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**Datasheet for the decision
of 16 June 2011**

Case Number: T 0494/08 - 3.5.04

Application Number: 04300461.3

Publication Number: 1515341

IPC: G11B 27/10

Language of the proceedings: EN

Title of invention:

Method for a time shift display of a video signal and
apparatus therefore

Applicant:

Thomson Licensing

Opponent:

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Headword:

-

Relevant legal provisions:

-

Relevant legal provisions (EPC 1973):

EPC Art. 56

Keyword:

"Inventive step (no)"

Decisions cited:

-

Catchword:

-



Case Number: T 0494/08 - 3.5.04

D E C I S I O N
of the Technical Board of Appeal 3.5.04
of 16 June 2011

Appellant: Thomson Licensing
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Representative: Rittner, Karsten
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Decision under appeal: Decision of the Examining Division of the
European Patent Office posted 25 October 2007
refusing European patent application
No. 04300461.3 pursuant to Article 97(1) EPC
1973.

Composition of the Board:

Chairman: F. Edlinger
Members: M. Paci
C. Vallet

Summary of Facts and Submissions

- I. The appeal is against the decision of the examining division refusing European patent application No. 04 300 461.3, which was published as EP 1 515 341 A2.
- II. The following document, cited as prior art in the decision under appeal, is relevant to the present decision:
- D1: WO 98/51076 A1.
- III. The decision under appeal was based on two different grounds, namely that claim 8 then on file was not clear (Article 84 EPC 1973) and that the subject-matter of claims 1 and 9 then on file lacked an inventive step (Article 56 EPC 1973) in view of D1 and common general knowledge.
- IV. With the statement of grounds of appeal the appellant (applicant) filed a new set of claims, replacing all previous claims.
- V. In a communication under Article 15(1) RPBA (Rules of Procedure of the Boards of Appeal, OJ EPO 2007, 536), annexed to the summons to oral proceedings, the board *inter alia* expressed doubts that the subject-matter of claim 1 involved an inventive step in view of D1 and common general knowledge.
- VI. With a letter dated 16 May 2011 the appellant filed a set of amended claims 1 to 7, replacing all previous claims, and description pages 1 and 1a.

VII. In a fax dated 15 June 2011, the appellant informed the board that it would not take part in the oral proceedings.

VIII. Oral proceedings were held on 16 June 2011 in the absence of the duly summoned appellant. At the end of the oral proceedings the board announced its decision.

IX. The appellant's final requests are that the decision under appeal be set aside and that a patent be granted on the basis of claims 1 to 7 filed with letter of 16 May 2011.

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

"Method for a time shift display of a video signal (VS) wherein upon a pause command (102) a received video signal (VS) is recorded (103) on a recording medium, and upon a resume command (106) the recorded video signal is provided to a display device while the received video signal (VS) is continued to be recorded (107) **characterized** in that upon further pause commands (110) during said recording successive pause start indicators (PSI(n)) are stored, and upon further successive resume commands (109, 117) recorded video signal starting from a plurality of successively previous pause start indicators (PSI(m)) is provided to a display device."

XI. The examining division's reasoning in the decision under appeal as to whether the subject-matter of

claim 1 then on file involved an inventive step reads as follows:

"A time shift display method according to the preamble of claim 1 is known from D1, see e.g. the first two sentences of the abstract. Moreover, a pause start indicator is known from D1, cf. "flags 1", figure 4, and there are provided means for determining the beginning of the first recorded portion, see page 3, lines 11-12, and a resume command for starting playback of the recorded portion from the first recorded position, cf. page 3, lines 10-19. The claim further defines that upon further successive pause and resume commands the video signal from the latest pause start indicator is displayed. However, this is the normal operation the apparatus of D1 would carry out as well. The claim does not define which temporal relationship holds between the further pause and resume commands and the recording of the received video signal. The present broad formulation leaves open when the further pause or resume commands are given. In D1, the recording starts after the first pause command. Then, the recording continues so that further pause commands would also fall in a time period wherein the signal is already recorded. After a resume command, the recording does not stop but is continued in order not get the complete broadcast program. Thus, after a resume and a successive further pause command, the apparatus of D1 would start a new pause period and store the new pause position in the same way as during the first pause period, as shown e.g. on page 7, line 3 - page 9, line 5.

