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Datasheet for the decision of 28 August 2019

Case Number: T 1793/15 - 3.5.07

Application Number: 11798647.1

Publication Number: 2583238

IPC: G06F17/30, G06Q50/00

Language of the proceedings: EN

Title of invention:
System and method for accessing online content

Applicant:
Nintendo Co., Ltd.

Headword:
Accessing online content/NINTENDO

Relevant legal provisions:
EPC Art. 56, 84, 123(2)

Keyword:
Inventive step over cited prior art - main request - after amendment (yes)
Remittal to the department of first instance - (yes)

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Boards of Appeal

Chambres de recours

Boards of Appeal of the
European Patent Office
Richard-Reitzner-Allee 8
85540 Haar
GERMANY
Tel. +49 (0)89 2399-0
Fax +49 (0)89 2399-4465

Case Number: T 1793/15 - 3.5.07

D E C I S I O N
of Technical Board of Appeal 3.5.07
of 28 August 2019

Appellant: (Applicant)	Nintendo Co., Ltd. 11-1 Kamitoba Hokotate- cho Minami-ku, Kyoto-shi Kyoto 601-8501 (JP)
Representative:	Flach Bauer Stahl Patentanwälte Partnerschaft mbB Adlzreiterstraße 11 83022 Rosenheim (DE)
Decision under appeal:	**Decision of the Examining Division of the European Patent Office posted on 22 April 2015 refusing European patent application No. 11798647.1 pursuant to Article 97(2) EPC**

Composition of the Board:

Chairwoman	M. Blasi
Members:	P. San-Bento Furtado
	M. Jaedicke

Summary of Facts and Submissions

I. The appeal lies from the decision of the Examining Division to refuse European patent application No. 11798647.1, filed as international application PCT/US2011/040469 published as WO 2011/163023, for lack of inventive step in the subject-matter of the independent claims of a main request and first to fourth auxiliary requests over document D3: US 2003/0126461 A1, published on 3 July 2003.

In the decision under appeal, the Examining Division cited other prior-art documents, including document D4: EP 1 739 925 A1, published on 3 January 2007.

II. In the statement of grounds of appeal, the appellant requested that the decision be set aside and that a patent be granted on the basis of the claims of the main request or of one of the first to fourth auxiliary requests considered in the appealed decision. Oral proceedings were requested as an auxiliary measure.

III. In a communication pursuant to Article 15(1) RPBA accompanying a summons to oral proceedings, the Board expressed its preliminary opinion that the subject-matter of claim 1 of the main request and the first to third auxiliary requests was not inventive over either document D3 or D4 in combination with the common general knowledge of the skilled person. The subject-matter of claim 1 of the fourth auxiliary request did not involve an inventive step over document D4 in combination with the common general knowledge of the skilled person. Furthermore, some distinguishing features were disclosed in documents D3, D4 or D6.

IV. In response, the appellant submitted new arguments defending the requests on file.

V. Oral proceedings were held as scheduled. During the oral proceedings, the appellant replaced the main request with a set of claims of a new main request filed at 12:40. At the end of the oral proceedings, the chairwoman pronounced the Board's decision.

VI. The appellant's final requests were that the decision under appeal be set aside and that a patent be granted on the basis of the claims of the main request filed at 12:40 in the oral proceedings or, in the alternative, on the basis of one of the sets of claims of the first to fourth auxiliary requests filed by letter dated 9 March 2015.

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

"A method of accessing a web page comprising:
receiving by a microphone audio output from speakers of electronic equipment, wherein the audio output includes content for listening by a user and one or more cues different from the content;
detecting a cue from the one or more cues in the audio output that is received by the microphone;
determining a web address based on the detected cue; and
connecting to a web page using the web address,
wherein the detected cue comprises one or more first tones followed by one or more second tones, and wherein the one or more first tones identify the one or more second tones as comprising cue information,
wherein the one or more cues are configured for a particular frequency which is high enough or low enough to not significantly interfere with the user's listening of the content, wherein the one or more cues are in the lower or higher ends of the audio frequency range which extends from about 20 Hz to about 20 kHz,

wherein the one or more cues can still be detected by the microphone."

The text of the other claims is not relevant to the present decision.

