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Datasheet for the decision of 26 October 2017

Case Number: T 0508/13 - 3.5.07

Application Number: 00921558.3

Publication Number: 1166269

IPC: G11B27/10, G11B27/34

Language of the proceedings: EN

Title of invention:
Multimedia program bookmarking system

Applicant:
TiVo Solutions Inc.

Headword:
Multimedia bookmarks/TIVO SOLUTIONS

Relevant legal provisions:
EPC Art. 56, 87(1), 123(2)
EPC R. 131(2)
Paris Convention Art. 4C(2)

Keyword:
Amendments - main request (not allowable)
Priority - validity of priority date (no)
Inventive step - first auxiliary request (yes)

Decisions cited:
T 0919/95, T 2445/11

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

Case Number: T 0508/13 - 3.5.07

D E C I S I O N
of Technical Board of Appeal 3.5.07
of 26 October 2017

Appellant: (Applicant)	TiVo Solutions Inc. 2 Circle Star Way San Carlos, CA 94070 (US)
Representative:	Pisani, Diana Jean Haley Guiliano International LLP Central Court 25 Southampton Buildings London WC2A 1AL (GB)
Decision under appeal:	**Decision of the Examining Division of the European Patent Office posted on 21 September 2012 refusing European patent application No. 00921558.3 pursuant to Article 97(2) EPC.**

Composition of the Board:

Chairman	R. Moufang
Members:	R. de Man
	M. Jaedicke

Summary of Facts and Submissions

I. The applicant (appellant) appealed against the decision of the Examining Division refusing European patent application No. 00921558.3. The application was filed on 30 March 2000, claiming priority from the following documents:

P1: US application 60/127,178, filed on 30 March 1999; and
P2: US application 09/538,925, filed on 30 March 2000.

II. The decision cited the following documents:

D1: US 5 063 547 A, 5 November 1991;
D2: EP 0 435 370 A, 3 July 1991;
D3: EP 0 691 651 A, 10 January 1996;
D4: JP 10 097766 A, 14 April 1998;
D5: US 5 513 306 A, 30 April 1996;
D6: EP 0 439 290 A1, 31 July 1991; and
D7: EP 0 692 790 A2, 17 January 1996.

The Examining Division decided that the subject-matter of independent claims 1, 11 (in the decision erroneously referred to as claim 10) and 21 of the then main request lacked inventive step over document D4 combined with document D6 and that the subject-matter of the independent claims of the then first to fourth auxiliary requests lacked inventive step in view of document D4 combined with one or more of documents D1, D2 and D6.

III. With the statement of grounds of appeal, the appellant replaced its requests with a sole main request corresponding to the previous main request with certain

amendments. The first to fourth auxiliary requests were not maintained. The appellant suggested that it was appropriate for the Examining Division to grant interlocutory revision.

IV. In a communication accompanying a summons to oral proceedings, the Board introduced the following documents:

D8: "Happy blue moon! TiVo celebrates its birthday (a little early)", 22 March 2012, retrieved from http://blog.tivo.com/2012/03/happy-blue-moon-tivo-celebrates-its-birthday-a-little-early/;

D9: Li F. et al.: "Browsing Digital Video", Technical Report MSR-TR-99-67, September 1999, retrieved from https://www.microsoft.com/en-us/research/publication/browsing-digital-video/;

D10: "MSR Research Area: Collaborative and Multimedia Systems", 9 October 1999, retrieved from http://web.archive.org/web/19991009112825/http://research.microsoft.com/coet/; and

D11: Arons B.: "SpeechSkimmer: A System for Interactively Skimming Recorded Speech", ACM Transactions on Computer-Human Interaction, Vol. 4, No. 1, pp. 3-38, March 1997.

The Board *inter alia* expressed the preliminary view that the sole substantive request did not comply with Article 123(2) EPC and that the subject-matter of claim 1 was not entitled to priority and lacked inventive step over either of documents D9 and D11.

V. In its written submissions in preparation for the oral proceedings, the appellant replaced its sole request with amended main and first auxiliary requests.

VI. In the course of oral proceedings held on 5 July 2017, the appellant further amended its requests. At the end of the oral proceedings, the chairman closed the debate and stated that the decision would be given in writing.

