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**Datasheet for the decision
of 24 July 2012**

Case Number: T 2152/08 - 3.5.04

Application Number: 04769005.2

Publication Number: 1676441

IPC: H04N7/173

Language of the proceedings: EN

Title of invention:

NON-LINEAR INTERACTIVE VIDEO NAVIGATION

Applicants:

Tiscali UK Limited
Video Networks IP Holdings Limited

Headword:

Relevant legal provisions:

EPC 1973 Art. 84, 111(1)

Keyword:

Claims - clarity after amendment (yes)
Decision re appeals - remittal (yes)

Decisions cited:

Catchword:



**Beschwerdekammern
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Chambres de recours**

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Case Number: T 2152/08 - 3.5.04

D E C I S I O N
of the Technical Board of Appeal 3.5.04
of 24 July 2012

Appellant I: Tiscali UK Limited
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Appellant II: Video Networks IP Holdings Limited
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Decision under appeal: **Decision of the Examining Division of the
European Patent Office posted 26 June 2008
refusing European patent application No.
04769005.2 pursuant to Article 97(2) EPC.**

Composition of the Board:

Chairman: F. Edlinger
Members: C. Kunzelmann
B. Müller

Summary of Facts and Submissions

- I. The appeal is against the decision of the examining division to refuse European patent application No. 04 769 005.2.
- II. The decision under appeal was based on the ground that the independent claims then on file did not meet the requirements of Article 84 EPC 1973.
- III. The board issued a communication pursuant to Article 15(1) of the Rules of Procedure of the Boards of Appeal, annexed to a summons to oral proceedings. It raised *inter alia* the issue whether the order in which the content items were delivered was clear.
- IV. Oral proceedings before the board were held on 24 July 2012. In the oral proceedings the appellants filed claims 1 to 8 according to a new sole request. The appellants requested that the decision under appeal be set aside and that the case be remitted to the first instance for further prosecution. At the end of the oral proceedings the chairman announced the board's decision.
- V. Claim 1 of the sole request reads as follows:

"A method for serving video on demand (VoD) content items, the method comprising:
storing a plurality of VoD content items in a content store;
storing associated attributes for each VoD content item in an attribute store, wherein at least one of the associated attributes of each VoD content item is a navigational attribute which defines a navigation action available for the VoD content item;

storing a content sequence list of VoD content items in a list store which determines an order a sequence of VoD content items are to be served from the content store; and,
serving VoD content items in accordance with the order determined by the content sequence list,
wherein user navigational control over the serving of the VoD content items of the content sequence list is allowed in accordance with the at least one associated navigational attribute."

Claim 8 of the sole request reads as follows:

"A system for delivering video on demand (VoD) content items, the system comprising:
a content store for storing a plurality of VoD content items;
an attribute store for storing associated attributes for each VoD content item, wherein at least one of the associated attributes of each VoD content item is a navigational attribute which defines a navigation action available for the VoD content item;
a list store for storing a content sequence list which determines an order a sequence of VoD content items are to be served from the content store; and,
a content server for serving VoD content items in accordance with the order determined by the content sequence list,
wherein user navigational control over the serving of the VoD content items of the content sequence list is allowed in accordance with the at least one associated navigational attribute."

Claims 2 to 7 are dependent on claim 1.

VI. The reasons for the decision under appeal may be summarised as follows:

The features of the independent claims were cast in such broad and vague terms that the claims did not find adequate technical support in the description and were not adequately clear to enable a fair determination of their intended scope. The independent claims amounted to little more than a mere statement of desire. The claims generally referred to video on demand by segmented presentation of content to users. The "associated attributes" were metadata capable of enabling navigation in some technically unspecified manner. Technical features defining the technical nature of the attributes and any technical infrastructure within which these enabled navigation were missing. Such features were essential technical features required to establish a clear technical meaning for the claimed subject-matter. Furthermore the intended system architecture, in particular in commonly used distributed systems, could not be derived from the vague terms of the independent claims.

VII. The appellants' arguments may be summarised as follows:

The "associated attributes" were metadata which related to each VoD content item. At least one of the attributes for each VoD content item defined a navigational action available for the VoD content item. These were the essential characteristics of the attributes, and they were expressed in functional language in the claims. The claims did not state that the associated attributes were capable of enabling navigation. Instead, user navigational control over the serving of the VoD content items of the content sequence list was allowed in accordance with the

associated navigational attribute(s). There was no requirement that technical instructions as to how to put an invention into effect be provided in the claims. The broad terminology used was appropriate. The invention was not limited to one particular system architecture of all those available to a person skilled in the art. Since the application had not been refused on the basis of either novelty or inventive step, the application should be referred back to the examining division for full analysis of these issues.

