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**Datasheet for the decision  
of 20 October 2017**

**Case Number:** T 2019/15 - 3.5.05

**Application Number:** 11195575.3

**Publication Number:** 2442207

**IPC:** G06F3/01

**Language of the proceedings:** EN

**Title of invention:**

System and method for automatically producing haptic events  
from a digital audio file

**Applicant:**

Immersion Corporation

**Headword:**

Audio signal/haptic signal conversion/IMMERSION

**Relevant legal provisions:**

EPC Art. 76(1), 123(2)

**Keyword:**

Divisional application - subject-matter extends beyond content  
of earlier application (yes)

**Decisions cited:**

**Catchword:**



**Beschwerdekammern**  
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Case Number: T 2019/15 - 3.5.05

**D E C I S I O N**  
**of Technical Board of Appeal 3.5.05**  
**of 20 October 2017**

**Appellant:** Immersion Corporation  
(Applicant) 50 Rio Robles  
San Jose, CA 95134 (US)

**Representative:** Hofstetter, Schurack & Partner  
Patent- und Rechtsanwaltskanzlei  
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Balanstrasse 57  
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**Decision under appeal:** **Decision of the Examining Division of the  
European Patent Office posted on 14 July 2015  
refusing European patent application No.  
11195575.3 pursuant to Article 97(2) EPC.**

**Composition of the Board:**

**Chair** A. Ritzka  
**Members:** P. Cretaine  
G. Weiss

## **Summary of Facts and Submissions**

- I. This appeal is against the decision of the examining division, posted on 14 July 2015, refusing European patent application No. 11195575.3 on the ground of lack of compliance with the requirements of Article 76(1) EPC.
- II. Notice of appeal was received on 15 September 2015 and the appeal fee was paid on the same day. The statement setting out the grounds of appeal was included in the notice of appeal. The appellant requested that the decision be set aside and that a patent be granted based on claims 1 to 18 filed with the statement setting out the grounds of appeal and identical to the claims on which the decision was based. Oral proceedings were requested as an auxiliary measure.
- III. A summons to oral proceedings was issued on 27 July 2017. In an annex to this summons, the board gave its preliminary opinion that the set of claims did not meet the requirements of Article 76(1) EPC because some features present in independent claims 1 and 11 were not disclosed in the earlier application

D5: EP 2 136 286,

of which the present application was a divisional application.

The board further mentioned that independent claims 1 and 11 did not meet the requirements of Article 123(2) EPC either.

- IV. By letter of reply dated 18 October 2017, the appellant informed the board that it would not attend the oral proceedings and requested a "decision according to the state of the file".
- V. Oral proceedings were held on 20 October 2017 in the absence of the appellant. The appellant requested in writing that the decision under appeal be set aside and that a patent be granted on the basis of claims 1 to 18 filed with the statement setting out the grounds of appeal. After due deliberation on the basis of the written submissions, the decision of the board was announced at the end of the oral proceedings.
- VI. Independent claim 1 according to the sole request reads as follows:

"A method for producing haptic events, **characterized by:**

receiving a representationally structured encoded music file that comprises a structured representational signal, wherein the structured representational signal comprises embedded sub-band frequency coefficient information;

analyzing the structured representational signal to extract the sub-band frequency coefficient information;

identifying a plurality of audio events using the sub-band frequency coefficient information; and

assigning a haptic effect to at least one of the events to produce a haptic event to be output by an actuator."

The request comprises a further independent claim 11 directed to a corresponding system.

## **Reasons for the Decision**

1. Admissibility of the appeal

The appeal complies with Articles 106 to 108 EPC (cf. point II above) and is therefore admissible.

2. Non-attendance at oral proceedings

The appellant decided not to attend the scheduled oral proceedings. Pursuant to Article 15(3) RPBA, the board is not obliged to delay any step in the appeal proceedings, including its decision, by reason only of the absence at the oral proceedings of any party duly summoned who may then be treated as relying only on its written case.