VII. The appellant's final requests were that the decision under appeal be set aside and that a patent be granted according to one of the following requests:

Main request:
- claims: Nos. 1 to 13 as filed during the oral proceedings;
- description: pages 1, 3 to 26 and 28 to 40 as published and pages 2, 2a, 2b and 27 as filed during the oral proceedings; and
- drawings: sheets 1/34 to 34/34 as published.

First auxiliary request:
- claims: Nos. 1 to 13 as filed during the oral proceedings;
- description and drawings as for the main request.

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

"A process for bookmarking a user's position within an audio or video program material, comprising the steps of:

storing a plurality of user profiles on at least one storage device (710), the user profiles containing viewing preferences and bookmarks associated with respective remote controls of a plurality of remote controls;

storing a plurality of audio and/or video programs on said at least one storage device (710);

in response to a first user command, playing an audio or video program from said at least one storage

device (710) to a user, the first user command being received from a first remote control (1401) of the plurality of remote controls, said first remote control (1401) having a unique identification encoding;

detecting a point where the user exits playing said audio or video program or places an explicit mark within said audio or video program;

storing said exit point or said explicit mark as a bookmark on said at least one storage device (710) in a first user profile of said plurality of user profiles, said first user profile being associated with the first remote control (1401);

accessing, using the unique identification encoding of the remote control (1401), the first user profile;

displaying bookmark indicators on a bar, as the user is watching the audio or video program, the bookmark indicators giving the user visual cues about the respective positions of the bookmarks in said audio or video program stored in the first user profile;

receiving a second user command from the first remote control (1401) to access one of the user's bookmarks; and

in response to the second user command, playing said audio or video program starting from said bookmark."

IX. Independent claim 1 of the first auxiliary request differs from claim 1 of the main request in that the step "receiving a second user command from the first remote control (1401) to access one of the user's bookmarks" has been replaced with the following text:

"while the audio or video program is playing, receiving a second user command from the first remote control

(1401) to jump sequentially to one of the user's bookmarks"

Claims 2 to 6 of the first auxiliary request are dependent on claim 1.

Independent claim 7 of the first auxiliary request reads as follows:

"An apparatus for bookmarking a user's position within an audio or video program material, comprising:

a processor (713);

at least one storage device (710), wherein a plurality of audio and/or video programs are stored on said at least one storage device (710);

wherein said processor (713) is configured to play, in response to a first user command from a first remote control (1401) of a plurality of remote controls, an audio or video program from said at least one storage device (710) to the user, said first remote control (1401) having a unique identification encoding;

a module for storing a plurality of user profiles on said at least one storage device (710), the user profiles containing user viewing preferences and any bookmarks associated with respective remote controls of the plurality of remote controls;

a module for detecting a point where the user exits playing said audio or video program or places an explicit mark within said audio or video program;

a module for storing said exit point or said explicit mark as a bookmark on said at least one storage device (710) in a first user profile of the plurality of user profiles, said first user profile being associated with the first remote control;

a module for accessing, using the unique identification encoding of the first remote control (1401), the first user profile;

a module for displaying bookmark indicators in a bar, as the user is watching the audio or video program, the bookmark indicators giving the user visual cues about the respective positions of the bookmarks in said audio or video program stored in the first user profile;

a module for receiving, from the first remote control and while the audio or video program is playing, a second user command from the first remote control (1401) to jump sequentially to one of the user's bookmarks; and

a module for, in response to the second user command, playing said audio or video program starting from said bookmark."

Claims 8 to 12 are directly or indirectly dependent on claim 7.

Independent claim 13 of the first auxiliary request reads as follows:

"A program storage medium readable by a computer, tangibly embodying a program of instructions executable by the computer to perform method steps for bookmarking a user's position within an audio or video program material, comprising the steps as recited in any of claims 1 to 7."

X. The appellant's arguments as relevant to the decision are discussed in detail below.

Reasons for the Decision

1. The appeal complies with the provisions referred to in Rule 101 EPC and is therefore admissible.

2. *The invention*

The invention is concerned with the use of "bookmarks" in a user interface for controlling the reproduction of audio and/or video programs stored on a storage device. When a user interrupts the reproduction of an audio or video program, the "exit point" is stored "as a bookmark" on the storage device. Alternatively, the user places an "explicit mark" and this mark is stored as a bookmark. During reproduction of a program, bookmark indicators associated with the program are displayed on a "bar", thus giving the user visual cues about the positions of the bookmarks within the program. In response to a user command "to access one of the user's bookmarks", the bookmark is retrieved and reproduction of the program (re)starts from the position associated with that bookmark.

