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Datasheet for the decision of 12 March 2014

Case Number: T 0512/13 - 3.5.04

Application Number: 01205003.5

Publication Number: 1213919

IPC: H04N5/445

Language of the proceedings: EN

Title of invention:
Interactive television program guide system having multiple devices within a household

Patent Proprietor:
United Video Properties, Inc.

Opponents:
Virgin Media Limited
Virgin Media Payments Ltd.

Headword:

Relevant legal provisions:
EPC 1973 Art. 56, 100(a)

Keyword:
Inventive step - (no)

Decisions cited:

Catchword:

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Case Number: T 0512/13 - 3.5.04

D E C I S I O N
of Technical Board of Appeal 3.5.04
of 12 March 2014

Appellant: (Patent Proprietor)	United Video Properties, Inc. 2830 De La Cruz Boulevard Santa Clara, CA 95050 (US)
Representative:	Hale, Peter Kilburn & Strode LLP 20 Red Lion Street London WC1R 4PJ (GB)
Respondent: (Opponent 1)	Virgin Media Limited 160 Great Portland Street London W1W 5QA (GB)
Respondent: (Opponent 2)	Virgin Media Payments Ltd. Media House Bartley Wood Business Park Hook Hampshire RG27 9 UP (GB)
Representative:	Gwilt, Julia Louise Marks & Clerk LLP 62-68 Hills Road Cambridge CB2 1LA (GB)
Decision under appeal:	**Decision of the Opposition Division of the European Patent Office posted on 5 February 2013 revoking European patent No. 1213919 pursuant to Article 101(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 opposition division to revoke European patent No. 1 213 919.

II. The patent had been granted on European patent application No. 01 205 003.5, which was a divisional application from earlier European patent application No. 99 935 596.9. This earlier application had been filed as an International application and published as WO 00/04707 A1.

III. Opponent 1 had filed opposition against the grant of the patent and an intervener (opponent 2) had filed an intervention of the assumed infringer (Article 105 EPC). Opponent 1 and opponent 2 both based their submissions on lack of novelty and inventive step (Article 100(a) EPC in conjunction with Articles 54 and 56 EPC), lack of disclosure (Article 100(b) EPC) and added subject-matter (Article 100(c) EPC).

IV. In the decision under appeal, the patent was revoked solely for the reason that the subject-matter of claim 1 of the patent as granted lacked inventive step (Article 100(a) EPC in conjunction with Article 56 EPC) over document

D4: WO 98/10589 A1.

V. Claim 1 reads as follows:

"A method for using an interactive television program guide system based on first and second user television equipment devices within a household, said first and second user television equipment devices implementing respective first and second interactive television

program guides, wherein the second television equipment device comprises a recording device, the method comprising:
interconnecting the first and second user television equipment devices by a communication path;
receiving, in the first interactive television program guide, a user selection of a program for recording;
coordinating the first and second user television equipment devices over the communications path, such that the selection on the first interactive television program guide is effective on the second interactive television program guide; and
recording, under control of the second interactive television program guide, the selected program on the recording device, wherein the second user television equipment device is in a location remote from the first user television equipment device."

VI. The patent proprietor appealed against the decision of the opposition division and requested acceleration of the appeal proceedings because of patent litigation proceedings in Belgian and English courts. Oral proceedings were also requested. In the statement of grounds of appeal, the appellant presented arguments as to why the subject-matter of claim 1 involved an inventive step over D4.

VII. The board informed the parties that it would accelerate the appeal proceedings.

VIII. The respondents (opponent 1 and opponent 2) submitted their counterarguments jointly in a common written reply and requested that the appeal be dismissed. Oral proceedings were also requested.

IX. The board issued a communication pursuant to Article 15(1) of the Rules of Procedure of the Boards of Appeal (RPBA), annexed to a summons to oral proceedings dated 27 November 2013.

X. The appellant submitted observations to the board's communication in a reply letter dated 12 February 2014. The respondents submitted their observations jointly in a common reply letter also dated 12 February 2014.

XI. Oral proceedings before the board were held on 12 March 2014. Before declaring the debate closed, the chairman stated the parties' final requests as follows:

The appellant (patent proprietor) requested that the decision under appeal be set aside and the patent maintained as granted. The respondents (opponent 1 and opponent 2) requested that the appeal be dismissed.

At the end of the oral proceedings the chairman announced the board's decision.

