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Datasheet for the decision
of 14 February 2018

Case Number:	T 1707/12 - 3.5.04
Application Number:	02751546.9
Publication Number:	1415479
IPC:	H04N7/50
Language of the proceedings:	EN

Title of invention:
VIDEO CODING METHOD

Applicant:
Koninklijke Philips N.V.

Headword:

Relevant legal provisions:
RPBA Art. 13(1)

Keyword:
Late-filed request - amendments after arrangement of oral
proceedings - justification for late filing (no)

Decisions cited:

EPA Form 3030

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It can be changed at any time and without notice.

Catchword:

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Case Number: T 1707/12 - 3.5.04

D E C I S I O N
of Technical Board of Appeal 3.5.04
of 14 February 2018

Appellant: Koninklijke Philips N.V.
(Applicant)   High Tech Campus 5
                             5656 AE Eindhoven (NL)

Representative: Roche, Denis
                             Société Civile SPID
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Decision under appeal: Decision of the Examining Division of the
                             European Patent Office posted on 4 June 2012
                             refusing European patent application
                             No. 02751546.9 pursuant to Article 97(2) EPC.

Composition of the Board:

Chairman   C. Kunzelmann
Members: B. Willems
                B. Müller

Summary of Facts and Submissions

I.   The appeal is against the decision of the examining
        division dated 4 June 2012 refusing European patent
        application No. 02751546.9, which was published as
        international application WO 03/013147 A1.

II.   The documents cited in the decision under appeal
        included the following:

        D1: EP 1 075 148 A2 (TEXAS INSTRUMENTS INC)
        (2001-02-07)

        D5: "Information technology - Coding of audio visual
        objects - Part 2: Visual", Maui, (December 1999),
        XP030011202

        D6: EP 1 026 899 A1 (MITSUBISHI ELECTRIC CORP [JP])
        (2000-08-09)

III.   The application was refused on the grounds that the
        subject-matter of the claims of the sole request lacked
        inventive step over the combined disclosures of
        documents D1 and D6 or the disclosure of document D5
        combined with the common general knowledge of a person
        skilled in the art (Article 56 EPC).

IV.   The applicant filed an appeal requesting that this
        decision be set aside. With the statement of grounds of
        appeal, the appellant filed amended claims according to
        a sole request and requested that a patent be granted
        on the basis of these claims. It indicated a basis for
        the amendments in the application as filed and provided
        arguments as to why the subject-matter of the claims
        met the requirements of Article 56 EPC.

V.   The board issued a summons to oral proceedings. In a
        communication under Article 15(1) RPBA (Rules of
        Procedure of the Boards of Appeal, OJ 2007, 536),
        annexed to the summons, the board gave its provisional
        opinion that claim 1 was not clear (Article 84 EPC) and
        the subject-matter of claim 1 lacked inventive step
        over the combined disclosures of documents D1 and D6 or
        the disclosure of document D5 combined with the common
        general knowledge of a person skilled in the art
        (Article 56 EPC).

VI.   With the reply dated 20 December 2017, the appellant
        filed amended claims according to a sole request
        replacing the previous request on file. It submitted
        arguments as to why the amended claims met the
        requirements of Articles 56 and 123(2) EPC and
        requested "*to have a decision [on] the state of the
        file*" since the "*Applicant or its representative [would
        not be] available at the date the oral hearing [was to]
        take place*".

VII.   The board notified the appellant that the oral
        proceedings to be held on 25 January 2018 were
        cancelled.

VIII.   Claim 1 reads as follows:

        "A video coding method applied to a sequence of video
        frames, comprising a step of generating a coded
        bitstream including data items, in which each data item
        is described by means of a bitstream syntax allowing
        any decoder to recognize and decode all the segments of
        the content of said bitstream, each of said video
        frames consisting of three rectangular matrices that
        are a luminance matrix and two chrominance matrices,
        said method being further characterized in that said

syntax comprises at a description level at or above the video object layer level a one bit flag indicating for a given value the absence of chrominance matrices such that both chrominance matrices do not have to be decoded if said flag is set to said given value."

IX.		The examining division's objections relevant to the present decision may be summarised as follows:

D1 disclosed generating a coded bitstream including data items described by means of a bitstream syntax, the syntax comprising at a high description level (macroblock level) a flag (COD field and MCBPC field) indicating for a given value the absence of chrominance components (see Reasons points 9.1 and 9.2). In particular, the MCBPC field was a flag at macroblock level indicating the presence or absence of chrominance components. In data processing a flag could refer to one or more bits used to store and indicate a binary value or a code that had an assigned meaning (see Reasons point 9.3). The technical problem to be solved was how to avoid wasting bits in case of black and white video sequences (see Reasons 9.4). It was well-known that including *"syntax elements at a level as high as possible that would apply to all coding units at lower levels"* avoided wasting bits (see Reasons 9.5). D6 suggested including syntax elements at a description level higher than the macroblock level. The person skilled in the art would have found it obvious to apply this teaching to the syntax elements known from D1 (COD and MCBPC) (see Reasons 9.6).