Thus, although there is no explicit disclosure of inputting further pause commands, the skilled-person would interpret D1 in a manner that subsequent pause commands would have the same effect namely storing the pause positions and recording the input signal. In a corresponding manner it is also known from D1 to start the resume operation after a resume command from the stored position, and from any other previously recorded position, see the passages identified above. When applying a problem solution approach, then the problem to be solved in view of the explicit disclosure of D1 would be how to deal with further interruptions if a first pause command had already been given and a first portion of the current program was already recorded.

The solution would be to do the obvious namely the same as during the first pause command.

Therefore, the features of the characterizing clause of claim 1 are obvious from D1 in combination with the normal knowledge of the skilled-person."

XII. The appellant essentially argued as follows:

Inventive step

According to D1, the start recording values and stop recording values that are stored are related to recorded "portions" or "partitions". Only the first start recording value depends on a pause command, all other start recording values depend on limitations of the recording device, namely the need to start a new portion either because there is no further space left for such portion or because of a resume command that

requires recording in a further portion in order to play back the previous portion.

The values C(1) and R(1) mentioned on page 34, third paragraph and page 36, last paragraph to page 37, first paragraph, respectively, are stored in case a pause command is given during playback of a portion. Playback can be resumed at the respective position C(1), R(1). However, only a single value C(1) or R(1), respectively, is stored, not a plurality, of successive values C(1), R(1), respectively.

Claim 1 as amended is thus new with regard to D1.

Storing a plurality of successive pause start indicators, which indicate the time position where a pause command is issued, and providing to a display device a video signal starting from a plurality of successively previous pause start indicators is also not obvious in view of D1. According to D1, the values C(1) and R(1) of the last position in case of a further pause command are overwritten at the next respective pause command, see figure 8 and 9 and the corresponding passages in the description. There is no indication given in D1 that a viewer may want to go back to a previous pause command location. D1 discloses that a viewer may want to rewind or go back to the position of the last pause command, but not that a viewer might want to go back to the location of an earlier pause command.

Hence, the subject-matter of claim 1 is not rendered obvious by the disclosure of D1 even when taking into account common general knowledge.

Other matters

The passage of D1, from page 7, line 3 to page 9, line 5, was cited for the first time in the decision to refuse the European Patent Application. The applicant thus did not have a chance to comment on this passage which describes an embodiment of the time shift recorder of D1.

Reasons for the Decision

1. The appeal is admissible.

Construction of claim 1

2. The last few lines of claim 1 read "and upon further successive resume commands (109, 117) recorded video signal starting from a plurality of successively previous pause start indicators (PSI(m)) is provided to a display device".

It is clear from the appellant's letter dated 16 May 2011 (see, in particular, the arguments on page 2 of the letter), that the appellant intends this phrase to be construed as meaning that the method allows (a viewer), by inputting (several) successive resume commands, to select (any of) the positions at which the video signal was previously paused (positions successively stored as pause start indicators PSI(n)) and to play back the recorded video signal starting from the selected position.

This meaning is also in agreement with the description, page 1a, lines 5 to 19 (corresponding to page 1, lines 21 to 35, of the application as filed). The board will thus use the above interpretation for the assessment of inventive step below.

Inventive step

3. Closest prior art

It is undisputed that D1 represents the closest prior art and that it discloses a method according to the preamble of claim 1 (see, for instance, claim 1 of D1).

As to the features in the characterising portion of claim 1, the board stated in its communication annexed to the summons to oral proceedings that D1 also disclosed the feature reading "upon further pause commands (110) during said recording successive pause start indicators (PSI(n)) are stored". Indeed, the board explained that D1 disclosed that the viewer may input several successive pause commands during a given video program, resulting in a segmented recording of a plurality of portions of a sequentially received program, and added that the addresses for resuming playback (of the complete program) were stored in file allocation tables (see D1, page 11, second paragraph; page 23, third and fourth paragraphs; page 34, third paragraph).

4. Distinguishing features

The subject-matter of claim 1 thus differs from the method of D1 only by the feature reading "and upon

further successive resume commands (109, 117) recorded video signal starting from a plurality of successively previous pause start indicators (PSI(m)) is provided to a display device".

Essentially this expresses the difference that successive resume commands select the positions at which the video signal was previously paused (see point 2 *supra*), whereas D1 does not explicitly disclose how the start addresses of the sequentially stored segments are selected by a user when a user desires to re-watch a particular segment.

5. Objective technical problem

The appellant has not explicitly stated during the appeal proceedings which objective technical problem is solved by the method of claim 1.

However, page 1a of the description sets out the object of the invention in general terms as being to provide an apparatus/method with improved time shift video display capabilities.

The board has no objection to this formulation of the objective technical problem.

