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**Datasheet for the decision  
of 21 December 2020**

**Case Number:** T 0573/15 - 3.4.01

**Application Number:** 07812250.4

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**Language of the proceedings:** EN

**Title of invention:**  
EMBEDDED APPLIANCE FOR MULTIMEDIA CAPTURE

**Applicant:**  
Echo 360, Inc.

**Headword:**  
EMBEDDED MULTIMEDIA CAPTURE / Echo 360

**Relevant legal provisions:**  
EPC Art. 54(2), 56  
RPBA 2020 Art. 13

**Keyword:**  
Novelty - (no)  
Inventive step - (no)  
Amendment to case - amendment admitted (no)



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Case Number: T 0573/15 - 3.4.01

**D E C I S I O N**  
**of Technical Board of Appeal 3.4.01**  
**of 21 December 2020**

**Appellant:** Echo 360, Inc.  
(Applicant) 21000 Atlantic Boulevard  
Dulles, VA 20166 (US)

**Representative:** Gill Jennings & Every LLP  
The Broadgate Tower  
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**Decision under appeal:** **Decision of the Examining Division of the  
European Patent Office posted on 28 October 2014  
refusing European patent application No.  
07812250.4 pursuant to Article 97(2) EPC.**

**Composition of the Board:**

**Chairman** P. Scriven  
**Members:** T. Alecu  
D. Rogers

## **Summary of Facts and Submissions**

- I. The appeal is against the Examining Division's decision to refuse the application.
- II. The Examining Division refused the three requests before them for lack of inventive step (Article 56 EPC) over document D5 (US 6628325 B1) in combination with common general knowledge.
- III. With the grounds of appeal, the appellant requested that this decision be set aside and a patent granted on the basis of a main request or one of two auxiliary requests. All three are identical to those refused by the Examining Division.
- IV. In the communication accompanying a summons to oral proceedings, the Board indicated its provisional opinion that claim 1 of the main and first auxiliary requests lacked novelty (Article 54 EPC) over D5, and that claim 1 of the second auxiliary request lacked inventive step over D5 in combination with common knowledge.
- V. The appellant filed a third auxiliary request.
- VI. At oral proceedings before the Board, the appellant maintained all four requests.

VII. Claim 1 of the main request defines (with reference signs removed and feature lettering by the Board):

*A method, comprising:*

- a) capturing an audio signal on a processor system of a specific-purpose embedded appliance;*
- b) capturing on the processor system at least any one of a visual-capture signal or a digital-image signal, the specific-purpose embedded appliance being dedicated to capturing, processing, storing and sending a plurality of real-time media signals, the plurality of media signals including the audio signal and the at least one of the visual-capture signal or the digital-image signal,
  - b1) wherein the capturing of the audio signal and the capturing of at least any one of a visual-capture signal or a digital-image signal is performed at different and/or variable rates;**
- c) receiving a start indicator configured to trigger the capturing of the audio signal on the processor system or the capturing on the processor system of the at least one of the visual-capture signal or the digital-image signal, the start indicator being received from a control server separate from the specific-purpose embedded appliance; and*
- d) sending at least any one of the audio signal, the visual-capture signal, or the digital-image signal based on a send indicator received from the control server, the start indicator and send indicator being*

*defined at the control server according to a schedule.*

VIII. Claim 1 of auxiliary request 1 removes b1) and adds, after d):

*e) wherein the processor system is configured to operate based on a hardened operating system which allows access by authorized users or programs only and facilitates functions related only to the capturing, processing, storing and/or sending of the real-time media signals.*

IX. Claim 1 of auxiliary request removes b1) from claim 1 of the main request and adds, between c) and d):

*c) ... and  
c\_d) synchronizing the audio signal with the at least any one of the visual-capture signal or the digital-image signal; and  
d) ...*

X. Claim 1 of auxiliary request 3 removes b1) from claim 1 of the main request and replaces it with

*b1') wherein the capturing of the audio signal and the capturing of at least any one of a visual-capture signal or a digital-image signal is performed at different and/or variable rates with respect to another audio signal, another visual capture signal or another digital image signal respectively;*

- XI. The appellant's arguments as to novelty and inventive step in the light of D5 and the skilled person's common general knowledge, and as to the consideration of auxiliary request 3, are set out below.

### **Reasons for the Decision**

1. The invention relates to an apparatus and method for capturing media signals using an embedded appliance (paragraph 1001). The appliance has multiple input ports for (for example) audio, digital image, video or visual capture signals (1020-1024). The data capture is initiated according to a schedule determined by a server communicating with the appliance (1015). The device may be used to capture, for example, classroom lectures at specific times (1002).
2. Document D5 is concerned with providing a communication device acting as an intermediary between a digital camera and a PC or a network (D5: abstract). Its main purpose is to facilitate the data transfer. It can be integrated in the same housing with the camera (D5: figure 9), and can trigger the data capturing, or the data download, according to a predetermined schedule (D5: column 5, lines 10-15).

#### *Main request*

3. Although the device of the invention and that of D5 are prima facie different, claim 1 is directed to a *method* of capturing media signals. This method is disclosed by

D5 as follows.

