus unclear in which form
        the last image is provided to the viewfinder and what
        the role of the input buffer or RAM disk is in
        completing the processing of the last captured image.

14.1   The remaining steps in the last two paragraphs of
        claim 1 merely set out a priority of processing the
        lower-resolution image before its high-resolution
        "copy". This priority of processing is required to be
        such that the device is capable of displaying for
        review the last image substantially immediately after
        the lower-resolution image has been captured and before
        processing of the image is complete. But claim 1 does
        not specify how the last image is accessed and provided

to the viewfinder for display depending on the status and location of the last image. Nor does it specify the essential features for achieving a rapid or substantially immediate review of the last image.

14.2   The description refers to status and locations, such as a determination whether image processing is complete or whether the last image is in a frame buffer (536, as distinct from an input buffer 538 which receives the raw data). Depending on the determined result, the last image is processed for display in a different manner (see for example page 10, lines 12 to 19; page 13, lines 1 to 25; page 15, lines 1 to 16; figures 4B, 7 and 9). None of the essential features relating to a particular status and location is set out in claim 1.

14.3   Contrary to the appellant's assertion (see the letter of 13 September 2010, page 3) that claim 1 "include[s] the technical step of generating a lower-resolution image of the captured high-resolution image before completing the processing of the high-resolution image", the board does not see such a definition in claim 1. The claim states that "the last image has been **captured as a lower resolution image**" (emphasis by the board) and that "a lower resolution image of the last captured image" is processed "before completing the processing of the high-resolution **copy** of the last captured image" (emphasis by the board). Although the meaning of the term "copy" may be questioned because it is not used anywhere in the description, the board understands these expressions to mean that different resolution versions of the last image exist, the processing of the lower-resolution version being completed before that of the high-resolution version. Neither the literal

meaning of the expression "captured as a lower resolution image" nor the corresponding parts of the description it invokes can be understood as generating a lower-resolution version of the captured high-resolution image. Instead the description discloses that raw image data at a reduced resolution suitable for display are sequentially captured in a live mode (page 9, line 27 to page 10, line 1). The raw image data which had already been processed before capturing the image is stored in the frame buffer 536. Once the user has captured an image, the raw data of an image corresponding to a higher-resolution version (set by the user) is stored in the input buffer 538 and used to generate an enhanced image file (see page 10, lines 1 to 19).

14.4   It is clear from the foregoing that the further amendments proposed by the appellant in the letter dated 13 September 2010, namely the deletion of the expression "substantially immediately after" and the addition of the words "before completion of the processing of the high resolution image" do not clarify the relationship of the determining and providing steps of claim 1 and their effect in the context of claim 1 has already been discussed in the above analysis (see point 14.1).

15.   For the above reasons, the fifth auxiliary request is not allowable.

Procedural matters

Request that the oral proceedings be held as close as possible to 1.00 pm

16.   The request to start the oral proceedings as close as
        possible to 1.00 pm could not be granted for the
        following reasons:

        Scheduling oral proceedings to start at 1.00 pm can
        only be accepted in certain exceptional cases. In
        general this creates a risk that the oral proceedings
        are not finished at a reasonable time and thus have to
        be adjourned. In the present case five sets of claims
        (main request and four auxiliary requests) were
        submitted with the grounds of appeal and five prior-art
        documents (D1 to D5) might have had to be discussed
        during the oral proceedings. The present case thus
        appeared inappropriate for making an exception.

        The oral proceedings therefore started at the usual
        time of 9.00 am.

The appellant's offer to discuss outstanding points on the telephone

17.   As announced in advance, the duly summoned appellant
        did not attend the oral proceedings. According to
        Rule 71(2) EPC 1973, the proceedings could however
        continue without him. In accordance with Article 15(3)
        RPBA (Rules of Procedure of the Boards of Appeal of the
        European Patent Office, OJ EPO 2007, 536), the board
        relied for its decision only on the appellant's written
        submissions. The board was in a position to decide at

the conclusion of the oral proceedings, since the case was ready for decision (Article 15(5) and (6) RPBA), and the voluntary absence of the appellant was not a reason for delaying a decision (Article 15(3) RPBA).

18.   Nor was the fact that in the letter dated 4 October 2010 the appellant had indicated his readiness to discuss any points with the board on the telephone a reason for the board to delay its decision. According to established case law, the EPC foresees the absolute right to oral proceedings under Article 116(1) EPC 1973, but not the right to an informal interview or an informal telephone consultation (Section VII.B.2.7.2 of the Case Law of the Boards of Appeal of the EPO, 6th edition, 2010). Hence the board was not required to contact the appellant by holding a telephone interview, for instance with the rapporteur.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar: The Chairman:

L. Fernández Gómez   F. Edlinger

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