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**Datasheet for the decision
of 3 November 2021**

Case Number: T 0075/16 - 3.5.04

Application Number: 10195472.5

Publication Number: 2309738

IPC: H04N5/91, H04N5/272, G11B27/034

Language of the proceedings: EN

Title of invention:
Distributed scalable media environment

Applicant:
OPEN TEXT SA ULC

Headword:

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

Keyword:
Inventive step - (no)
Amendment after summons - exceptional circumstances (no)

Decisions cited:

Catchword:



Beschwerdekammern

Boards of Appeal

Chambres de recours

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Case Number: T 0075/16 - 3.5.04

D E C I S I O N
of Technical Board of Appeal 3.5.04
of 3 November 2021

Appellant: OPEN TEXT SA ULC
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Decision under appeal: **Decision of the Examining Division of the
European Patent Office posted on 4 August 2015
refusing European patent application
No. 10195472.5 pursuant to Article 97(2) EPC.**

Composition of the Board:

Chairwoman B. Willems
Members: M. Paci
G. Decker

Summary of Facts and Submissions

- I. The appeal is against the examining division's decision refusing European patent application No. 10 195 472.5, published as EP 2309738 A1.
- II. The documents cited in the decision under appeal included the following:
- D1: EP 0 526 064 A2;
D2: EP 1 513 151 A1;
D3: WO 97/39411 A1;
D4: WO 2004/104773 A2;
D5: US 5 828 370 A.
- III. The decision under appeal was based on the grounds that claims 1 and 9 did not meet the requirements of Article 84 EPC and that their subject-matter lacked inventive step over the combined disclosures of documents D5 and D1 and the common general knowledge of the person skilled in the art (Article 56 EPC).
- IV. The applicant (hereinafter: appellant) filed notice of appeal. With the statement of grounds of appeal, the appellant filed claims of a main request and an auxiliary request, and submitted that the claims of the main request corresponded to the claims that had formed the basis for the decision under appeal.

The appellant requested that the decision under appeal be set aside and that a European patent be granted on the basis of the claims of the main request or, alternatively, on the basis of the claims of the auxiliary request, both requests filed with the statement of grounds of appeal. The appellant indicated

a basis for the claims in the application as filed and provided arguments as to why the claims met the requirements of Articles 56 and 84 EPC.

- V. The board issued a summons to oral proceedings and a communication under Article 15(1) RPBA 2020. In this communication, the board gave the following preliminary opinion.
- a) Claims 1 and 9 of neither request met the requirements of Article 84 EPC.
 - b) The subject-matter of claims 1 and 9 of the main request lacked inventive step over the combined disclosures of documents D5 and D1 and common general knowledge (Article 56 EPC).
 - c) Claims 1 and 9 of the auxiliary request did not meet the requirements of Article 123(2) EPC.
- VI. With a letter of reply dated 17 December 2020, the appellant filed amended claims of a main request and an auxiliary request. It indicated a basis in the application as filed for the amendments and submitted reasons why the claims met the requirements of Articles 56, 84 and 123(2) EPC.
- VII. By letter dated 15 January 2021, the appellant requested that, due to the pandemic situation, the oral proceedings scheduled for 3 and 4 February 2021 be held by videoconference.
- VIII. By communication of the Registry dated 22 January 2021, the oral proceedings were rescheduled to 3 and 4 November 2021.
- IX. By letter dated 12 October 2021, the appellant withdrew its request to hold the oral proceedings by videoconference and informed the board that it intended

to attend the oral proceedings at the EPO Boards of Appeal premises in Haar.

X. The board held oral proceedings on 3 November 2021.

The appellant's final requests were that the decision under appeal be set aside and a European patent be granted on the basis of the claims of the main request or, alternatively, on the basis of the claims of the auxiliary request, both requests filed with the letter dated 17 December 2020.