XII. The reasons for the decision under appeal, as far as they concern inventive step in view of D4, may be summarised as follows:

D4 disclosed a method for using an interactive electronic program guide (EPG) system.
There were two user TV equipment devices within a household. The first one was an input device (332 in figure 13), such as a home PC, which could be a PCTV with the associated EPG. The second one was a separate television device comprising a recording device and a processing system (334 in figure 13; 22, 30 in figure 1) controlling the recording of a selected program on the recording device (336 in figure 13; 32

in figure 1). The coordination between the first device (home PC) and the combination of the processing system 334 as well as the recording device 336 was clearly disclosed. The processing system 334 had means to provide EPG functionality. User selection of the program for recording could be made, according to one of the embodiments, by an input device providing visualization of EPG information (page 17, lines 5 to 8 and page 18, lines 1 to 16). The recording device was controlled by the processing system 334, which stored the EPG like user selection (page 18, lines 12 to 16).

Thus the subject-matter of claim 1 differed from the method known from D4 in that the home PC (as disclosed in D4 on page 17) did not include explicitly an EPG functionality.

The problem to be solved by the claimed method was seen by the parties as providing an efficient selection capability to the user (opponent) or as how to improve the interactive program guide functionality (patent proprietor).

D4 disclosed that user selection of a program for recording could be performed using an EPG on a user television equipment device or on a remote input device.

A home PC used as a PCTV was an input device with an EPG and it would have been natural for a person skilled in the art to use the EPG to select the program for recording. Thus it would have been obvious for a person skilled in the art to combine all the features of claim 1.

The location of the central processing system (334 in figure 13) was not relevant since the opposed patent considered distributed implementations of a household covering multiple houses and even external servers.

XIII. The appellant's arguments concerning inventive step in view of D4 may be summarised as follows:

The invention provided the advantage of two fully fledged interactive electronic program guides (EPGs) being coordinated so that the duties of setting up and recording a program were shared. The first EPG implemented on a first TV equipment device provided the graphical user interface (GUI) to set up the recording commands. The second EPG on the second TV equipment device received the command and scheduled the recording. Both TV equipment devices belonged to one household and were under the control of the user. In the prior art, EPGs were not contemplated as devices that could coordinate their functionalities so that an input on a first EPG became effective on a second EPG. Instead the prior art EPGs operated independently from each other.

D4 taught a local EPG implemented on a user's stand-alone TV equipment device able to set up and carry out a recording on a local recorder. D4 did not consider two interconnected user TV equipment devices belonging to one household. In D4 different TV equipment devices belonged to different subscribers. Each TV equipment device received data (including EPG data) from a distribution center via, for instance, a satellite channel, a cable channel or over-the-air television broadcast. Exemplary TV equipment devices implemented an EPG and could directly control a recorder via a so-called "IR blaster" which emulated user commands using

infrared in the same way a TV remote control communicated with a TV or a video cassette recorder.

D4 moreover disclosed an enhanced recording capability which allowed a user to select programs for unattended recording from a location remote from the household. A user could use an input device (which could be a rudimentary one such as a telephone) to access a processor which implemented the EPG. D4 taught that the type of input device was secondary since it only needed to be able to access the processor. In the context of recording from a location remote from the household even the more sophisticated input devices disclosed in D4, such as a home PC, office PC or terminal, laptop computer etc. served only as a terminal for accessing the processor. This was also the case if access was realised by means of a browser implemented on a PC.

The processor was a central facility serving multiple subscribers. It was not within the household of the user and was not a user television equipment device.

Even if, *arguendo*, one assumed that the processor could be considered as belonging to a user's household, it was part of the user's TV equipment device on which the EPG was implemented. Thus no matter whether the processor was considered to belong to a user's household or to a central facility, there was only a single EPG with automatic unattended recording. Thus D4 enhanced the recording capabilities in a manner completely different from that of the invention. Therefore, D4 was not an appropriate starting point for the assessment of inventive step.

D4 also disclosed that the processor might implement the possibility of an EPG-like theme-based recording

selection. But for unattended recording from a location remote from the household this merely meant that there might be two independent EPGs, one at home and one remote, that each separately controlled the recorder.

The opposition division had based its finding on hindsight, namely on the consideration that in D4 the input device for remote access to the processor could be a PCTV. However, the PCTV in D4 was an example of a user's TV equipment device, not of a remote input device. D4 taught that the input device should be simple, not a PCTV which might implement an interactive EPG. Moreover, the opposition division had not considered that also under the assumption that the remote input device was a PCTV this remote PCTV was not a TV equipment device within the user's household.

The method of claim 1 solved the problem of enhancing the recording capability of an EPG by supplementing a first EPG implementation with a second separate EPG implementation. Both EPG implementations were coordinated so that the recording function was shared.