Hence, the board was in a position to announce a decision at the end of the oral proceedings.

3. Article 76(1) EPC

3.1 Although both the examining division and the appellant relied on the application documents as originally filed for the assessment of the requirements of Article 76(1) EPC, the board holds that the published earlier application document D5 is the proper basis for examining this issue, even if the technical content of the application documents as originally filed and that of D5 are almost identical.

3.2 The board agrees with the examining division that the feature present in independent claims 1 and 11 defining that "the structured representational signal comprises embedded sub-band frequency coefficient information" is not disclosed, either explicitly or implicitly, in the earlier application.

In that respect, paragraph [0016] of D5 describes that in a first embodiment the audio file contains a digital signal for which frequency sub-band signals and associated coefficients are calculated. The same paragraph [0016] further describes that in a second embodiment the audio file contains structured representation files. There is however no mention at all of frequency sub-band signals and associated coefficients with respect to this second embodiment. Paragraphs [0028] and [0029] further describe how frequency sub-band coefficients are calculated from a received signal, this signal being however exclusively defined as a sampled audio signal, i.e. not a structured representational signal.

Further, paragraph [0020] of D5 describes that certain compressed digital audio files already contain information relating to sub-band frequencies and coefficients of audio events in those sub-band frequencies. However, although representationally structured audio files are later mentioned in this paragraph, again no mention at all of sub-band frequencies and coefficients with respect to this second kind of audio files is present in paragraph [0020].

Paragraphs [0066] to [0068] also describe that the sub-band frequency coefficients can be embedded in the audio file, the audio file being a compressed digital audio file. There is here again no mention of embedded sub-band frequency coefficients with respect to a structured representational signal.

Therefore, there is no basis in the earlier application D5 for an audio file with a structured representational signal comprising embedded sub-band frequency

coefficient information. It thus follows that the further features of claims 1 and 11 relating to extracting and using the sub-band frequency coefficient information have no basis in the earlier application either.

3.3 The appellant argued in substance that these features were implicit from D5. Based on paragraph [0003], which mentioned that audio data may be encoded either by using a structured representational format, such as MIDI, or by using periodic samples of the audio waveform, the appellant considered that the term "audio file" in D5 should be construed as also including a representationally structured encoded file. Since the skilled person would be taught by paragraph [0067] that the processing speed is increased by directly including frequency sub-band coefficients in an audio file and by paragraph [0071] that a representationally structured file may contain information concerning "events associated with audio", the appellant concluded that D5 would implicitly teach the skilled person to create a representationally structured encoded audio file with embedded sub-frequency coefficient information.

The board is however not convinced by this line of argument. Even if it can be accepted that a representationally structured encoded music file falls under the broad definition of an audio file, the embedding of frequency sub-band coefficients in the audio file is described in D5 exclusively in relation to sampled digital audio files (see section 3.2 above). It is further noted that paragraph [0067] mentions that the aim of the embedding is to avoid the "intensive computations described in relation to Figure 13". Figure 3 (instead of the erroneously mentioned, non existent Figure 13) and the



corresponding passages in paragraphs [0025] to [0029] show that these computations, including the spectral decomposition 312, are performed when a sampled digital audio signal is received as shown in Figure 2. There is no disclosure of such computations, in particular of a spectral decomposition, in respect of a representationally structured audio file. It is further doubtful whether such computations, including a spectral decomposition, can be performed on a structured representation signal as shown in Figures 9 and 10.

3.4 For these reasons, the board judges that the subject-matter of independent claims 1 and 11 extends beyond the content of the earlier application and that the application does not meet the requirements of Article 76(1) EPC.

4. Article 123(2) EPC

The originally filed application documents are substantially identical to the earlier application. Therefore, the application does not meet the requirements of Article 123(2) EPC either.

**Order**

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

The appeal is dismissed.

The Registrar:

The Chair:



K. Götz-Wein

A. Ritzka

Decision electronically authenticated