Reasons for the Decision

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

Invention

2. The invention as disclosed in the description relates to accessing web pages by means of detected cues such as audio signals from radio or television programs or radio-frequency identification (RFID) tag information (see paragraphs [0012] and [0013] of the WO publication). When a cue is detected by a device (e.g. via a microphone), the detected cue is used to consult a database or table to determine website information, e.g. a uniform resource locator (URL), that corresponds to the cue. The database may be maintained on a website. The web page corresponding to the determined website information may be displayed immediately. In some embodiments, audio cues correspond to television or radio advertisements and the system collects and stores the data about the advertiser. The next time the user accesses the internet, he or she is given the option to view the specific pages for the advertisements corresponding to the cues previously detected (paragraphs [0027] and [0028]). The invention can be implemented in a game console (paragraphs [0084] to [0086]). The cues can be collected by a handheld device as the user carries it around, and can be filtered so that only cues likely to result in

presenting information of interest to the user (e.g. based on gender) are actually used for loading web pages (paragraph [0087] to [0089]).

Main request

3. *Admission into the proceedings*

3.1 In its communication pursuant to Article 15(1) RPBA, the Board presented a new line of reasoning for assessing inventive step on the basis of document D4. During the oral proceedings, the Board discussed with the appellant the topic of added subject-matter pursuant to Article 123(2) EPC and how to interpret claim 1 in light of the application as filed. The appellant then submitted claims of a new main request.

3.2 The claims were submitted in response to the new line of reasoning based on document D4 and the exchanges at the oral proceedings regarding added subject-matter and claim interpretation. The amendments restrict the claimed subject-matter to reflect an important aspect of the invention as described in the application. These circumstances support for the admission of the amended claims into the proceedings.

3.3 At the oral proceedings, the Board informed the appellant that, since the new claims brought about a shift in the subject-matter claimed, it might become necessary to remit the case for further prosecution. The appellant indicated that it would not contest such an outcome.

3.4 The main request was therefore admitted into the proceedings pursuant to Article 13(1) RPBA.

4. *Clarity, support and added subject-matter*

4.1 Claim 1 is based on a combination of claim 1 as originally filed and features disclosed in the description or other claims of the application as filed. Claim 1 as originally filed defines a method of accessing a web page comprising steps of receiving audio output, detecting a cue, determining a web address and connecting to a web page. Claim 6 as originally filed specifies that the cue comprises an audio cue. The features that the detected cue comprise first and second tones are disclosed in claims 3 and 7 as originally filed and in paragraphs [0047] and [0048]. Paragraph [0044] discloses that the audio output is received by a microphone and that the cues are configured for a frequency as defined in the claim and such that the cues can still be detected by the microphone.

Therefore, claim 1 fulfils the requirements of Article 123(2) EPC.

4.2 The Board is satisfied that claim 1 clearly defines the matter for which protection is sought and is supported by the description. The claim hence fulfils the requirements of Article 84 EPC.

5. *Novelty and inventive step - document D3*

5.1 Document D3 discloses a method for accessing web sites on the basis of mnemonics, which may be text, audio or video-based (paragraphs [0008] to [0010]).

5.2 At the oral proceedings, the appellant argued that document D3 only disclosed sending the mnemonic over the internet in an audio or video stream. The client of D3 did not receive the audio output by a microphone. Instead, it was connected to the internet and received

the audio or video stream in a digital format which was then further processed.

5.3 The Board agrees with the appellant's analysis of document D3. In the most relevant embodiment of D3, an audio mnemonic may be embedded in an audio broadcast stream such as an internet radio station or in a video clip (paragraphs [0009] and [0023]). The audio stream includes a mnemonic preceded by a mnemonic identifier comprising a standard tone, a series of tones or any audio signal generally accepted to be an identifier. The system examines the audio stream for the presence of the mnemonic identifiers and when it detects the presence of the mnemonic identifier, it knows that the audio information that follows the identifier is the mnemonic itself (paragraph [0023]). The mnemonics and URLs are registered with a "mnemonic conversion service", which can be used by the system to access the target web page once the mnemonic is detected (paragraphs [0021] and [0026]).

5.4 The subject-matter of claim 1 differs from the method of document D3 in that the audio output is transmitted as an audio signal from speakers of electronic equipment to microphones of a receiving device, and in that the cues are configured for a particular frequency which is high enough or low enough to not significantly interfere with the user's listening of the content, wherein the one or more cues are in the lower or higher ends of the audio frequency range which extends from about 20 Hz to about 20 kHz.

5.5 The Board agrees with the appellant that the method of document D3 is based on a concept and a technical framework different from those of the invention of claim 1. The claimed method does not rely on a data connection between the electronic equipment and the

device. Given that the system of document D3 uses streams, there would have been no reason for the skilled person to transmit the cues in an audible frequency chosen not to significantly interfere with the user's listening of the content. Therefore, the subject-matter of claim 1 is inventive over document D3 pursuant to Article 56 EPC.