X.		The appellant's arguments relevant to the present decision may be summarised as follows:

Claim 1 has been amended "*to improve its clarity*" (see reply dated 20 December 2017, page 1, heading Amendments (Art 123)).

D1 disclosed a method of encoding motion vectors which "*makes use of a motion data field consisting of a COD field (i.e. not_coded) and an MCBPC field (i.e. Macroblock type & Coded Block Pattern for Chrominance)*". The COD field indicated whether a macroblock was coded or skipped. The MCBPC was a variable length code that was used to derive the macroblock type and the coded block pattern for chrominance (see reply dated 20 December 2017, paragraph bridging pages 1 and 2).

The subject-matter of amended claim 1 differed from the disclosure of D1 in that the presence or absence of chrominance was indicated at a description level at or above the video object layer level and this was indicated with one bit. This was neither known nor obvious from the cited prior art (reply dated 20 December 2017, page 2).

Reasons for the Decision

1.   The appeal is admissible.

2.   Under Article 13(1) RPBA any amendment to a party's submissions after it has filed its statement of grounds of appeal may be admitted and considered at the board's discretion. The discretion is to be exercised in view of *inter alia* the complexity of the new subject-matter submitted, the current state of the proceedings and the need for procedural economy.

3.   The present request was filed for the first time in
        response to the summons to oral proceedings before the
        board (cf. point VI above). Hence, it was filed at a
        very late stage of the appeal proceedings. It is noted
        that the appellant did not give any reasons as to why
        the request was filed at this late stage.

4.   The filing of the present request cannot be seen as a
        response to a new objection raised for the first time
        by the board in its communication. In the decision
        under appeal, the examining division had reasoned that
        a flag could refer to one or more bits and D1 disclosed
        signalling an MCBPC field (flag) at macroblock level
        indicating the presence or absence of chrominance
        components (see point IX above). The board's
        communication, in particular section 4, contained a
        preliminary opinion agreeing with this reasoning.
        Therefore, the communication cannot be considered as
        having caused the submission of a new request with an
        amended claim addressing for the first time aspects of
        the division's reasoning in the impugned decision. As a
        consequence, the communication cannot be taken as a
        justification for the submission of the new request at
        this very late stage.

5.   In its reply dated 20 December 2017, the appellant
        provided reasons as to why it considered that the
        subject-matter of amended claim 1 involved an inventive
        step over the combined disclosures of documents D1 and
        D6. These reasons focus on the description level being
        at or above the video object layer level and using a
        one-bit flag. The appellant referred to page 3 of the
        description as a basis for both features. Indeed,
        neither the feature of a one-bit flag nor the feature
        of the description level being at or above the video
        object layer level are present in the originally filed

claims. Hence, claim 1 has been amended on the basis of features taken from the description, and the appellant's brief arguments in favour of inventive step solely refer to these features. Thus, the board would have to assess inventive step on the basis of newly added features taken from the description and a mere cursory analysis provided by the appellant (see reply dated 20 December 2017, page 2, penultimate paragraph: "*The evidence does not show that it was known or obvious to include a one bit flag at the video object layer or higher to provide an indication concerning the chrominance matrices*").

Moreover, claim 1 specifies that "*each of said video frames [... consists of] a luminance matrix and two chrominance matrices [...] a one bit flag indicating for a given value the absence of chrominance matrices*". At first glance, the absence of chrominance matrices contradicts the fact that a video frame consists of a luminance and two chrominance matrices. This contradiction casts further doubts on which logical data structure ("chrominance component", "chrominance channel" or "chrominance matrix") is present or not (see board's communication, points 3.3 and 3.4). The general assertion that claim 1 "*has been amended to improve its clarity*" (see section X above) does not express why the appellant was of the opinion that claim 1 met the requirements of Article 84 EPC 1973.

Summarising, the amendments give rise to new complex questions with regard to technical issues.

6.   In view of the complexity of the present claim request filed 20 December 2017, i.e. at a very late stage of the appeal proceedings, the board, in exercising its

discretion referred to in Article 13(1) RPBA, decided
not to admit this claim request into the proceedings.

7.   Thus there are no application documents on file on the
        basis of which the board could order the requested
        grant of a European patent. Therefore, the appeal must
        be dismissed.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar: The Chairman:

K. Boelicke   C. Kunzelmann

Decision electronically authenticated