EPGs had never before been seen as something in which the duties could be split. Thus the method of claim 1 involved an inventive step.

XIV. The respondents' arguments concerning inventive step in view of D4 may be summarised as follows:

The appellant's arguments based on the understanding that claim 1 referred to a method involving TV equipment devices within a household did not take into account that a "household" in the patent specification was defined as covering multiple houses and even external servers.

The appellant's arguments based on the understanding that claim 1 specified two EPGs which were coordinated did not take into account that according to claim 1 two TV equipment devices were coordinated.

Moreover, an EPG as described in the patent was software running on user TV equipment (or possibly a server) to provide a graphical user interface (GUI) for visualisation of EPG information. In general it could be presumed that substantially the same data was used for the different EPGs described in the patent since they were describing the same available programs and the EPG data came from a common source. Thus the coordination of the EPGs could mean no more than that sufficient information necessary to identify a selected program was passed between the EPGs.

In D4, it would have been obvious to a person skilled in the art to use a PCTV to provide an EPG user interface for visualisation of the EPG data from central processing system 334. D4 did not teach that the input device should be simple.

Reasons for the Decision

1. The appeal is admissible.

2. Inventive step (Articles 56, 100(a) EPC 1973)

2.1 The closest prior art

2.1.1 The decision under appeal started from document D4 as the closest prior art for the method of claim 1.

The appellant, however, argued that D4 was an inappropriate starting point for the assessment of inventive step as it taught to solve the problem of enhancing recording capabilities in a manner completely different from that of the invention and because it was not concerned with first and second TV equipment devices within a household.

2.1.2 It is established jurisprudence that the closest prior art for assessing inventive step is normally a prior-art document disclosing subject-matter conceived for the same purpose or aiming at the same objective as the claimed invention and having the most relevant features in common, i.e. requiring the minimum of structural modifications.

2.1.3 In the present case the invention of the opposed patent and of D4 in terms of their structure are both based on interconnected TV equipment devices. Moreover, it is undisputed that they both aim *inter alia* at the objective of enhancing recording capabilities. Furthermore, both allow a user to remotely schedule recording of a program on a recording device within the user's household. Thus the board finds that D4 qualifies as a starting point for the assessment of inventive step in the present case.

2.1.4 The appellant's arguments in this respect did not convince the board for the following reasons:

It is undisputed that in the specification of the opposed patent a "household" may comprise a plurality of homes and even a server located outside the plurality of homes (see, for instance, paragraphs [0022], [0034], [0041], [0074], [0075] and figures 7c and 7d).

Moreover, the specification of the opposed patent does not state that the user necessarily has full control over the interconnection of the TV equipment devices. The step of interconnecting the devices according to claim 1 serves to allow receiving a user selection and coordinating the devices such that the selection is effective on the second program guide for recording the selected program.

In D4 user television equipment devices (such as TVs, VCRs, PCTVs, set-top boxes) are interconnected via a transmission system (13), as can be seen from figures 1 and 2. The transmission system serves to provide the data stream from a data distribution center to the user television equipment devices via, for instance, a telephone network (page 4, lines 21 to 23 or page 5, lines 28 to 31). When a user at a remote location selects a program for recording, the relevant information is received by the central processing system 334 and stored in the appropriate time slot of the schedule data structure. This allows the recording device 336 to be activated for recording at the appropriate time in a manner which is similar to recording by the local program guide (D4, page 16, lines 23 to 33 and page 17, lines 16 to 31).

Thus the feature of "first and second user television equipment devices within a household" in claim 1 does not imply structural or functional limitations which would have the consequence that D4 may not be considered as a starting point for the assessment of inventive step.

2.2 The disclosure of D4

2.2.1 It is undisputed that D4 discloses a method for using an interactive television program guide system (see D4, page 2, line 8, "interactive schedule system"; page 4, line 11, "program schedule guide"). The interactive television program guide (EPG) in D4 may be used to control a recording on a recording device (see page 2, lines 8 and 9). This functionality of interactive EPGs was already known from prior art documents discussed in D4 (see D4, "Background of the invention"). The EPG is implemented on a user television equipment device ("peripheral device", see D4, page 4, lines 24 to 32 in conjunction with page 16, lines 26 to 33). Examples of user television equipment devices implementing an EPG are a PC, a PCTV, a TV connected to a set-top box or a TV including a custom board (page 5, lines 3 to 6). D4 also discloses an enhanced recording capability which allows user selection of programs to be recorded on a recorder located at a user's home from an input device located away from home (see D4, section H, "Enhanced Recording Capability"). The remote input device may be a PC (D4, page 17, lines 1 to 8, or claim 2).