6. Obviousness

D1 does not disclose that the successive pause start indicators may be selected for playback of a recorded video signal by inputting successive resume commands. However, the board regards this option as obvious for the following reasons.

D1 states on page 26, third paragraph, that the viewer may "re-watch a segment", for instance by "going to a previously viewed disk location (in the case of a hard drive, DVD, or other disk media)" while "the time sequential signal still continues to be recorded as it is received so that the entire program can be watched at the viewer's leisure" (see also page 12, lines 9 to 11, and page 23, third paragraph). In the board's view, this can only be achieved if all the segments of the entire program, and their respective start and end addresses, remain stored on the recording medium until the viewer has finished watching the program. In other words, recorded segments must not be overwritten by later recorded segments of the same program. The same applies to the start and end addresses of these segments. As correctly pointed out in the decision under appeal, this is the normal operation of the apparatus of D1 in case a complete video program is recorded and interrupted by several pause commands. D1 further points in this direction on page 25, fourth paragraph, by stating that the pause start indicator (called "start-recording value" in D1) can be stored in a file allocation table. Since a file allocation table usually contains several entries, it suggests storing several or all pause start indicators in such a table. In D1, each pause start indicator is the start address of a recorded segment (see, for instance, page 10, second paragraph, 7th to 14th lines, and page 11, second paragraph). Allowing the viewer to go back to any previous recorded segment by repeatedly pressing a button (such as a resume button) on the remote control is regarded as a straightforward measure because it is similar to the well-known way of navigating between

chapters of a DVD by repeatedly pressing the "previous chapter" or "next chapter" button on the remote control until the desired chapter is reached.

7. The appellant's arguments

The appellant's arguments (see point XII *supra*) essentially fall along the following lines:

- (a) In D1, only the first start recording value depends on a pause command, all other start recording values depend on limitations of the recording device, namely the need to start a new portion either because there is no further space left for such portion or because of a resume command that requires recording in a further portion in order to play back the previous portion.
- (b) The values C(1) and R(1) mentioned in D1 on page 34, third paragraph and page 36, last paragraph, to page 37, first paragraph, respectively, are stored in case a pause command is given during playback of a portion. These values C(1) and R(1) of the last position are overwritten at the next respective pause command: see figure 8 and 9 and the corresponding passages in the description.
- (c) There is no indication given in D1 that a viewer may want to go back to a previous pause command position. D1 discloses that a viewer may want to rewind or go back to the position of the last pause command, but not that a viewer might want to go back to the position of an earlier pause command.

8. The board disagrees with appellant's argument (a) because D1 clearly states on page 11, second paragraph, by reference to a "third start-recording value" and a "fourth start-recording value" that each further pause command triggers the recording of a further segment and of its associated start address.

Regarding appellant's argument (b), the board sees no clear and unambiguous disclosure in D1 that values C(1) and R(1) of the last position are overwritten at the next respective pause command and not stored somewhere on the data storage device. For instance, the statement on page 35, last paragraph, first sentence, reading "[t]o give the user the option of obtaining **a complete recording of the program** a third VCR can be employed to receive the recorded portions of the program in the correct sequence from each of the two VCRs used to effect the above-described time shifted viewing" (emphasis added by the board) appears to imply that the recorded segments and their respective start and end addresses are not overwritten by the next pause command during the same program because otherwise it would not be possible to obtain a **complete** recording of the program on a third VCR.

Appellant's argument (c) has already been addressed under point 6 *supra*.

9. Conclusion on inventive step

For the above reasons, the subject-matter of claim 1 according to the main request does not involve an inventive step in view of D1 and common general knowledge.

Other matters

10. In the statement of grounds of appeal the appellant criticised that the applicant had not been given an opportunity to comment on a relevant passage of D1 cited in the decision under appeal, namely page 7, line 3 to page 9, line 5.

11. Although it is true that this passage of D1 referred to in the decision under appeal was not indicated in the examining division's first and only communication dated 23 February 2006, the essential reasoning set out in the decision under appeal that what was claimed in broad terms in claim 1 corresponded to the normal operation of the apparatus of D1, was the same as in the communication. Moreover, the examining division supported their reasoning in the decision under appeal by passages of D1 which were also referred to in the search report. The board thus considers that the decision under appeal complied with Article 113(1) EPC 1973, i.e. was based on grounds and evidence on which the appellant had had an opportunity to present comments.

Conclusion

12. Since the appellant's sole request is not allowable, the appeal must be dismissed.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:

K. Boelicke

F. Edlinger