

Internal distribution code:

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

**Datasheet for the decision
of 26 January 2017**

Case Number: T 1583/11 - 3.5.04

Application Number: 97943507.0

Publication Number: 0976244

IPC: H04N7/173

Language of the proceedings: EN

Title of invention:

Method for collating data from multiple sources to form a composite program guide for display

Applicant:

Technicolor USA, Inc.

Headword:

Relevant legal provisions:

EPC Art. 123(2)

Keyword:

Amendments - added subject-matter (yes)

Decisions cited:

Catchword:



Beschwerdekammern
Boards of Appeal
Chambres de recours

European Patent Office
D-80298 MUNICH
GERMANY
Tel. +49 (0) 89 2399-0
Fax +49 (0) 89 2399-4465

Case Number: T 1583/11 - 3.5.04

D E C I S I O N
of Technical Board of Appeal 3.5.04
of 26 January 2017

Appellant: Technicolor USA, Inc.
(Applicant) 101 West 103rd Street
Indianapolis, IN 46290 (US)

Representative: Huchet, Anne
Technicolor
1-5, rue Jeanne d'Arc
92130 Issy-les-Moulineaux (FR)

Decision under appeal: **Decision of the Examining Division of the
European Patent Office posted on 3 March 2011
refusing European patent application
No. 97943507.0 pursuant to Article 97(2) EPC.**

Composition of the Board:

Chairman M. Paci
Members: R. Gerdes
T. Karamanli

Summary of Facts and Submissions

- I. The appeal is directed against the decision to refuse European patent application No. 97 943 507.0, published as international application WO 98/47283 A1.
- II. The patent application was refused by the examining division on the grounds that claim 1 of the main request and the first to third auxiliary requests then on file did not comply with Article 84 EPC, and that claim 1 of the third to fifth auxiliary requests then on file contained subject-matter extending beyond the content of the application as filed (Article 123(2) EPC).
- III. The applicant appealed against this decision and with the statement of grounds of appeal submitted claims of a new main and a new auxiliary request, replacing all previous claims on file.
- IV. The board sent a communication pursuant to Rule 100(2) EPC in which it expressed doubts that claim 1 according to either of the main or auxiliary requests met the requirements of Article 123(2) EPC.
- V. In a letter of reply dated 13 September 2016 the appellant provided counter-arguments to the board's objections.
- VI. Thereafter the board sent a communication pursuant to Article 15(1) RPBA (Rules of Procedure of the Boards of Appeal, OJ EPO 2007, 536) accompanying a summons to oral proceedings. In that communication the board explained why it maintained its objections raised in the previous communication.

VII. Oral proceedings were held before the board on 26 January 2017. As announced beforehand, the duly summoned appellant was not represented at them. The chairman noted that the appellant had requested 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 of the auxiliary request, both filed with the statement of grounds of appeal.

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

"Method of collating program information items for display in a video decoder system, which system is arranged for receiving program guide information from a first source and from a second source, the method comprising the steps of:

(a) causing a plurality of selectable program guide menu icons to be displayed, each selectable program guide menu icon being associated with a category of program information items, at least one program information item in said category being received from the first source, and at least one program information item in said category being received from the second source,

wherein the or at least one program information item(s) from the first source in said category is received with a code allocated according to a first categorization scheme, and

wherein the or at least one program information item(s) from the second source in said category is received with a code allocated according to a second categorization scheme different from the first categorization scheme;

(b) collating a plurality of program information items, the codes of the programs information items being converted such that they are consistent with said category, the codes being converted using equivalence mapping information that maps categories of received program information items to categories in a master set of program categories, the mapping information being such that different categories of the received program information items are mapped to a common category in the master set; and,

(c) in response to the selection of a selectable program guide menu icon, displaying said collated program information items, the collated program information items being from the category associated with the selected program guide menu icon."

IX. Claim 1 of the auxiliary request corresponds to claim 1 of the main request with the following amendments to features (a) and (c), additions being indicated by underlining, deletions by strike-through:

"...

(a) causing a plurality of selectable program guide menu icons ~~portions~~ portions to be displayed, each selectable program guide menu icon portion being associated with a category of program information items,

...

(c) in response to the selection of a selectable program guide menu icon portion, displaying said collated program information items, the collated program information items being from the category

associated with the selected program guide menu icon portion."

- X. In the decision under appeal (see Reasons, point 4.2) the examining division found that the feature "causing a plurality of selectable program guide menu icons to be displayed, each selectable program guide menu icon being associated with a category" of claim 1 of the third auxiliary request was not directly and unambiguously derivable from the application as filed (Article 123(2) EPC). According to the application as filed, the selection of a program guide menu icon was performed in a "rainbow sort icon showing a spectrum of discrete color blocks", wherein "Color may be used as an attribute to identify programs by theme or topic" (see page 26, line 24, to page 27, line 6, and figure 7 of the application as filed). This passage and figure 7 imposed a restriction on the location of the selectable portions in the user interface. All selectable blocks were to be placed within an "icon", meaning that they had to reside in a coherent area on the display.

Since claim 1 did not contain this restriction, its subject-matter extended beyond the content of the application as filed. This objection also applied to claim 1 of the fourth and the fifth auxiliary requests (see Reasons, points 5.2 and 6.2).