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

XI. Claim 1 of the appellant's **main request** reads as follows.

"A method of playing back movies in a distributed network (100) environment, comprising:

applying, by a software program executing on a computer at a first location, a predetermined function to each frame of a movie, which comprises frames stored in a linear sequence, to produce a texture strip (720) that is a navigation bar and that has a sequence of frame representations (725) of the frames of the movie, wherein each of the frame representations represents a corresponding frame as a column of the texture strip, is a result of the predetermined function, and corresponds to a temporal position of the corresponding frame relative to an entirety of the movie, wherein the texture strip is produced as a strip, which presents the sequence of frame representations as a sequence of columns, and is provided to a user device at a second location, wherein a positioner (730) and a deep tag marker (735) are displayed over the texture strip (720)

on the user device, wherein the positioner (730) indicates in the texture strip where a currently displayed frame is located relative to entirety of the movie and enables a user to use the texture strip (720) to seek frames in the movie in a random access manner, and wherein the deep tag marker (735) enables the user to use the texture strip (720) to select a segment of the movie and has a left edge and a right edge that are adjustable by the user for selecting the segment;

at the computer at the first location, receiving, via the positioner, a selection of a frame representation in the sequence of frame representations of the texture strip from the user device at the second location, wherein the user device is connected to the computer at the first location over a network connection;

at the computer at the first location, utilizing the selected frame representation in the sequence of frame representations of the texture strip to locate a temporal position of a frame of the movie relative to the entirety of the movie, wherein the frame of the movie corresponds to the selected frame representation in the texture strip provided to the user device at the second location; and

playing, on the user device at the second location, the frame of the movie corresponding to the selected frame representation in the texture strip."

XII. Claim 1 of the appellant's **auxiliary request** reads as follows (additions to claim 1 of the **main request** are underlined, and long identical text portions are replaced by "[...]").

"A method of playing back movies in a distributed network (100) environment, comprising:
[...]

playing, on the user device at the second location, the frame of the movie corresponding to the selected frame representation in the texture strip;

wherein the texture strip is usable for applying at least one special effect to the movie and/or for including at least one advertising movie into the movie, wherein:

if it is determined, by the software program executing on the computer at the first location, that the user wishes to apply at least one special effect on the movie, providing, by the software program executing on the computer at the first location to the user device, an effect editor interface comprising the texture strip and a slider, wherein the slider is displayed over the texture strip on the user device, enables the user to use the texture strip to select frames of the movie, to which the at least one special effect is to be applied, and has a left edge and a right edge that are adjustable by the user for selecting the frames, to which the at least one special effect is to be applied; and/or

if it is determined, by the software program executing on the computer at the first location, that the user wishes to include at least one advertising movie into the movie, providing, by the software program executing on the computer at the first location to the user device, an advertising movie editor interface comprising the texture strip and the slider, wherein the slider is displayed over the texture strip on the user device, enables the user to use the texture strip to include the at least one advertising movie into the movie, and wherein the left edge and the right edge of the slider are adjustable by the user for selecting frames, in which the at least one advertising movie is to be inserted into the movie."

Reasons for the Decision

1. The appeal is admissible.

Main request - admittance into the appeal proceedings

2. In response to the board's objections under Articles 84 and 123(2) EPC raised for the first time in the communication under Article 15(1) RPBA 2020, the appellant filed a new main request aiming at overcoming these objections. The board accepts that this constituted "exceptional circumstances" within the meaning of Article 13(2) RPBA 2020, and admitted the main request into the proceedings.

The invention

3. The invention relates to a method for playing back movies in a distributed network environment in which a server (computer at a first location) and a user device (at a second location) exchange data relating to a graphical user interface (GUI) displayed at the user device in order to enable playback of the movie at the user device from any frame selected by the user. The invention also enables the user to select a segment of the movie.

Main request - interpretation of claim 1

4. For the reasons set out below, the board considers that claim 1 must be interpreted in the following manner.

(1) The method of claim 1 covers both of the following cases: the entire movie is already stored on the user device at the second location before the claimed method

is performed; and the movie is not stored on the user device before the claimed method is performed.

(2) The "*texture strip*" in claim 1 need not be more than just an image.