The user commands controlling the reproduction are received from one of a plurality of remote controls. Each remote control is linked to a user profile stored on the storage device by means of a "unique identification encoding" of the remote control. The bookmarks are stored in the user profile associated with the remote control from which the user commands are received.

3. *Non-rectification by the Examining Division*

3.1 In the statement of grounds of appeal, the appellant, referring to decision T 919/95 of 16 January 1997,

submitted that it was appropriate for the Examining Division to grant interlocutory revision because the amended claims overcame at least the reasons for refusing the previous set of claims.

The Examining Division did not rectify the decision but remitted the appeal to the Board in accordance with Article 109(2) EPC "without comments as to its merits".

3.2 According to Article 109(1) EPC, an examining division is to rectify a refusal decision if it considers the appeal against the decision to be admissible and well founded. In decision T 919/95, reasons 2 and 2.1, the deciding board, after having had recourse to the travaux préparatoires to the EPC 1973, explained that the object and purpose of this provision was to cut short the appeal proceedings in clear cases, in particular when the examining division could recognise that the board of appeal, taking into account the statement of grounds of appeal, would set aside the decision.

In the Board's view, this means that the expression "considers the appeal to be ... well founded" in Article 109(1) EPC leaves an examining division room for exercising judgment while bearing in mind that the purpose of interlocutory revision is to speed up the procedure (cf. decision T 2445/11 of 2 May 2017). At the same time, once an examining division has decided not to rectify a refusal decision, the possible incorrectness or inappropriateness of not rectifying it is in itself insufficient reason for an immediate remittal of the case: the opportunity to cut short the appeal procedure by means of interlocutory revision has in any event passed. Rather, it has to be assessed

whether an immediate remittal is appropriate in view of the overall state of the case.

3.3 In the present case, although the amendments filed with the statement of grounds of appeal introduced features into the independent claims not considered earlier in the examination proceedings, the Board found it appropriate to deal with the merits of the appeal, in particular in view of the application's age.

Main request

4. *Added subject-matter - Article 123(2) EPC*

4.1 Claim 1 includes the following combination of features which is not present in the originally filed claims:

- displaying bookmark indicators on a bar, as the user is watching the audio or video program, the bookmark indicators giving the user visual cues about the respective positions of the bookmarks in said audio or video program stored in the first user profile; and
- receiving a second user command from the first remote control to access one of the user's bookmarks.

4.2 Displaying bookmark indicators on a bar is disclosed only on page 34, lines 1 to 6, of the description of the application as filed. This passage refers to a "trick play bar", which, according to page 31, lines 8 to 14, and page 33, lines 23 to 31, can be displayed as a user watches a program. According to page 34, lines 4 and 5, the user "can sequentially jump" to a bookmark indicator by pressing the "jump button 1414" on the remote control. Claim 1, on the other hand, more

generally specifies that one of the user's bookmarks is accessed by means of "a second user command" received from the first remote control.

According to the appellant, a general teaching for accessing bookmarks that is not restricted to sequential jumping is given by page 2, lines 26 to 32, and page 26, lines 9 to 21, of the original description.

4.3 The Board does not agree that a generalisation to accessing bookmark indicators displayed on a trick play bar other than by means of "sequential jumping" is directly and unambiguously derivable from the application as filed.

In particular, the passage on page 2, lines 26 to 32, refers only generally to accessing a previously saved bookmark and does not disclose that the bookmark is accessed by selecting an indicator displayed on a trick play bar. And the passage on page 26, lines 9 to 21, relates to accessing a bookmark via indicator 1708 shown in Figure 17 and described on page 26, lines 9 to 23, which again is not an indicator displayed on a trick play bar.