2.2.2 However, the parties disagree whether, in the context of recording from a remote location, the user TV equipment device implementing the EPG may be located in a user's household. Indeed, D4 discloses in relation with figure 13 that "a user who is away from home may record a program remotely by using input device 332 to access and communicably connect to central processing system 334", without specifying the location of the central processing system. Only the recording device is specified as being located at the user's home (page 17, lines 1 to 21).

In the board's understanding, the enhanced recording capability discussed in section H of D4 is general in the sense that the central processing system 334 could be central to one home or to multiple homes. In particular in the claims of D4 the physical locations of the central processing device, the input device and the recording device are left open (see, for instance, claims 1 and 8). It is implicit in D4 that the user may only record onto the recording device located at his/her home, but not onto recording devices of, for instance, unknown subscribers. Moreover, the word "central" in "central processing system" is used in a logical rather than in a physical sense. Thus, independent of its physical location the central processing system is central to the user's home in the sense that it may be accessed from a different (remote) location by the user to schedule a recording onto the recording device located at his/her home. This different (remote) location may be within or outside the user's household. Taking also into account the general meaning of the expression "household" in the opposed patent (see point 2.1.4 above), the board finds that the physical location of the central processing system in D4 is not relevant, and that the devices from which the user inputs his/her selection of a program and where the program is recorded may be within a household in the meaning of claim 1 of the opposed patent.

2.2.3 The parties also disagree whether the user TV equipment devices in D4 are interconnected. In this respect the board finds for the respondent, see point 2.1.4 above.

2.2.4 The parties also disagree whether, in the context of recording from a remote location, the EPG in D4 is

implemented on user TV equipment or instead would be implemented in a central facility.

In the board's understanding of D4, an EPG is implemented on user TV equipment ("peripheral devices" in D4) even if no recording from a remote location is considered. The description of the guide user interface in section I of D4 makes clear that the user is presented with an interactive display screen which allows, for instance, an action such as recording a program, tuning to a channel or purchasing a pay-per-view program. The user may interact with the display screen using, for instance, a remote control or a keyboard. This is confirmed by the description of the TV schedule guide illustrated in figure 12 on page 16, lines 11 to 25 in section H, "Enhanced Recording Capability".

Hence in D4 the feature of scheduling recordings from a remote location is additional to the feature of scheduling recordings locally using the EPG implemented on the user TV equipment device. The user interface in the case of scheduling recordings from a remote location may be different from the local user interface, since the remote input device may be, for instance, a telephone.

However, D4 does not disclose that the EPG used for local recording is also used when the user schedules recordings from a remote location. Nor does D4 specify that a further EPG is implemented in such a case.

2.2.5 The parties also disagree whether D4 discloses that the input device with which the user schedules recordings from a remote location may be a PCTV.

In this respect the board agrees with the appellant that the list of exemplary input devices does not include a PCTV.

2.3 Would a person skilled in the art have considered using a PCTV as the input device for scheduling recordings from a remote location in D4?

2.3.1 In the decision under appeal the opposition division made the assumption that a home PC, which may be a PCTV, could be used to provide an implementation of an EPG as input means for a user choice (see point 21 of the decision under appeal). The appellant challenged this assumption as being based on hindsight.

2.3.2 In the board's view, the list of disclosed input devices given in D4 is not a complete enumeration of possible input devices. Quite to the contrary, D4 makes clear that the input device "may be any device capable of transmitting data from a remote location", home PC and office PC being just two examples (see page 17, lines 5 to 7). One requirement is that the input device may "access and communicably connect to central processing system 334" (see page 17, lines 3 to 5). Moreover, the input device must have some kind of user interface so that the user can make his/her choice at the remote location. The interface may be simple (such as in the case of a telephone), but in the case of more sophisticated input devices (such as a laptop computer, a home PC or an office PC) more comfortable interfaces (such as a GUI) would be considered by a person skilled in the art without knowledge of the opposed patent. Indeed, D4 suggests that the input device in preferred embodiments may send and receive information (page 17, lines 11 to 18 and 28 and 29) and that the information to be transmitted may be more complicated than a simple

predetermined program code, such as the selection of a program by themes or of one of a plurality of listings (page 17, lines 15 and 16 and page 18, lines 1 to 14). One embodiment discloses that the input device may be a computer and the user may access a web site which is connected to the processing system to enter the user's selection (page 18, lines 17 to 29). Thus in such cases D4 naturally calls for a comfortable user interface. Moreover, D4 explicitly envisages that the invention of D4 "will have increased utility as new combinations of computers and television systems are developed" (see page 5, lines 2 to 8). This statement, even though not referring to the input device, makes clear that the authors of D4 already considered taking advantage of the convergence of the technical areas of televisions and computers. In this context the board notes that it is undisputed that a PCTV may be considered as a particular kind of PC. Thus the opposition division's assumption was based on the disclosure of D4.

