

Internal distribution code:

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

**Datasheet for the decision
of 26 July 2011**

Case Number: T 1137/07 - 3.5.04

Application Number: 98944175.3

Publication Number: 0951782

IPC: H04N 9/64

Language of the proceedings: EN

Title of invention:

Apparatus and method for using a television set with a personal computer

Applicant:

Koninklijke Philips Electronics N.V.

Opponent:

-

Headword:

-

Relevant legal provisions:

RPBA Art. 13

Relevant legal provisions (EPC 1973):

EPC Art. 84

Keyword:

"Main request: clarity (no)"

"Auxiliary request: admissibility (no): not clearly allowable"

Decisions cited:

-

Catchword:

-



Case Number: T 1137/07 - 3.5.04

D E C I S I O N
of the Technical Board of Appeal 3.5.04
of 26 July 2011

Appellant: Koninklijke Philips Electronics N.V.
Groenewoudseweg 1
NL-5621 BA Eindhoven (NL)

Representative: Groenendaal, Antonius W.M.
Philips
Intellectual Property & Standards
P.O. Box 220
NL-5600 AE Eindhoven (NL)

Decision under appeal: Decision of the Examining Division of the
European Patent Office posted 13 February 2007
refusing European patent application
No. 98944175.3 pursuant to Article 97(1) EPC
1973.

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 to refuse European patent application No. 98 944 175.3.
- II. The examining division refused the application *inter alia* on the grounds that claim 1 was not allowable due to lack of clarity (Article 84 EPC 1973).
- III. With the statement of grounds of appeal the appellant filed a set of claims amended to overcome the clarity objections.
- IV. In a communication annexed to the summons to oral proceedings the board, *inter alia*, expressed the preliminary opinion that it tended to agree with the examining division's findings. It drew attention to Article 13 RPBA (Rules of Procedure of the Boards of Appeal, OJ 2007, 536) and indicated that any observations should be filed at least one month before the oral proceedings.
- V. The appellant did not reply to the board's communication.
- VI. Oral proceedings before the board took place on 26 July 2011. The appellant filed claims 1 to 11 according to an auxiliary request towards the end of these oral proceedings.
- VII. The appellant requested that the decision under appeal be set aside and that a patent be granted according to the main request on the basis of claims 1 to 11 filed with the statement of grounds of appeal, or

alternatively according to the first (and only) auxiliary request on the basis of claims 1 to 11 submitted in the oral proceedings on 26 July 2011.

VIII. Claim 1 according to the main request reads as follows:

"A method for establishing a television set (26) as a graphic output device (26) for a computer system (10), the method comprising steps of:
calling a selected executable routine (52) from a linked library (20) across a generic application programming interface (22) by a computer system routine (14, 16), the linked library (20) having a plurality of the executable routines for selectively controlling the television set (26) or for selectively controlling components of a graphics core (24), at least one of the executable routines detecting a presence of the television set (26);
using the graphics core (32, 34, 42) to detect the presence of the television set and to control the television set;
executing a hardware-specific routine from a hardware abstraction layer (30) in response to execution of the selected executable routine (52), and returning (60) a hardware-specific result to the called selected executable routine, the hardware-specific routine being associated with a hardware operation of the television set (26); and
sending (62) an execution result by the called selected executable routine to the computer system routine (14, 16) across the application programming interface (22) based on the hardware-specific result."

IX. Claim 1 according to the first auxiliary request reads as follows:

"A method for establishing a television set (26) as a graphic output device (26) for a computer system (10), the method comprising steps of:
calling a selected executable routine (52) from a linked library (20) across a generic application programming interface (22) by a computer system routine (14, 16), the linked library (20) having a plurality of the executable routines for selectively controlling the television set (26), at least one of the executable routines detecting a presence of the television set (26);
executing a hardware-specific routine from a hardware abstraction layer (30) in response to execution of the selected executable routine (52), and returning (60) a hardware-specific result to the called selected executable routine, the hardware-specific routine being associated with a hardware operation of the television set (26); and
the hardware-specific routine selectively controlling components of a graphics core (24) to detect the presence of the television set and to control the television set; the hardware-specific result specifying a connection status of the television set when the executable routine for detecting a presence of the television set is selected
sending (62) an execution result by the called selected executable routine to the computer system routine (14, 16) across the application programming interface (22) based on the hardware-specific result."

- X. The reasoning as to lack of clarity in the decision under appeal may be summarised as follows.

It is unclear whether the graphics core is a hardware component or a software routine. It is also unclear how such a graphics core, for instance a graphics card, can detect and control a conventional television set using a communication protocol.

- XI. Additional reasoning by the board in the communication annexed to the summons to oral proceedings may be summarised as follows.

The role of the graphics core and the technical features which enable it to detect the presence of the television set are unclear. The presence of a television set is physically detected using hardware components in the graphics core. It is unclear from the wording of claim 1 whether the "hardware-specific result" returned by the hardware-specific routine depends on the interaction between the routine and the associated hardware components in the graphics core to provide a (physical/electrical) detection.

- XII. The appellant's arguments as to clarity may be summarised as follows.