5. Re (1)

5.1 According to the description, the movie may be uploaded to the "*computer at the first location*" either from the "*user device at a second location*" or from a third location: see page 12, lines 15 and 16, "[a]t step 400 of Fig. 7, transcoder 40 receives the uploaded video, either from the user or from another web site". In other words, prior to the execution of the method of claim 1, the movie may already be stored on the user device and uploaded from there to the server (the "*transcoder*" is part of the server). Alternatively, the movie may **not** be stored on the user device because it is uploaded to the server from a third location ("*another web site*").

The wording of claim 1 is compatible with both cases.

5.2 During the oral proceedings, the appellant agreed that the method of claim 1 should be understood to cover both cases.

6. Re (2)

6.1 Claim 1 essentially states the following about the "*texture strip*".

- It is a "*navigation bar*".
- It is created by the computer at the first location as a linear sequence of columns corresponding to the temporal sequence of the frames in the movie.

- It is provided to the user device at the second location.
- It is displayed at the user device.
- A positioner is displayed over it to enable the user to select any frame of the movie.
- The selection, via the positioner, is sent from the user device to the computer.
- The computer locates the frame selected by the user.
- The frame selected by the user is played at the user device.

6.2 The texture strip is described on page 12, lines 22 to 30 of the description as follows.

*"At step 410, transcoder 40 builds a texture strip representing the movie. Specifically, transcoder 40 applies a function to each frame to generate texture data, and saves the texture data as a video image. For example, the function might be to extract the center 8x8 pixels of each frame and realign into a 64 pixel height column and the texture strip is the sequence of 64 pixel columns. **The texture strip may be saved as a .jpg file.** The texture strip serves to represent the entire movie in a convenient information bar, and is sometimes referred to as a navigation bar. The texture strip is an intuitive way of determining the temporal position of a frame relative to the entirety of a movie. The texture strip often is useful in detecting scene changes, which is important when deciding which frames to group together as a segment."* (emphasis added by the board)

6.3 The board thus notes that neither claim 1 nor the description describes the "texture strip" as being more than just an image.

6.4 The appellant argued that the fact that the texture strip was a "*navigation bar*" implied that it was not just an image, but necessarily included a table in which the columns were numbered so that the column number corresponding to the position of the positioner could be sent to the computer at the first location.

6.5 The board does not share the appellant's view, for the following reasons.

In the board's view, the feature that the texture strip is a "*navigation bar*" merely implies that it is used by the user as a visual representation of the whole movie which, in combination with the positioner, allows the user to visually determine where the current frame is located in the movie and to jump to other frames at other locations in the movie by moving the positioner. In other words, the term "*navigation bar*" as such does not imply that the texture strip is more than just an image, e.g. a table as asserted by the appellant.

The application does not disclose how the user device converts the position of the positioner over the texture strip into data which, when received by the computer at the first location, enables the computer to determine which frame of the movie has been selected by the positioner.

The board disagrees with the appellant that the texture strip must be a table rather than merely an image in order for the user device to be able to create and send such data to the computer. Indeed, even if the texture strip is just an image stored, for instance, as a .jpg file (see point 6.2 above), the user device can easily determine on which column of the texture strip the positioner is positioned: it simply needs to count the

pixels from the left of the texture strip to the column in question and to send the resulting column number to the computer. From that column number, the computer can easily determine the frame selected by the user. For instance, if the positioner is on the 517th pixel column of the image of the texture strip, the 517th frame of the movie is selected. There is thus no necessity for the texture strip to be a table comprising column numbers in addition to the pixels of the texture strip.

7. The following assessment of inventive step is based on the interpretation of claim 1 in point 4 above.

Main request - inventive step (Article 56 EPC)

8. Closest prior art

The appellant has not disputed that document D5 may be regarded as the closest prior art (see appellant's letter dated 17 December 2020, page 8, last paragraph).