In the Board's view, the presence of these passages is insufficient for the skilled reader of the application to recognise without doubt that the selection mechanism of "sequential jumping" by repeatedly pressing a button is disclosed only as an optional means for selecting one of the bookmark indicators displayed on a trick play bar. This is because selecting an indicator from one of a plurality of indicators linearly displayed on a trick play or time bar requires a selection mechanism suitable for that purpose, and in this regard the

application as filed contains no considerations other than the mention of sequential jumping.

4.4 At the oral proceedings, the appellant submitted that the step "receiving a second user command from the first remote control to access one of the user's bookmarks" was not to be read in connection with the preceding step "displaying bookmark indicators on a bar, ...". Rather, the second user command was a command to select any bookmark indicator, such as bookmark indicator 1708 of Figure 17.

The Board is convinced, however, that the skilled person reading claim 1 understands the received "second user command" to be a command to select one of the bookmark indicators displayed on the "bar" mentioned in the previous step. It is therefore not persuaded by the appellant's argument.

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

First auxiliary request

5. *Added subject-matter - Article 123(2) EPC*

5.1 Claim 1 of the first auxiliary request specifies that the second user command is a command "to jump sequentially to one of the user's bookmarks". It therefore overcomes the objection discussed under point 4 above.

5.2 Independent process claim 1 is based on a combination of original claims 1, 6 and 7, with amendments related to the display and selection of bookmark indicators on

a bar taken from page 34, lines 1 to 6, of the original description.

5.3 Independent claims 7 and 13 relate to an apparatus and a program storage medium corresponding to claim 1.

5.4 Dependent claims 2 to 6 and 8 to 12 are based on original dependent claims 4, 5, 8 to 10, 14, 15 and 18 to 20.

5.5 Hence, the Board is satisfied that the first auxiliary request complies with Article 123(2) EPC.

6. *Entitlement to priority*

6.1 The only passage of priority application P1 concerned with bookmarks is the paragraph bridging pages 84 and 85 (page numbering taken from the copy of priority application P1 present in the electronic file). This passage reads as follows:

"A bookmark indicator allows the user to bookmark a program where he left off. For example, a user can watch the first half-hour of a program and then bookmark the program where he left off. The invention places an indicator on the screen either at the bottom of the screen or next to the program listing, indicating that a bookmark has been saved. The user can, at any time, access this bookmark and continue viewing the program from where he left off. Bookmarks within a single program can be set for different users."

This passage does not disclose that bookmarks are stored on the storage device. It also does not disclose that bookmark indicators are displayed "on a bar" where

they give the user "visual cues about the respective positions of the bookmarks" in the program being reproduced. Nor does it disclose "detecting a point where the user exits playing" the program in combination with "storing said exit point".

The subject-matter of claim 1 is therefore not entitled to priority from application P1.

6.2 Priority application P2 and the present application were filed on the same day. Since the twelve-month priority period is calculated starting from the day following the day of filing of the priority application, the present application cannot validly claim priority from application P2 (Article 87(1) and Rule 131(2) EPC; confirmed by Article 4C(2) Paris Convention).

6.3 Hence, the effective date for determining the state of the art under Article 54(2) EPC for the subject-matter of claim 1 is the filing date of the present application, i.e. 30 March 2000.

7. *Inventive step - Article 56 EPC*

7.1 *Document D9*

7.1.1 Document D9 is a Microsoft Research technical report dated 20 September 1999. Document D10 shows it to have been made available to the public no later than 9 October 1999. It is thus prior art under Article 54(2) EPC for the subject-matter of claim 1.

7.1.2 Document D9 is concerned with the design of a software application for browsing digital video content (see abstract). Under the heading "INTRODUCTION" it mentions

that ReplayTV and TiVo devices store video in digital form on large hard disks, which allows instant random access to the video content (page 1, left-hand column, line 33, to right-hand column, line 2).

7.1.3 The document describes an "enhanced" video browser based on Microsoft Windows Media Player (page 2, right-hand column, lines 12 to 14). The user interface of this enhanced browser includes controls for "notes", "timeline markers", "jump-back" and "jump-next" (page 2, right-hand column, lines 26 to 34).

The "notes" control allows the user to associate a textual comment with the current position of the video being played, thus creating a bookmark (page 2, right-hand column, line 41, to page 3, left-hand column, line 2).

As a video plays, "timeline markers" show the locations of the note entries (i.e. the bookmarks) within a "timeline seek bar" (page 3, left-hand column, lines 3 to 11; Figure 1, "Basic Controls" and "Markers").