In the invention the graphics core is television-specific and the method of claim 1 sets out how to detect and control an attached television set. The graphics core may comprise software and hardware components, e.g. a comparator, as described in the application. The skilled person would be able to implement the graphics core as defined in functional

terms in claim 1. It would be inappropriate to limit the claims to a purely hardware or software implementation, or to limit hardware components to a particular implementation.

Reasons for the Decision

1. The appeal is admissible.
2. Main request
 - 2.1 Claim 1 relates to a method for establishing a television set as a graphic output device for a computer system, by calling a selected executable routine and returning a hardware-specific result from a hardware-specific routine to the selected one of a plurality of executable routines, the hardware-specific routine being associated with a hardware operation of the television set.
 - 2.2 The graphics core used in the method of claim 1 "to detect the presence of the television set and to control the television set" comprises components which may be selectively controlled by executable routines. The graphics core may comprise hardware components for these purposes, for instance an analogue comparator for detecting the presence of a conventional television set (see the description, page 6, lines 3 to 6), or components for setting or detecting operation modes of an attached television set (see the description, page 5, lines 1 to 10). Furthermore, software components may also be involved in the graphics core.

2.3 In the (only) concrete example described, a hardware-specific routine is executed, detects a status of a component (VGC 32) of the graphics core (24) and returns a hardware-specific result to a higher-level hardware-independent, executable routine ("IsMonitorAttached") indicating that an attached television monitor was detected by the graphics core. The executable routine then returns an execution result to a computer system routine (see page 6, line 27, to page 7, line 8). Other results may be returned upon detection of other operation modes of the television set by other components of the graphics core. However, claim 1 leaves totally open how the graphics core and its components would be used together with the other features of claim 1, in particular whether and how these components would affect the step of returning the hardware-specific result from the hardware-specific routine to the selected executable routine. Claim 1 simply does not mention the graphics core or any of its components in the steps of executing a hardware-specific routine, returning a hardware-specific result and sending an execution result, according to the last two paragraphs of claim 1.

2.4 Claim 1 further sets out that a linked library has a plurality of executable routines for selectively controlling a television set or for selectively controlling components of a graphics core, with at least one of the executable routines detecting the presence of the television set. Claim 1 leaves open whether the hardware-specific routine "associated with a hardware operation of the television set" in the penultimate paragraph of claim 1 would be the one for

detecting the presence of the television set or another one in the plurality of executable routines.

2.5 It follows from the above that claim 1 does not set out a functional relationship between the use of the graphics core and the execution of the higher-level routines, be it the hardware-specific routine or the selected executable routine. It is therefore unclear whether and how the step of using the graphics core combines and interacts with the other steps of the claim.

2.6 As a result, claim 1 of the main request lacks clarity, contrary to what is required by Article 84 EPC 1973. The main request is therefore not allowable

3. First auxiliary request

3.1 Admission into the proceedings of a request filed after the filing of the statement of grounds of appeal is a matter of discretion for the board, which is to be exercised in view of *inter alia* the complexity of the new subject-matter and the current state of the proceedings (see Article 13(1) and (3) RPBA).

3.2 The amended set of claims according to the auxiliary request was filed in the oral proceedings before the board, after the main request had been discussed, i.e. at the very last stage of the appeal proceedings. Although some of the amendments made may be considered as a response to arguments presented by the board in the oral proceedings, the late filing of extensive amendments, restructuring features of claim 1 of the main request, raised issues which the board could not

reasonably be expected to deal with without further extensive discussion and, possibly, adjournment of the oral proceedings. This situation could have been avoided if the appellant had submitted observations and/or amendments in reply to the board's communication, which already set out the objection under Article 84 EPC 1973.

3.3 The amendments essentially consist in moving features relating to the graphics core to a different place in the order of the steps of the method claim. Moreover, the step of using the graphics core, as recited in claim 1 of the main request, is replaced by the definition of the hardware-specific routine as "selectively controlling components of a graphics core" in order to "detect the presence of the television set and to control the television set". The hardware-specific result is additionally defined as "specifying a connection status of the television set when the executable routine for detecting a presence of the television set is selected" (see also the description, page 6, lines 11 to 19).

3.4 *Prima facie*, the amendments are not suitable to overcome the objections raised under Article 84 EPC 1973. Claim 1 still covers the step of executing a hardware-specific routine for controlling the television set and returning a hardware-specific result to the called selected executable routine which may be different from the routine for detecting the presence of the television set, in which case the graphics core would still appear not to interact with the routines returning the "hardware-specific result" and an "execution result".

- 3.5 Furthermore, the amendments introduce an additional issue of possibly added subject-matter under Article 123(2) EPC. It is not immediately apparent that the passage (page 5, lines 14 to 22) indicated by the appellant provides a valid basis in the application documents as originally filed for a direct and unambiguous disclosure of a (single) hardware-specific routine capable of selectively controlling components of the graphics core in order to detect the presence of the television set as well as to control the television set.
- 3.6 In conclusion, the board considered the amendments made in the oral proceedings as not clearly allowable in the sense of making it possible to quickly ascertain whether the amended claims overcame the objection raised so far and did not give rise to a new objection.
- 3.7 On grounds of the above, and in the absence of relevant reasons why the amendments were filed only at the latest stage of the proceedings, the board exercised its discretion in not admitting the auxiliary request into the proceedings, in accordance with Article 13(1) RPBA.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar

The Chairman

K. Boelicke

F. Edlinger