9. Disclosure of D5

Document D5 discloses a method of playing back movies in a distributed network environment comprising one or more computers (media servers 50 in figure 1) and one or more user devices (subscriber units 52 in figure 1) connected by a network (40 in figure 1). The media server (50) stores one or more video streams or movies (column 4, lines 20 to 23 and 61). The server creates a slider bar (54), which represents a whole movie, and a knob/cursor (55) over the slider bar which indicates the position of the current frame in the movie (see figure 2; column 4, lines 23 to 26, and column 7, lines 12 to 19 and 58 to 61). The slider bar and the

cursor are sent by the server to the user device, where they are displayed (see column 4, lines 23 to 26). The user may change the position of the cursor on the slider bar in order to jump to another location in the movie (see column 4, lines 58 to 61). The user device determines the position of the cursor relative to the slider bar and sends that information to the server (see column 7, lines 33 to 38). The server then locates and retrieves the frame of the movie corresponding to the new cursor position and sends the frame to the user device (see column 7, lines 38 to 42).

The above disclosure of D5 has not been disputed by the appellant.

10. Distinguishing features

The method of claim 1 differs from that of D5 by the following features.

(a) The "*strip*" has a texture, and this texture is created in a particular manner defined in the "*applying*" step of the method of claim 1.

(b) A "*deep tag marker*" displayed over the texture strip enables the user to use the texture strip to select a segment of the movie and has a left edge and a right edge that are adjustable by the user for selecting the segment.

The appellant agrees that the method of claim 1 differs from that of D5 by the above distinguishing features (see appellant's letter dated 17 December 2020, page 9, fourth paragraph).

11. Objective technical problem

During the oral proceedings, the appellant stated that the objective technical problem was "*how to enable more precise and simplified operating on movie data*".

The board can accept this formulation of the objective technical problem.

12. Obviousness

12.1 Document D1 discloses an operator interface for a video editing system that provides enhanced visualisation and interactive control of video sequences during the editing process (see column 1, lines 3 to 7).

Document D1 thus belongs to the same technical field (video editing) as the invention and document D5, and provides improvements to the user interface of a video editing system. The skilled person would thus have been aware of document D1.

12.2 Re distinguishing feature (a)

12.2.1 Document D1 discloses displaying a video pictorial timeline (10,11) to an operator of a video editing system. The pictorial timeline consists of a sequence of frame representations, each representation corresponding to a temporal position in a video sequence lasting an hour and a half, and being generated by applying a predetermined function to the frames of the video sequences (see figures 1 and 3, column 6, lines 46 to 48 and column 11, lines 20 to 34). When the user's cursor is locked to the cursor associated with the pictorial timeline, moving the

cursor causes the video displayed in a window above the cursor to reflect the cursor position almost instantaneously (see column 8, lines 15 to 22 and 34 to 38), i.e. the cursor (positioner) enables the user to use the timeline to access frames in a random access manner.

12.2.2 The appellant argued that the skilled person would not have wanted to apply any teaching from the timeline of D1 to the slider bar of D5, because the vertical columns of the slider bar of D5 corresponded to playtime values, whereas the vertical columns of the timeline of D1 corresponded to frames.

12.2.3 The board does not find this argument persuasive because, although the slider bar is divided into 101 columns corresponding to playtimes in an example (see D5, column 4, lines 62 to 65), D5 also discloses that the playtime values can be chosen so that they correspond to frames (see column 11, lines 24 to 26).

12.2.4 Document D1 teaches that a textured timeline has advantages over an untextured timeline because it "*provides enough information to visually cue the operator quite effectively*" (see column 6, lines 37 to 45).

The skilled person would therefore have wanted to apply that teaching to the slider bar of D5, thereby arriving at distinguishing feature (a) in an obvious manner.

12.3 Re distinguishing feature (b)

12.3.1 Document D1 discloses that a video segment can be selected by clicking a control button on the mouse while the cursor is on a mark (In box 26) identifying a

starting point and while the cursor is on a mark (Out box 28) identifying an end point (see figure 1 and column 7, lines 2 to 9).

