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**Datasheet for the decision
of 2 December 2014**

Case Number: T 1482/10 - 3.5.04

Application Number: 01943775.5

Publication Number: 1297695

IPC: H04N5/76

Language of the proceedings: EN

Title of invention:

TIME SHIFTED INTERACTIVE TELEVISION

Applicant:

NDS Limited

Headword:

Relevant legal provisions:

EPC 1973 Art. 84
EPC 1973 R. 71(2)
RPBA Art. 15(3), 15(5), 15(6)

Keyword:

Claims - clarity (no)

Decisions cited:

Catchword:



**Beschwerdekammern
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Chambres de recours**

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Case Number: T 1482/10 - 3.5.04

D E C I S I O N
of Technical Board of Appeal 3.5.04
of 2 December 2014

Appellant: NDS Limited
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Decision under appeal: **Decision of the Examining Division of the European Patent Office posted on 23 February 2010 refusing European patent application No. 01943775.5 pursuant to Article 97(2) EPC.**

Composition of the Board:

Chairman F. Edlinger
Members: R. Gerdes
T. Karamanli

Summary of Facts and Submissions

I. The appeal is directed against the decision to refuse European patent application No. 01 943 775.5, published as international application WO 02/01866 A2.

II. The patent application was refused by the examining division on the grounds that the subject-matter of the independent claims of the main request and the first and second auxiliary requests lacked novelty over the prior-art document US 5 621 456 A.

III. Claim 1 of the main request reads as follows:

"A recording apparatus comprising:

a receiver (200) to receive a television program (300; 400; 500; 600) and an interactive content stream from a Headend (15), the interactive content stream including interactive content, the interactive content being integrated with the television program (300; 400; 500; 600) during real-time or time-shifted play of the television program (300; 400; 500; 600);

a processor (250) to identify the interactive content stream associated with the television program (300; 400; 500; 600); and

a memory (225) to record the television program (300; 400; 500; 600) and the interactive content stream so that the interactive content is available for later integrated employment with the television program (300; 400; 500; 600) during playback of the television program (300; 400; 500; 600) in a time-shifted mode, wherein:

the receiver (200) is operative to receive an update of at least a portion of the interactive content, so that when the interactive content stored in the memory (225) is employed in the time-shifted mode with the playback

of the recorded television program (300; 400; 500; 600), the interactive content is matched to current conditions at the time of the playback; and the processor (250) is operative to update the recorded interactive content stream based, at least in part, on the update."

- IV. Claim 1 according to the first auxiliary request is identical to claim 1 of the main request except for its penultimate paragraph which has been modified to read (amendments indicated in bold):

"... the receiver (200) is operative to receive an update of at least a portion of the interactive content **after the television program (300; 400; 500; 600) has been broadcast**, so that when the interactive content stored in the memory (225) is employed in the time-shifted mode with the playback of the recorded television program (300; 400; 500; 600) **after the television program (300; 400; 500; 600) has been broadcast**, the interactive content is matched to current conditions at the time of the playback; ...".

- V. Claim 1 of the second auxiliary request reads as follows:

"A recording apparatus comprising:
a receiver (200) to receive a television program (300; 400; 500; 600) and an interactive content stream from a headend (15), the interactive content stream including interactive content, the interactive content and the television program (300; 400; 500; 600) having elements of metadata in common;
a processor (250) to identify the interactive content stream associated with the television program (300; 400; 500; 600) based on the elements of metadata;

a memory (225) to record the television program (300; 400; 500; 600) and the interactive content stream, wherein: the receiver (200) is operative to receive an update of at least a portion of the interactive content after the television program (300; 400; 500; 600) has been broadcast; and the processor (250) is operative to update the recorded interactive content stream based, at least in part, on the update; and a means for playing back the recorded television program from the memory with integrated employment of the updated interactive content stored in the memory, after the television program has been broadcast."

- VI. The examining division stated in the decision under appeal *inter alia* that the wording "the interactive content being integrated with the television program" and "interactive content [...] for later integrated employment with the television program" was interpreted as referring to content that was synthesised into a television programme. A typical example of interactive content integrated into a television programme was an On Screen Display user interface allowing an integral view of both the television programme and the user interface. An EPG user interface might constitute such a user interface (see decision under appeal, Reasons 2.2.3).
- VII. The applicant appealed against this decision and, with the statement of grounds of appeal, maintained its requests as attached to the decision under appeal.
- VIII. The appellant argued *inter alia* that the claims were clear when taken as a whole and without reference to impermissible use of prior art. The key concept of the invention was that the interactive application was associated with a particular television programme and

both were recorded for time-shifted use. The interactive content was not fixed content but could be updated between recording and playback. The invention identified the interactive content and ensured that the updated interactive content was played back in an integrated manner with the television programme. The examining division was thus incorrect in its interpretation of content that was synthesised into a television programme. Correctly interpreted, the claimed invention was novel over the prior art.