2.3.3 The appellant's argument that D4 taught that the input device should be simple did not convince the board. Instead, in the board's understanding of D4, there is a large variety of conceivable input devices, including simple ones and more sophisticated ones. As correctly indicated by the respondents, D4 does not specify which of these are preferable over others.

2.3.4 In view of the above the board finds that the opposition division's finding that a person skilled in the art would have considered using a PCTV as the input device for scheduling recordings from a remote location in D4 was correct.

2.4 The coordination of the television equipment devices

2.4.1 In the decision under appeal the opposition division found that, if the PCTV was used as an input device, it became a natural design choice to use the local existing EPG as GUI for the visualisation of EPG information. The appellant challenged this with the arguments that in D4 the PCTV was not an input device and that in the case of unattended recording from a location remote from the household there were two independent EPGs, one at home and one remote, that each separately controlled the recorder.

2.4.2 The decision under appeal does not clearly distinguish between the PCTV discussed in D4 and the remote input device which may be a PC. But, as discussed in points 2.3.2 to 2.3.4 above, a person skilled in the art would have considered using a PCTV as the input device for scheduling recording from a remote location. This would not be the PCTV discussed in D4 as an example of a peripheral device (see page 5, lines 2 to 6 and 28 to 33). But since D4 teaches scheduling recordings from both a user TV equipment device at home and an input device at a remote location, the teaching of D4 is consistent with two PCTVs, one at home and one at a remote location.

2.4.3 A person skilled in the art considering such a situation with two PCTVs, one at home and one at a remote location, would be confronted with the issue of providing appropriate user interfaces at the PCTVs. In this respect the board agrees with the finding in the decision under appeal that it would have been a natural design choice to use the existing EPG as GUI for the visualisation of EPG information. In the board's view this is also correct for the specific EPG information

necessary for scheduling recordings and holds for both PCTVs.

2.4.4 Moreover, a person skilled in the art considering such a situation with two PCTVs, one at home and one at a remote location, would be confronted with coordination problems because local and remote recording schedules might be in conflict, for instance if there is only one recording device at the user's home. Different ways of coordination are conceivable, but it would be necessary that scheduling a recording from a remote location is possible at least under certain circumstances.

2.4.5 The appellant's argument that, if in D4 the remote input device implemented an EPG, then there would be two independent EPGs, one at home and one remote, that each separately controlled the recorder did not convince the board. Two EPGs which separately control a recorder require a minimum of coordination at some level determining, for instance, which of two conflicting commands to the recorder takes precedence.

Moreover, this argument is manifestly based on an understanding of claim 1 of the opposed patent that the two implemented EPGs are coordinated. In this respect the board agrees with the respondents that claim 1 specifies that the two user TV equipment devices are coordinated. The coordination of the user TV equipment devices is specified on a functional level "such that the selection on the first interactive television program guide is effective on the second interactive television program guide". However, claim 1 does not indicate how this function is achieved, and indeed the specification of the opposed patent does not give details in this respect. In this respect D4 discloses that the central processing system 334 stores

information in the appropriate time slot of the schedule data structure in a manner which is similar to recording by the local program guide (see point 2.1.4 above). Since the information entered and stored in this way will cause activation of the recording device, the devices in D4 are coordinated in the meaning of claim 1.

2.4.6 Also, the appellant's argument that EPGs had never before been seen as something in which the duties could be split did not convince the board that the method of claim 1 of the opposed patent involves an inventive step. One reason for this is that claim 1 does not imply that duties are split between two EPGs (see point 2.4.5 above). Another reason is that an interconnection of user TV equipment devices (see point 2.1.4 above) permits interconnection of EPGs implemented on these user TV equipment devices, whereas in a traditional arrangement of stand-alone user TV equipment devices EPGs were not interconnected.

2.5 In summary, the board holds that the opposition division was correct in its finding in the decision under appeal that a person skilled in the art, starting from the disclosure of document D4 and considering a PCTV as an obvious choice of an input device for scheduling recordings from a remote location would have implemented some kind of coordination between the two PCTVs and thus would have arrived at a method according to claim 1 of the opposed patent.

3. In view of the above the appeal is to be dismissed.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar: The Chairman:

L. Fernández Gómez F. Edlinger

Decision electronically authenticated