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

Case Number: T 0326/16 - 3.5.04

Application Number: 10195448.5

Publication Number: 2309737

IPC: H04N5/91, H04N5/272,
G11B27/034, G06F17/30

Language of the proceedings: EN

Title of invention:

Distributed scalable media environment

Applicant:

OPEN TEXT SA ULC

Headword:

Relevant legal provisions:

EPC Art. 84
RPBA 2020 Art. 13(2)

Keyword:

Claims - support in the description (no)
Amendment after summons - exceptional circumstances (no)

Decisions cited:

Catchword:



Beschwerdekammern
Boards of Appeal
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Case Number: T 0326/16 - 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 10 August 2015
refusing European patent application
No. 10195448.5 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. 10 195 448.5, published as EP 2309737 A1.

II. The documents cited in the decision under appeal included the following:

D1: WO 01/10127 A1;
D2: US 2004/0268223 A1;
D3: US 2002/0156829 A1;
D4: US 2002/0069218 A1;
D5: EP 0 526 064 A2.

III. The decision under appeal was based on the grounds that claims 1 and 11 did not meet the requirements of Article 84 EPC and that their subject-matter lacked inventive step over the combined disclosures of documents D4 and D5 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 sole request.

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 sole request 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 11 of the sole request did not meet the requirements of Article 84 EPC.
 - b) Claims 1 and 11 did not meet the requirements of Article 123(2) EPC.
 - c) The subject-matter of claims 1 and 11 did not involve an inventive step in view of the combined disclosures of documents D4 and D5 and common general knowledge (Article 56 EPC).
- VI. With a letter of reply dated 17 December 2020, the appellant filed amended claims of a main request and first and second auxiliary requests. 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 either the first or second auxiliary request, all 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 providing access to a stored movie, comprising:

a computer (10) creating a texture strip (720) that is a navigation bar to represent an original movie, which comprises frames stored in a linear sequence, in entirety, the texture strip containing sequential frame representations (725) of the frames of the movie, each of the frame representations representing a corresponding frame as a column of the texture strip and being a result from a software program executing on the computer applying a predetermined function to a frame in the original movie for creating the frame representation as the column of the texture strip such that the texture strip represents the original movie in entirety as a sequence of columns;

the computer (10) processing the original movie to create a stored movie having a stored format;

the computer (10) receiving an indication from a first user to share a segment of the stored movie, the shared segment being obtained by the first user selecting, from the texture strip (720), frame representations of the stored movie using an adjustable

deep tag marker (735), which is displayed over the texture strip (720) and has an adjustable left edge that is adjustable and a right edge that is adjustable, wherein the shared segment is selected by adjusting the left and right edges of the adjustable deep tag marker by the first user, comprises frames presented by frame representations between the left and right edge in the texture strip (720), and is addressable;

the computer (10) receiving an instruction from the first user to permit access to the shared segment to a second user, wherein the permitting of the access to the shared segment comprises permitting viewing the shared segment by the second user;

the computer (10) providing a permission to the second user to access the shared segment;

the computer (10) receiving a request from the second user to receive the shared segment, the request including address of the shared segment and capability information indicating the presentation capability of the client device;

converting, by the software program executing on the computer, the shared segment from the stored format to an output format based on the capability information included in the request from the second user to create an output segment presentable to the second user via the client device; and

sending the output segment to the second user permitted to access the shared segment of the stored movie."

XII. Claim 11 of the appellant's **main request** reads as follows.

"A method of obtaining access to a stored movie, which comprises frames stored in a linear sequence, the method comprising:

at a client device associated with a second user permitted by a first user to access a shared segment of a stored movie, receiving an address of the shared segment of the stored movie from a computer (10) at a remote location, the address of the shared segment being obtained by the first user selecting, from a texture strip (720) that is a navigation bar, frame representations of the stored movie using an adjustable deep tag marker (735) displayed over the texture strip (720), the texture strip containing sequential frame representations (725), each of the frame representations representing a corresponding frame as a column of the texture strip and being a result from a software program executing on the computer applying a predetermined function to a frame in an original movie, wherein the stored movie is created from the original movie for creating the frame representation as the column of the texture strip such that the texture strip represents the original movie in entirety as a sequence of columns; the stored movie having a stored format;

the client device sending a request to the computer at the remote location to receive the shared segment, the request including the address of the shared segment and capability information indicating the presentation capability of the client device; and

the client device receiving, from the computer at the remote location, the shared segment in an output format presentable on the client device."