6. *Novelty and inventive step - document D4*

6.1 Document D4 discloses a method of transmitting coded information to a mobile device, the coded information corresponding to intermediate information for identifying key information about a product. The coded information may be transmitted by audio output (e.g. a song on the radio or music played in a movie) in an inaudible way, e.g. using a frequency outside the audible range (abstract, paragraphs [0049] and [0052], claims 1 and 5). The coded information is an identifier (claim 1). The intermediate information may be a URL later used to load a web page (paragraphs [0044], [0045], [0050], [0053] and [0058]).

Therefore, document D4 discloses a method of accessing a web page by receiving audio cues from electronic equipment comprising steps similar to those specified in claim 1.

6.2 In its communication pursuant to Article 15(1) RPBA, the Board expressed the view that the method of claim 1 of the then main request did not involve an inventive step over the disclosure of D4. The only difference was that the detected cue comprised first and second tones, wherein the first tones identified the second tones as comprising cue information.

At the oral proceedings, the appellant argued that in the method of document D4 the audio cues were

transmitted separately from the audio content. As described in paragraphs [0039] to [0041] and depicted in Figure 2 of D4, the coded information was not transmitted together with the audio content by the loudspeaker 6 but by a separate special transmitting unit 5 using ultrasonic, infrared or blue tooth transmission, and had to be received by corresponding special receiving means 3 at the mobile device. In comparison to the prior art, the claimed invention solved the problem of transmitting cues using normal audio equipment such as standard speakers. In fact, paragraphs [0003] to [0008], [0022] and [0023] of document D4 taught away from the invention.

The Board found that argument unconvincing because it relied on an incorrect interpretation of claim 1 of the main request then on file. However, claim 1 of the present main request now specifies that the audio cues are transmitted from a speaker to a microphone, using frequencies in the lower or higher ends of the audible range. In view of those features, the Board agrees with the appellant's arguments with respect to claim 1 of the present main request.

In particular, document D4 first describes as background art solutions in which information is encoded in a voice signal (paragraphs [0003] to [0008], [0022] and [0023]). Paragraph [0023] explains that those solutions are disadvantageous because they demand complex devices and involve costly elements such as a large memory, loudspeakers and voice recognising means. It then discloses embodiments aimed at mitigating at least some of those drawbacks (paragraph [0024]). In those embodiments, the encoded data is transmitted using ultrasonic, infrared or blue tooth transmission and the transmitting unit 2 and receiving means 3 are

specially adapted to transmit and receive such signals (in addition to the passages cited above, see also paragraphs [0013], [0019], [0028], [0041], [0049], and [0059] to [0061] and claims 5 and 9).

Thus, document D4 does not teach transmitting encoded information together with audio content using the frequencies in the lower or higher ends of the audible range.

6.3 Claim 1 of the main request differs from document D4 in that

(a) the audio output including the audio cues is received by a microphone from speakers of electronic equipment;
(b) the detected cue comprises one or more first tones followed by one or more second tones, and the one or more first tones identify the one or more second tones as comprising cue information,
(c) the one or more cues are in the lower or higher ends of the audio frequency range which extends from about 20 Hz to about 20 kHz, and can still be detected by the microphone.

6.4 Starting from document D4, it would not have been obvious to arrive at the claimed invention.

Since the method of document D4 relies on special transmitting and receiving units, it would not have been obvious to the skilled person, on the basis of his or her common general knowledge alone, to modify the method of document D4 according to distinguishing features (a) and (c).

None of the documents cited in the present case disclose those two features or hint at the problem of

transmitting cues using normal audio equipment such as standard speakers and microphones.

Document D3 does not disclose a solution to such a problem either. It teaches transmitting the cues encoded in an audio stream and does not disclose either of features (a) and (c).

The Board is therefore of the opinion that the subject-matter of claim 1 is inventive over document D4 alone or in combination with document D3 pursuant to Article 56 EPC.

Further prosecution

7. Claim 1 satisfies the requirements of Articles 84 and 123(2) EPC, and its subject-matter is inventive over documents D3 and D4.

8. Compared with the claims considered in the decision under appeal, the main request represents a significant shift in the claimed subject-matter.

The decision under appeal does not take into consideration the fact that the approach of D3 differs from that of the present invention in that it relies on an audio stream. The reasoning regarding inventive step of the contested decision cannot therefore provide a basis for examining the inventive step of the subject-matter claimed now.

In order to arrive at a conclusion regarding the inventive step of the new subject-matter, it may be necessary to take into account other prior-art documents not dealt with by the decision under appeal. In particular, the background art mentioned in document D4 (see also point 6.2 above) may have to be considered.

9. The case is therefore to be remitted for further prosecution pursuant to Article 111(1), second sentence, EPC.

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.

2. The case is remitted to the Examining Division for further prosecution.

The Registrar: The Chairwoman:

I. Aperribay M. Blasi

Decision electronically authenticated