- 12.3.2 Distinguishing feature (b) thus differs from the above feature of D1 in that the "*deep tag marker*" for selecting a segment is displayed over the texture strip, and in that the left and right edges of the deep tag marker are adjustable by the user.
- 12.3.3 The board considers that it would have been an obvious alternative to D1 to adjust the position of the left and right edges of a selected video segment directly on the texture strip instead of clicking on two buttons (26, 28) to achieve the same effect.
- 12.3.4 The appellant argued that distinguishing feature (b) allowed a more precise selection of a frame or segment in an efficient and simplified way than the mechanism of D1 for taking a clip from a video sequence, which is more complicated because more components are used (see appellant's letter dated 17 December 2020, page 12, fifth and sixth paragraphs).
- 12.3.5 The board does not find these arguments persuasive because distinguishing feature (b) does not specify how the user interacts with the deep tag marker; it merely specifies that the marker is displayed and interacted with ("*a left edge and a right edge that are adjustable by the user*"). The appellant's alleged advantages in terms of efficiency and simplicity are based on features which are not present in claim 1.
- 12.3.6 For the above reasons, the skilled person would have arrived at distinguishing feature (b) without an inventive step.

13. Conclusion on inventive step

For the above reasons, the method of claim 1 does not involve an inventive step in view of the disclosures of documents D5 and D1.

14. Conclusion on the main request

Since the subject-matter of claim 1 does not meet the requirements of Article 56 EPC, the appellant's main request is not allowable.

Auxiliary request - admittance into the appeal proceedings

15. According to Article 13(2) RPBA 2020, "*[a]ny amendment to a party's appeal case made ... after notification of a summons to oral proceedings shall, in principle, not be taken into account unless there are exceptional circumstances, which have been justified with cogent reasons by the party concerned*".

The following explanatory remarks are given with respect to Article 13(2) RPBA 2020 in *Rules of Procedure of the Boards of Appeal*, Supplementary publication 2, OJ EPO 2020.

The basic principle of the third level of the convergent approach is that, at this stage of the appeal proceedings, amendments to a party's appeal case are not to be taken into consideration. However, a limited exception is provided for: it requires a party to present compelling reasons which justify clearly why the circumstances leading to the amendment are indeed exceptional in the particular appeal ("*cogent reasons*"). For example, if a party submits that the

board raised an objection for the first time in a communication, it must explain precisely why this objection is new and does not fall under objections previously raised by the board or a party.

16. Claim 1 of the auxiliary request differs from claim 1 of the main request in that a number of features have been added (see the underlined features under point XII above).

These additional features explain how the texture strip can be used for adding special effects or advertisements to the movie.

17. During the oral proceedings, the appellant argued that the exceptional circumstances within the meaning of Article 13(2) RPBA 2020 were that these additional features had been filed in reaction to the objections of lack of clarity (Article 84 EPC) raised in points 4.3 and 4.4 of the board's communication. The additional features further clarified the texture strip by explaining how it could be used.

18. The board is not persuaded by the above arguments, for the following reasons.

In points 4.3 and 4.4 of the board's communication, the board expressed the preliminary opinion that the expression "*texture strip*" did not have a clear meaning and it was not clear how it was generated.

The appellant addressed these objections by amendments to claim 1 **of the main request**. The additional features of claim 1 **of the auxiliary request**, however, do not address the objections raised in points 4.3 and 4.4 of the board's communication, because they do not relate

to how the texture strip is generated, but to how the texture strip may be used for applying special effects to the movie or for inserting ads into the movie.

In the board's view, the additional features of claim 1 of the auxiliary request are thus an attempt to render the claimed subject-matter inventive, rather than an attempt to clarify the wording of the claim. Since, in its communication, the board affirmed the view of the examining division that the claimed subject-matter of claim 1 did not involve an inventive step in view of prior-art documents D5 and D1 and common general knowledge, the claims of the auxiliary request cannot be regarded as a reaction to an objection raised for the first time in the board's communication.

19. For the above reasons, the board considers that there are no exceptional circumstances within the meaning of Article 13(2) RPBA 2020 and therefore did not admit the auxiliary request into the appeal proceedings (Article 13(2) RPBA 2020).

Conclusion

20. Since the appellant's main request is not allowable and its auxiliary request was not admitted into the appeal proceedings, the appeal must be dismissed.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairwoman:



K. Boelicke

B. Willems

Decision electronically authenticated