- Feature a). Figure 9 teaches one embedded appliance (*novel digital camera*) containing both the camera and the communication device. Figure 7, in combination with column 8, lines 35 to 40, teaches that voice annotation is provided from the camera to the communication device. This implies the capture of an audio signal.
  - Feature b). The camera/embedded device captures still and or video images and sends them to a remote computer (column 2, lines 27-29).
  - Feature b1). Voice/audio and video/image have inherently different sampling rates. This is thus an implicit feature.
  - Features c) and d). Scheduling of image capture and the data transmission is taught at column 5, lines 10-15.
4. The appellant argued that the device of D5 could not be equated with that of the invention. It was not an embedded device, because the camera and the communication device were two different things. D5 also failed to disclose ports, and referred to paragraphs 1020 to 1024 of the application.
  5. The Board notes that claim 1 is directed to a method, and that no ports are defined, either explicitly or implicitly.
  6. The appellant further argued that the information in figure 7 of D5 could not be combined, for novelty purposes, with that of figure 9, which described a different embodiment. The statement starting at line 4

of column 13 of D5, and stating

*In general, all of the features discussed relative to the communication device 10 apply also to the camera 182 with an integrated communication device 180 as illustrated in FIG. 9, except for those comments that refer to the external connection between the camera and the communications device.*

was too vague to be considered as pointing to that specific combination.

7. The Board is not persuaded by these arguments. It is clear to the skilled person that the "*novel digital camera*", comprising a camera and the communication device of figure 9 must provide the same features as the combination of these devices when they are not integrated in the same device.
8. The appellant further argued that, even if the information could be combined, there was no indication that the capturing could be done at different rates. Unlike the device of D5, which was connected to only one camera, the invention offered flexibility because it enabled the capture of data from different sensors at different rates through the input ports (paragraph 1027).
9. The appellant's argument relies on the idea that there is more than one video capture signal, and that the claim refers to these when it defines different or variable rates. However, claim 1 does not define a plurality of video capture signals, but rather *at least any one of a visual capture signal or a digital-image*



*signal. Nor does the capturing of the audio signal and the capturing of at least any one of a visual-capture signal or a digital-image signal is performed at different and/or variable rates* mean that, if there is a plurality of video or image devices, that their rates are different or variable. To the extent that this is understandable, the most straightforward reading is that audio capture is at a different rate from image or video. As already said, that is the normal situation.

10. The Board concludes that claim 1 of the main request lacks novelty in view of D5.

*First auxiliary request*

11. The feature e) is disclosed by D5 in that *the processor performs security operations when programmed to do so* (column 6, lines 45-46) and requires a user password (column 8 line 24-25) to access it.
12. The appellant submitted that the term *hardened operating system* had a special meaning in the art. The Board is not persuaded, that there is any precise definition of this term. The only concrete security measure mentioned in the application is, as in D5, requiring a password (paragraph 1039).
13. The Board concludes that claim 1 of this request also lacks novelty in view of D5.

*Second auxiliary request*

14. Regarding c\_d), the appellant argued that the communication device of Figure 1 of D5 did not, and did

not need to, synchronize the received signals. It just stored and transmitted the data. Even if one took the device of figure 9 and combined it with the information in figure 7, there was only a mention of voice annotation, which did not require a synchronization of streams of audio and image signals. The skilled person, starting from D5, had no motivation to provide for synchronization.

15. The Board agrees with the appellant that the skilled person does not need to provide synchronization for the purpose of voice annotation, at least not in the common sense of the word, i.e. synchronization of audio and video streams. However, the teaching of D5 would be applied by the skilled person to digital cameras recording audio-video signals, if only to follow the technological developments around consumer digital cameras. In consumer video cameras, synchronization is necessary and standard, which the appellant did not contest. Hence c\_d) would have been obvious in light of the common general knowledge of the skilled person.
16. The Board concludes that claim 1 of this request lacks inventive step in view of D5 and common general knowledge.

*Third auxiliary request*

*Admission*

17. The appellant argued that this request was filed as a reaction to the Board's opinion that b1) was disclosed by D5, which was a different opinion from that of the Examining Division. It was, therefore, appropriate further to specify that feature so as to restore

novelty and establish inventive step.

18. The appellant further submitted that, the request was a further specification of the main request, based on paragraphs 1020 - 1024 (which described different input ports) and 1027 (which specified *capturing media signals at different and/or variable rates*), and was not a divergent development.
19. The Board notes that, although the Examining Division found the feature in question was new over D5, it nonetheless deemed it to be obvious given the skilled person's common general knowledge. It would have been appropriate further to specify this feature at that point in time, or, at the latest, upon filing the appeal.
20. Furthermore, the specification is not simply a restriction, as it also changes its thrust - the rates are now presumably different between signals of the same type (*respectively*), not of different type as in the main request. Thus, although it appears to be a further specification of the main request, it defines *de facto* different subject matter, requiring new considerations. It is, in fact, the fourth different direction that the appellant takes with their requests: the two discussed here relating to capturing at different or variable rates, the one in the first auxiliary request relating to a hardened operating system, and the one in the second auxiliary request relating to synchronizing the audio and image signals. The requests cannot be said to be converging.
21. The Board is also not persuaded that the amendment actually has a basis in the application as filed (Article 123(2) EPC). There is no disclosure in the

application of capturing data at different rates on two ports of the same type. The only example in the application (paragraph 1027, last sentence) refers actually to different frame rates on two ports of different type (video signals and digital image signals).

22. The Board, therefore, declines to admit this request (Article 13(1) RPBA 2020).

## Order

### **For these reasons it is decided that:**

The appeal is dismissed.

The Registrar:

The Chairman:



D. Meyfarth

P. Scriven

Decision electronically authenticated