By means of the "jump-back" and "jump-next" controls, the user can jump backward and forward through the video by, in particular, note entry (page 3, left-hand column, lines 12 to 15; Figure 1, "Jump back/next controls").

7.1.4 The subject-matter of claim 1 differs from what is disclosed in document D9 in that reproduction is controlled by means of a first remote control of a plurality of remote controls and in that the bookmarks are stored on the storage device in a first user profile associated with the first remote control, the

user profile being accessed on the basis of a unique identification encoding of the remote control.

7.1.5 The "enhanced" video browser described in document D9 is based on Microsoft Windows Media Player, which is a program designed to run on a Windows PC. Its user interface, shown in Figure 1, is indeed a typical Windows user interface and would not normally be controlled by means of a remote control.

Nevertheless, document D9 is concerned more generally with video-browsing features enabled by digital video technologies and specifically mentions both the traditional VCR as an example of analogue video technology and ReplayTV and TiVo as examples of set-top devices which store video in digital form on large hard disks (see the "INTRODUCTION" section) and which are typically controlled by means of remote-control devices (see the paragraph bridging the left-hand and right-hand columns on page 2).

The Board therefore takes the view that the skilled person reading document D9 would consider incorporating part or all of the disclosed video-browsing functionality into a remote-controlled set-top device such as ReplayTV and TiVo. In particular, the Board considers it to be obvious to incorporate in such a device the bookmarking functionality of document D9 and, after making suitable changes to the user interface depicted in Figure 1, to allow this functionality to be controlled by means of a remote control.

7.1.6 The remaining distinguishing features relate to the use of user profiles and "unique identification encodings" to associate remote controls with users and to provide,

in particular, user-specific bookmarks. These features solve the problem of personalising the control of a reproduction device.

7.1.7 The only document on file relating to per-user remote controls is document D2.

Document D2 is concerned with remote controls for "complex" television systems. Its "State of the Art" section explains that advanced televisions allow personal preferences (such as image settings and channel preferences) to be programmed for a plurality of users. In such systems, the remote control has a button labelled "Personal Preferences" that, when pressed, prompts the user to select a digit corresponding to his or her profile.

The object of document D2 is to simplify this complex interaction. The proposed solution is a combination of a complex remote control and a simple auxiliary remote control (column 4, lines 3 to 6). The complex remote control can be used to program a number of user profiles (column 4, lines 46 to 51; column 5, lines 7 to 12). The auxiliary remote control includes a switch to select between the preferences of different users (column 5, lines 13 to 22 and 37 to 47). In a non-preferred embodiment, the auxiliary remote control with the switch may be replaced with a plurality of auxiliary remote controls, each having its own recognisable personal "power on and up and down code" (column 9, lines 45 to 49).

Hence, document D2 discloses the use of user profiles in the form of "Personal Preferences" and associated remote controls having unique identification encodings. However, it does not relate to the control of

reproduction devices with bookmark functionality but focuses on simplifying the control of a complex television system by means of simple auxiliary remote controls and programmable user preferences. The Board is therefore not convinced that the skilled person, starting from document D9, would consider document D2 when looking for a solution to the problem posed.

The subject-matter of claim 1 is thus not rendered obvious by document D9 either taken alone or in combination with any of the other cited documents.

7.2 *Document D11*

7.2.1 Document D11 describes the SpeechSkimmer system for browsing ("skimming") speech recordings (see abstract). It *inter alia* reports on the results of a usability test, in which it was found that users were interested in being able to place bookmarks and in being able to jump to a particular place in a recording and obtain an indication of their current location in a recording by means of a "time line" (see page 28, section 4.2.13). Document D11 proposes implementing these features by means of the user interface shown in Figures 17 and 19 and discussed in sections 5.1 and 5.2. This user interface includes a time line, a "create mark" button and "jump" buttons. Figure 19 shows and sections 5.2.1 and 5.2.2 explain that the positions of the user bookmarks are graphically indicated on the time line.

Document D11 discloses neither user profiles nor the use of a remote control.

7.2.2 Thus, document D11 discloses essentially the same features of claim 1 as document D9 (but with respect to

audio programs rather than video programs) and does not come closer to the subject-matter claimed.