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

"A method of providing access to a stored movie, comprising:

[...]

the computer (10) processing the original movie to create a stored movie having a stored format;

if the computer (10) determines that a first user wishes to apply at least one special effect on the stored movie, the computer (10) executes the following:

providing an effect editor interface comprising the texture strip and a slider, wherein the slider is displayed over the texture strip, enables the first user to use the texture strip to select frames of the stored 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 first user for selecting the frames, to which the at least one special effect is to be applied;

receiving a selection of the at least one special effect and receiving a selection of the frames, to which the at least one special effect is to be applied, wherein the selection of the frames, to which the at least one special effect is to be applied, is performed by using the slider;

applying the selected at least one special effect to the selected frames, to which the at least one special effect is to be applied; and

storing an identification of the at least one selected special effect in association with the selected frames to which the at least one special effect has been applied;

if the computer (10) determines that the first user wishes to include at least one advertising movie into the stored movie, the computer (10) executes the following:

providing an advertising movie editor interface comprising the texture strip and the slider, wherein

the slider is displayed over the texture strip, enables the first user to use the texture strip to include the at least one advertising movie into the stored movie, and wherein the left edge and the right edge of the slider are adjustable by the first user for selecting frames, in which the at least one advertising movie is to be inserted into the stored movie;

receiving a selection of the at least one advertising movie and receiving a selection of frames, in which the at least one advertising movie is to be inserted, wherein the selection of the frames, in which the at least one advertising movie is to be inserted, is performed by using the slider; and

inserting the at least one selected advertising movie into the frames, selected for inserting the at least one selected advertising movie;

the computer (10) receiving an indication from a the first user to share a segment of the stored movie, the shared segment being obtained by the first user selecting, from the texture strip (720), frame representations of the stored movie using an adjustable deep tag marker (735), which is displayed over the texture strip (720) and has an adjustable left edge that is adjustable and a right edge that is adjustable, wherein the shared segment is selected by adjusting the left and right edges of the adjustable deep tag marker by the first user, comprises frames presented by frame representations between the left and right edge in the texture strip (720), and is addressable;

[...]

sending the output segment to the second user permitted to access the shared segment of the stored movie."

XIV. Claim 1 of the appellant's **second auxiliary request** reads as follows (additions to claim 1 of the **first**

auxiliary request are underlined, and long identical text portions are replaced by "[...]".

"A method of providing access to a stored movie, comprising:

[...]

sending the output segment to the second user permitted to access the shared segment of the stored movie;

wherein the computer (10) is a transcoder arranged for receiving movies and for generating transcoded movies by processing the received movies, and wherein the stored format is a source proxy format that is convertible to one or more formats for network distribution.

Reasons for the Decision

1. The appeal is admissible.

The invention

2. The invention relates to a method for enabling a first user at a first location to allow a second user at a second location to access a segment of a movie stored on a server at a third location. Independent claim 1 concerns a method of providing access to a stored movie. Independent claim 11 concerns a method of obtaining access to a stored movie.

Main request - admittance into the appeal proceedings

3. 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.

Main request - Article 84 EPC

4. Disclosure according to the description
- 4.1 During the oral proceedings, the appellant asserted that, in order to access a segment of a movie on the server, the second user must provide the address of the segment to the server, the address itself being proof of the permission to access the segment (see, for instance, on page 9, lines 25 to 27, of the description of the application: "*PC 140 is a general purpose personal computer that is able to view transcoded movies by obtaining an address for the movie, or a segment thereof, and providing the address to server 50*"). The board concurred.
- 4.2 A point of dispute, however, is where the second user receives the address of the segment from. The description of the application comprises two disclosures relevant to that point: one on page 9 and the other on page 26.
- 4.3 According to the disclosure on page 9, lines 27 to 29, the address of the segment is **sent by the first user to the second user** by email ("*As an example, a user of PC 110 or a user of phone 130 may upload a movie to movie system 10, edit the uploaded movie, and provide to the user of PC 140, via email, an address of an edited segment that the user of PC 140 is permitted to view*").

This is undisputed by the appellant.

- 4.4 According to the disclosure on page 26, lines 11 to 13, "*the user instructs transcoder 40 when to make the access permissions effective, typically by sending an email to the outside users identifying the segment address, and its short text description*".

In the board's view, this sentence on page 26 is ambiguous because it is grammatically unclear which of the user and the transcoder (which is part of the server) sends the email. The context of the sentence does not permit this ambiguity to be eliminated. In view of the fact that page 9 of the description provides a clear disclosure that the address of the segment is sent by a user, not by a server, the board considers that the person skilled in the art reading the above ambiguous sentence on page 26 would understand it as meaning the same as on page 9, i.e. that the address of the segment is **sent by the first user to the second user**.

- 4.5 The appellant argued that according to the sentence on page 26, the address of the segment is sent by email to the second user ("*the outside users*") by the server ("*transcoder 40*"), not by the user. In support of its view, it submitted that it was well known in the art that a server was capable of sending emails to users.
- 4.6 The board does not dispute that a server was capable of sending emails at the priority date. However, the relevant question is not what the server was potentially capable of, but what is actually disclosed in the description of the application. For the reasons given under point 4.4 above, the board considers that

there is no clear disclosure in the description that the server sends the address of the segment to the second user. In contrast, there is a clear disclosure that a first user sends such an address to the second user. In the board's view, the skilled person would thus understand from the description as a whole that the address of the segment is sent to the second user by a first user, not by the server.