- IX. The board sent a communication accompanying the summons to oral proceedings and indicated that it tended to share the examining division's interpretation of the wording of the independent claims. It also indicated that novelty and inventive step would have to be discussed in the oral proceedings in the light of this interpretation. In addition, the board stated that some of the claims' formulations would have to be discussed under Article 84 EPC 1973 and Article 123(2) EPC. In this context the board questioned the clarity of the formulations relating to the integration of interactive content and the television programme. There was no explicit basis for them in the application as filed and their meaning appeared to be unclear. The disputed wording appeared to be based on the disclosure of an "integrated/enhanced television category". For this category interactive content was synchronised with a television programme. But it was not clear whether the synchronisation related to the moment when the television programme was recorded or when it was played back.
- X. With a letter dated 28 November 2014 the appellant informed the board that it would not be attending the

oral proceedings. It did not reply in substance to the observations of the board.

- XI. Oral proceedings were held by the board on 2 December 2014 in the absence of the duly summoned appellant. The Chairman noted that the appellant had requested in writing that the decision under appeal be set aside and that a patent be granted on the basis of the claims of the main request, or alternatively of the first or second auxiliary request, all claims attached to the decision under appeal.

Reasons for the Decision

1. The appeal is admissible.
2. 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) of the Rules of Procedure of the Boards of Appeal (RPBA, 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).

The present application

3. The present application relates to a recording apparatus and a corresponding method for time-shifted viewing of a television programme and associated

interactive content. The television programme and the associated interactive content may be transmitted and received together or as separate streams. Both the TV programme and the interactive content are recorded and if the user wishes to view the television programme in a time-shifted mode, the television programme and the associated interactive content are played back at the desired moment in time.

The interactive content may, for example, contain advertisements, statistical information relating to a sports programme or a recipe for a cooking show. Some parts of the interactive content, such as a price for an advertised item, may become obsolete or require updates before the television programme and its associated content are played back. Hence, the recording apparatus of the present invention is adapted to receive updates for the interactive content and to update the recorded interactive content accordingly such that it is matched to the conditions applying at the time of playback (see page 1, lines 7 to 26; page 6; page 37, line 25 to page 38, line 7).

4. The application distinguishes several categories of interactive content. Interactive game or interactive shopping applications, both of which are unrelated to any television programme, are designated as stand-alone applications. In contrast, interactive content of the "integrated/enhanced television category" designates interactive applications that "support television (TV) programs" and which are synchronised with the television programmes. In addition, interactive content of the "opportunistic enhanced television category" "may accompany television programs" but is "not directly related to the television programs". An example of this category is a stock-ticker which is

displayed over news headlines (see page 7, line 6 to page 8, line 20; and page 34, lines 4 to 32). Hence, according to the present application there are several categories of interactive content which differ from each other depending on their relationship with a television programme.

Main request

5. According to Article 84 EPC 1973, the claims shall define the matter for which protection is sought. They shall be clear and concise and be supported by the description.
- 5.1 Claim 1 refers to "interactive content being **integrated with** the television program (300; 400; 500; 600) during real-time or time-shifted play of the television program (300; 400; 500; 600)" and states that "the interactive content is available for later **integrated employment** with the television program (300; 400; 500; 600) during playback of the television program (300; 400; 500; 600) in a time-shifted mode" (emphasis added by the board).
- 5.2 The application as filed does not explicitly refer to integrated interactive content or to an integrated employment of the interactive content with a television programme. In addition, there is no indication in the claim that the interactive content is restricted to the integrated/enhanced television category. Hence, the characteristics of that category of interactive content - such as the content being synchronised with the television programme (see page 7, lines 13 to 15) - are not clearly implied by the use of the word "integrated" in the above wording of claim 1. This view is supported by the fact that a synchronisation of the interactive

content with the television programme is only specified as a further limiting feature in dependent claim 7.

5.3 In the decision under appeal the examining division stated that it understood the term "integrated interactive content" as referring to content that was synthesised into a television programme. In its communication the board concurred with the examining division that this was one possible interpretation of the claim which might have to be taken into account when examining novelty. However, there is no support in the description for this being the clear, albeit broad meaning of the claim when taken as a whole. Moreover, this interpretation was disputed by the appellant (see decision under appeal, Reasons 2.2.3).

5.4 Hence, it is unclear which limitations of the claim are entailed by specifying an "interactive content being integrated with the television program" and an "integrated employment" of the interactive content with the television programme. As a consequence, claim 1 lacks clarity (Article 84 EPC 1973).

Auxiliary requests

6. Claim 1 according to the first auxiliary request additionally specifies that an update of the interactive content is received after the television programme has been broadcast and that the interactive content is employed in the time-shifted mode with the playback of the recorded television programme after the television programme has been broadcast.

These features have no influence on the understanding of the wording "the interactive content being integrated with the television program" and the

- "integrated employment" of the interactive content with the television programme.
7. Claim 1 of the second auxiliary request specifies as its last feature "a means for playing back the recorded television program from the memory with **integrated employment** of the updated interactive content stored in the memory, after the television program has been broadcast" (emphasis added by the board). The further features of the claim fail to clarify the meaning of an "integrated employment" of the interactive content and the recorded television programme, as set out above with respect to claim 1 of the main request.
 8. It follows that claim 1 of both the first and second auxiliary requests lacks clarity for the same reasons as claim 1 of the main request (Article 84 EPC 1973).

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:



K. Boelicke

F. Edlinger

Decision electronically authenticated