7.3 *Document D4*

7.3.1 In its decision, the Examining Division considered document D4 to be the closest prior art for the subject-matter of claim 1 of the then main request.

7.3.2 Document D4 discloses an optical-disk recording and reproducing device which detects and records the position where reproduction is interrupted by the user and allows later resumption of the reproduction from the recorded position (see abstract).

7.3.3 Like documents D9 and D11, document D4 contains no hint to the use of per-user remote controls. It therefore does not come closer to the claimed invention, either.

7.4 None of the remaining documents represents a more promising starting point for assessing inventive step for the subject-matter of claim 1.

7.5 The Board concludes that the subject-matter of claim 1 and that of corresponding independent claims 7 and 13 involve an inventive step over the available prior art (Article 52(1) and 56 EPC).

8. *Possible prior use*

8.1 According to document D8, the appellant shipped its first "TiVo digital video recorder" on 31 March 1999, i.e. almost one year prior to 30 March 2000. The present application, claiming an earliest priority date of 30 March 1999, concerns a digital video recorder and appears to be related to the shipped product. In

particular, application P1 suggests that the appellant's product may have included some form of bookmarking functionality.

8.2 In its communication, the Board invited the appellant to make a statement on whether and, if so, when it first sold or otherwise disclosed a product incorporating the bookmarking functionality specified in the claims filed with the statement of grounds of appeal. The appellant, however, chose to remain silent on this point.

8.3 In examination proceedings, the initial burden of proof for showing that an invention lacks novelty or inventive step undoubtedly lies with the EPO. But in the Board's view this does not mean that an applicant is never under any obligation to co-operate in establishing the facts relevant to the determination of its right to a patent. In exceptional cases, in which there are clear and objective indications that the appellant has made a prior disclosure to the public of relevant parts of the subject-matter that it puts forward as being new and inventive but the appellant chooses to make no statement, it may, arguably, be justified to reverse the burden of proof.

8.4 In the present case, however, the Board considers that there are no such clear and objective indications with respect to the subject-matter now claimed. In particular, nothing in priority application P1 suggests that the product shipped by the appellant in March 1999 included personalised remote controls. The Board therefore sees no need to pursue this issue further.

9. *Double patenting*

9.1 The Board is aware of granted patents EP 1 953 758 B1 (arising from a divisional application of the present application) and EP 2 352 276 B1 (arising from a divisional application with the same filing date and applicant as the present application), which both have claims similar in scope to those of the first auxiliary request.

9.2 As to patent EP 1 953 758 B1, the process of its dependent claim 5 largely corresponds to that of present claim 1, but it differs at least in that, before bookmark indicators are displayed on a bar, reproduction of the audio or video program is started from a position corresponding to a user-selected bookmark.

9.3 Independent claim 1 of patent EP 2 352 276 B1 refers to the display on a trick play bar of indicators for multiple bookmarks, each of the multiple bookmarks being associated with a different input-device identifier. The claims of the first auxiliary request, on the other hand, recite the display of indicators for bookmarks stored in the first profile, i.e. bookmarks associated with the same input-device identifier (or "unique identification encoding").

9.4 The Board is satisfied that none of the claims of the two granted patents is identical in scope to any of the claims of the first auxiliary request. The prohibition of double patenting therefore does not apply.

10. *Obvious mistake in claim 13*

Independent claim 13 of the first auxiliary request refers to "the steps as recited in any of claims 1 to 7". However, while claims 1 to 6 are process claims, claim 7 is an apparatus claim not reciting any steps. Claim 13 therefore appears to contain an obvious mistake. To respect the appellant's rights under Article 113 EPC, the Board leaves it to the Examining Division to make a correction to claim 13 in the text that it proposes for grant.

11. *Conclusion*

In view of the above, the Board reaches the conclusion that the application according to the first auxiliary request satisfies the requirements of the EPC, apart from what appears to be an obvious mistake in claim 13 as discussed in point 10 above. The case is therefore to be remitted to the Examining Division for further prosecution on the basis of the first auxiliary request.

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.

2. The case is remitted to the department of first instance for further prosecution.

The Registrar: The Chairman:

I. Aperribay R. Moufang

Decision electronically authenticated