5. Claim 11

5.1 Claim 11 includes the following wording.

"A method of obtaining access to a stored movie, which comprises frames stored in a linear sequence, the method comprising:

at a client device associated with a second user** permitted by a first user to access a shared segment of a stored movie, **receiving an address of the shared segment** of the stored movie **from a computer (10) at a remote location, [...]

*the client device sending a request **to the computer at the remote location** to receive the shared segment, the request including the address of the shared segment and capability information indicating the presentation capability of the client device; and*

*the client device receiving, **from the computer at the remote location**, the shared segment in an output format presentable on the client device".* (emphasis added by the board)

5.2 It is clear from the above wording of claim 11 that the "computer (10) at the remote location" corresponds to the movie system (10) of the description, i.e. to a server which is not the client device associated with the first user. Claim 11 thus states that the client

device associated with the second user receives an address of the shared segment **from the server**. This is not disputed by the appellant.

5.3 The wording of claim 1 is therefore not supported by the description of the application, which, for the reasons given in section 4 above, discloses the fact that the address of the shared segment is sent to the second user **by the first user**.

5.4 For the above reasons, the board considers that claim 11 is not supported by the description, contrary to the requirements of Article 84 EPC.

6. Claim 1

6.1 Claim 1 includes the following wording.

"A method of providing access to a stored movie, comprising:

a computer (10) creating a texture strip [...];

the computer (10) processing the original movie to create a stored movie having a stored format;

the computer (10) receiving an indication from a first user to share a segment of the stored movie, [...];

the computer (10) receiving an instruction from the first user to permit access to the shared segment to a second user, wherein the permitting of the access to the shared segment comprises permitting viewing the shared segment by the second user;

the computer (10) providing a permission to the second user to access the shared segment;

the computer (10) receiving a request from the second user to receive the shared segment, the request including address of the shared segment and capability

information indicating the presentation capability of the client device;

[...]

sending the output segment to the second user permitted to access the shared segment of the stored movie". (emphasis added by the board)

7. According to the above wording of claim 1, the "computer (10)" which creates the texture strip corresponds to the movie system (10) of the description, i.e. to a server which is not the client device associated with the first user. According to claim 1, the computer (10) further provides "a *permission to the second user to access the shared segment*". According to the description, and as acknowledged by the appellant, the permission is the address of the segment (see point 4.1 above). It thus follows that, according to claim 1, the address of the segment is sent to the second user by the server, not by the first user.

- 7.1 Claim 1 is therefore not supported by the description, contrary to the requirements of Article 84 EPC, for essentially the same reasons as for claim 11.

8. Conclusion on the main request

Since claims 1 and 11 do not meet the requirements of Article 84 EPC, the appellant's main request is not allowable.

First auxiliary request - admittance into the appeal proceedings

9. 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.

10. Claim 1 of the first 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 XIII above).

These additional features are method steps relating to the application of at least one special effect on the stored movie and to the inclusion of at least one advertising movie into the stored movie.

11. 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 board had objected that the expression "*texture strip*", and how this texture strip was generated, lacked clarity. The additional features further clarified the texture strip by explaining how it could be used.

12. 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 that the step(s) for generating that strip were not clearly defined.

The appellant addressed these objections by amendments to claim 1 **of the main request**. The additional features of claim 1 **of the first 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 the texture strip itself or to how it 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 first 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 agreed with the examining division that the claimed subject-matter of claim 1 did not involve an inventive step in view of prior-art documents D4 and D5 and common general

knowledge, the claims of the first auxiliary request cannot be regarded as a reaction to an objection raised for the first time in the board's communication.

13. 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 first auxiliary request into the appeal proceedings (Article 13(2) RPBA 2020).

Second auxiliary request - admittance into the appeal proceedings

14. Claim 1 of the second auxiliary request differs from claim 1 of the first auxiliary request in that it comprises the following additional features.

"wherein the computer (10) is a transcoder arranged for receiving movies and for generating transcoded movies by processing the received movies, and wherein the stored format is a source proxy format that is convertible to one or more formats for network distribution".

15. In the board's view, the above additional features are an attempt to render the claimed subject-matter inventive. They do not address objections raised for the first time in the board's communication. Moreover, the reasons given above regarding the first auxiliary request also apply to the second auxiliary request.
16. 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 second auxiliary request into the appeal proceedings (Article 13(2) RPBA 2020).

Conclusion

17. Since the appellant's main request is not allowable and its first and second auxiliary requests were 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