Reasons for the Decision

1. Amendments (Article 123(2) EPC)

- 1.1 Claim 1 is in substance claim 1 as originally filed with clarifying amendments. The features of a navigational attribute which defines a navigation action available for the VoD content item and the corresponding user navigational control over the serving of the VoD content items are disclosed, for instance, on page 3, lines 12 to 14, and page 11, line 3, to page 13, line 12, in particular page 12, lines 24 to 29, as originally filed. The feature of a list store is disclosed in claim 9 and on page 10, lines 1 to 7, as originally filed. The feature of the content sequence list determining an order in which a sequence of VoD content items are to be served from the content store is disclosed on page 13, lines 13 to 19.
- 1.2 Claim 8 is in substance claim 9 as originally filed with amendments similar to those made to claim 1. The dependent claims are as originally filed.

1.3 Thus the application has not been amended in such a way that it contains subject-matter which extends beyond the content of the application as filed.

2. *Clarity (Article 84 EPC 1973)*

2.1 The decision under appeal is correct in its finding that navigational attributes for a VoD content item, as specified in claim 1, are metadata which are associated with the respective VoD content item. However, these metadata are not themselves capable of "enabling navigation" in some unspecified manner, at least in view of the wording of the present amended claim 1. Instead, they define those navigation actions allowing user navigational control which are available.

2.2 Claim 1 defines a method which is carried out using a system which comprises a content store, an attribute store and a list store. The respective locations of these stores, even in distributed systems, are not essential as long as the used system is capable of serving the content items to the user in the manner specified in claim 1 (see page 7, lines 11 to 14).

2.3 Furthermore, a person skilled in the art at the priority date had numerous possibilities of embodying the storing and serving steps of claim 1 in generally known VoD delivery systems. The technical features of such systems, in particular the use of metadata, in principle allow a server of content items to give a user (limited) navigational control over the serving of VoD content items in a similar manner as a server may give a user (limited) control over the copying of content items if appropriate metadata are used. Claim 1 makes clear that user navigational control over the serving of a given VoD content item of the content

sequence list is allowed **in accordance with the at least one associated navigational attribute** (emphasis added by the board).

- 2.4 The objection given in the decision under appeal that the independent claims were cast in broad and vague terms did not convince the board that the present independent claims are not clear. Claim 1 is broad in the sense that it covers a large variety of methods. However, in the present case broad terms such as "associated attributes" are appropriate for defining the matter for which protection is sought. It is clear from the description of the invention that the idea underlying the invention is the use of metadata which define a user navigation action and determine whether this user navigation action is allowed (or not allowed) for the associated VoD content item. In the given context of server-controlled presentation of individual content items, this permits a server to define the limits within which user controlled navigation over the content items is allowed (see page 16, lines 11 to 20). A user may navigate within the items of the content sequence list or may even jump to different VoD content items. Exemplary navigation actions are specified in dependent claims and described for instance on page 15, lines 3 to 18, and page 11, line 24, to page 12, line 23. The technical features of the attributes (as well as the technically possible navigation actions) may vary depending on the particular VoD serving system considered. In the case of a segmented presentation of content to users, to which the decision under appeal referred, claim 1 would require that each VoD content item have at least one associated attribute (metadata) defining available navigation actions for this item. In the board's judgment it is clear for which matter protection is sought, and which matter has to be

examined for novelty and inventive step. Hence present claim 1 is broad but not vague.

2.5 The two features "serving VoD content items in accordance with the order determined by the content sequence list" and "wherein user navigational control over the serving of the VoD content items of the content sequence list is allowed in accordance with the at least one associated navigational attribute" in claim 1 reflect the function of the described invention (from the perspective of the user) that the content sequence list determines the order in which the VoD content items are served if the user does not exert (or is not allowed) navigational control. However, the user may change this order within the allowed limits. Hence these two features do not cast doubts on the order in which the VoD content items are "to be served from the content store" according to claim 1.

2.6 The board does not see any other objection under Article 84 EPC 1973 against present claim 1. Furthermore, the reasons given above also apply to the objections against the other independent claim (present claim 8) given in the decision under appeal. Moreover the board does not see any objection under Article 84 EPC 1973 against the dependent claims. Thus the decision under appeal is to be set aside.

3. *Remittal (Article 111(1) EPC 1973)*

The examining division has appended "Additional comments" concerning inventive step to the reasons for the decision. These comments are not sufficiently concrete to constitute objections resulting from a full examination of novelty and inventive step in view of the meaning of the associated attributes as set out in

points 2.1 to 2.3 above. Moreover the appellants requested that the case be remitted to the first instance for further prosecution for full analysis of these issues.

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:



L. Fernández Gómez

F. Edlinger

Decision electronically authenticated