- XI. The appellant's arguments, as far as they are relevant for the present decision, may be summarised as follows:

The description of the application did not impose a restriction on where the "selectable portions" were located. It only provided an example; in particular, the passage cited by the examining division disclosed

merely one possible situation in which different discrete and selectable colour blocks resided side by side so as to form a strip. Although the description referred to this strip as being an icon, this was merely for convenience. The use of the term "icon" did not imply any technical relationship between the different selectable portions. Furthermore, based on the normal meaning of the term "icon", a skilled person would understand that even though the description referred to the strip as an icon, the individual selectable blocks were also examples of icons even if the description did not refer to them as such.

Another example of the selectable portions was disclosed on page 13, line 21, to page 14, line 10, and in figure 2. Home page icon 873 of figure 2 showed the claimed icon. Similar information could be found on pages 20 and 21, in particular, on page 21, lines 2 to 6.

For claim 1 of the first auxiliary request the reference to "icon" had been replaced with "icon portion" so as to narrow the claims and bring them more closely into line with the embodiment of figure 7 (see statement of grounds, chapter "Comments on the Decision" and letter dated 13 September 2016, section 1).

Reasons for the Decision

1. The appeal is admissible.

Non-attendance of the appellant at the oral proceedings

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) RPBA 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 video decoder system which may receive information from different sources and in different data formats such as high definition television (HDTV) broadcasts, multi-point microwave distribution system (MMDS) broadcasts and digital video broadcasts (DVB). Providing a single user interface for these different data formats and integrating in addition functions such as email, telephone and Internet access was complex and required a simple command interface for the user.

These problems are addressed in the present application by providing a method of collating program information items for display in such a video decoder system.

Main request

4. The method of claim 1 according to the main request comprises a step of "causing a **plurality of selectable program guide menu icons** to be displayed, each selectable program guide menu icon being associated with a category of program information items, at least one program information item in said category being received from the first source, and at least one program information item in said category being received from the second source" (emphasis added by the board).
- 4.1 This feature is partly based on claim 1 of the application as filed, which specified a step of "displaying **a** selectable program guide menu icon". In addition, the embodiment of figure 7 of the application as filed and corresponding passages in the description, see page 26, line 24, to page 27, line 6, were cited as a basis for this feature. According to the latter passage the selection of a program guide menu icon was performed by means of a single "rainbow" sort icon, which might be arranged "as a continuous color spectrum or selected range of colors in a single or a number of discrete color blocks". The passage also refers to the rainbow sort icon "showing a spectrum of discrete color blocks", wherein "Color may be used as an attribute to identify programs by theme or topic".
- 4.2 The board agrees with the decision under appeal that this passage and figure 7 disclose a selectable icon of the user interface, located in a coherent area. In other words, all selectable blocks are placed within a single icon. This interpretation is consistent with the example shown in figure 7 and is also confirmed by the reference to a spectrum which normally has a coherent

area. Hence, the disclosure of a single rainbow sort icon that is composed of discrete colour blocks has been generalised to "a plurality of selectable program guide menu icons" with no restrictions as to their relative position. It is not apparent why the skilled person should have directly and unambiguously derived the teaching of selectable program guide menu icons from the rainbow sort icon.

- 4.3 The appellant argued that the contested feature had a basis in different examples of the application, in particular on page 13, line 21, to page 14, line 10, and in figure 2, as well as on pages 20 and 21 of the description. One or more of the icons 873 in figure 2 represented a "selectable program guide menu icon".

This interpretation is not consistent with the context of this feature in claim 1. The claim specifies that "each selectable program guide menu icon" is "associated with a category of program information items" which are received from different sources. In addition, claim 1, method step (c), requires that collated program information items are displayed in response to the selection of a selectable program guide menu icon.

In contrast, icon 873 serves to "indicate whether Internet information such as a 'home page' is available for a particular program". Icon 873 may be a pop-up icon which appears as an indication that Internet information is available for a particular program. A user may "request Internet information on a particular program by highlighting the program followed by highlighting the pop-up icon" (see page 13, lines 22 to 37).

Hence, icon 873 is not associated with a category of program information items which are received from different sources; it is only associated with Internet information. In addition, selecting icon 873 does not trigger the display of collated program information items, but of Internet information for a particular program.

Similarly, the example on page 21, lines 2 to 6, only refers to an icon allowing access to the Internet. A disclosure of an association with a category of program information items or the display of collated program information items in response to the selection of the icon cannot be derived from this passage.

- 4.4 Hence, the subject-matter of claim 1 extends beyond the content of the application as filed, contrary to Article 123(2) EPC.

Auxiliary request

5. Claim 1 of the auxiliary request differs from claim 1 of the main request in that it refers to "selectable program guide menu icon portions" instead of "selectable program guide menu icons".

This amendment does not overcome the above finding of added subject-matter with respect to claim 1 of the main request. Essentially, the amendment does not imply that the "icon portions" are located in a coherent area of the display. According to the wording of claim 1, they need not even be part of the same icon.

Hence, the auxiliary request is not allowable because the subject-matter of claim 1 extends beyond the

content of the application as filed (Article 123(2) EPC).

Conclusion

6. Since neither of the appellant's requests is allowable, the appeal must be dismissed.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:



K. Boelicke

M. Paci

Decision electronically authenticated