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**Datasheet for the decision
of 21 January 2021**

Case Number: T 0677/16 - 3.5.04

Application Number: 05705512.1

Publication Number: 1714485

IPC: H04N7/167, H04K1/00, H04L9/00,
G06F12/14

Language of the proceedings: EN

Title of invention:
TRANSCODING CABLECARD

Applicant:
Sony Corporation
Sony Electronics, Inc.

Headword:

Relevant legal provisions:
EPC 1973 Art. 56
RPBA 2020 Art. 13(2)

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

Decisions cited:

Catchword:



Beschwerdekammern
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 0677/16 - 3.5.04

D E C I S I O N
of Technical Board of Appeal 3.5.04
of 21 January 2021

Appellant: Sony Corporation
(Applicant 1) 1-7-1 Konan
Minato-ku
Tokyo 108-0075 (JP)

Appellant: Sony Electronics, Inc.
(Applicant 2) 1 Sony Drive
Park Ridge, NJ 07656 (US)

Representative: D Young & Co LLP
120 Holborn
London EC1N 2DY (GB)

Decision under appeal: **Decision of the Examining Division of the
European Patent Office posted on 26 November
2015 refusing European patent application
No. 05705512.1 pursuant to Article 97(2) EPC.**

Composition of the Board:

Chairwoman B. Willems
Members: A. Seeger
G. Decker

Summary of Facts and Submissions

- I. The appeal is against the decision of the examining division to refuse European patent application No. 05 705 512.1, published as international patent application WO 2005/082121 A2.
- II. The documents cited in the decision under appeal included the following:
- D1: US 2002/0163911 A1
- D2: The ExpressCard™ Standard - The Next Generation PC Card Technology, XP002339816, October 2003 [retrieved on 2005-08-09]. Retrieved from <http://www.expresscard.org/files/ExpressCardWP.pdf>
- III. The application was refused on the grounds that claims 1 and 8 of the main request and the auxiliary request did not meet the requirements of Article 56 EPC, and claims 1 and 8 of the auxiliary request did not meet the requirements of Article 84 EPC.
- IV. The applicants (hereinafter: appellants) filed notice of appeal. With the statement of grounds of appeal, the appellants maintained the main request and the auxiliary request on which the decision under appeal was based. They 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.

V. The board issued a summons to oral proceedings. In a communication under Article 15(1) RPBA 2020 annexed to the summons, the board expressed the preliminary opinion that:

(a) The subject-matter of claims 1 and 8 of the main request and the auxiliary request did not meet the requirements of Article 56 EPC 1973.

(b) Claims 6 and 13 of the main request and the auxiliary request did not meet the requirements of Article 84 EPC 1973.

VI. By letter dated 23 November 2020, the appellants requested that the oral proceedings be held by videoconference.

VII. By letter dated 25 November 2020, the appellants filed amended claims according to a first and a second auxiliary request. The appellants submitted that the first auxiliary request replaced the first auxiliary request on which the decision was based.

VIII. Oral proceedings by videoconference were held before the board on 21 January 2021.

The appellants' 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 which had formed the basis for the decision under appeal, or, alternatively, on the basis of the first or second auxiliary request filed with the letter dated 25 November 2020.

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

IX. Claim 1 of the main request and the first auxiliary request reads as follows:

"A method carried out in a conditional access module of manipulating a stream of video data, comprising:

receiving at the conditional access module a stream of video data from a host, the stream of video data being encoded according to a first coding;

transcoding in the conditional access module the stream of video data to convert the stream of video data to a second coding, producing a transcoded data stream; and

sending from the conditional access module the transcoded data stream back to the host."

X. Claim 1 of the second auxiliary request reads as follows (amendments relative to claim 1 of the main request are underlined):

"A method carried out in a conditional access module of manipulating a stream of video data, comprising:

receiving at the conditional access module a stream of video data from a host, the stream of video data being encoded according to a first coding, wherein the stream of video data includes encrypted video data;

decrypting in the conditional access module the encrypted video data using a conditional access decrypter (26);

transcoding in the conditional access module the stream of video data to convert the stream of video data to a second coding, producing a transcoded data stream;

encrypting in the conditional access module the transcoded data stream using a copy protection encrypter (28); and

sending from the conditional access module the transcoded data stream back to the host."

XI. The appellants' arguments, relevant to the present decision, may be summarised as follows.

Main request and first auxiliary request

(a) It was implicit that the "*conditional access module*" of claim 1 allowed the host to access the video data in the clear if a corresponding key was available. In contrast, the decrypter shown in Figure 3 of document D1 only allowed the transcoder to access the data in the clear. Once the data had been transcoded it was re-encrypted. Thus, from the viewpoint of the host, the data still appeared encrypted. The concatenation of modules shown in Figure 3 of D1 did not alter the accessibility to the data: either the host could access the data because the corresponding key was available, or the host was barred from accessing the data. Hence, the modules shown in Figure 3 of D1 did not allow a host to access the data in the clear. Therefore, the person skilled in the art would not have considered the module carrying out the series of decryption, decoding, coding and re-encryption operations shown in Figure 3 of D1 to be a "*conditional access module*".

(b) Document D1, paragraph [0004], disclosed that the transcoding was carried out at intermediate network nodes. Document D1 only addressed the processing

shown in Figure 3 in a rudimentary manner. Therefore, it did not disclose whether the processing shown in Figure 3 could be carried out at a client device.

Second auxiliary request

(c) The feature "*encrypting ... using a copy protection encrypter (28)*" of claim 1 specified the purpose of the encryption, i.e. copy protection. This differed from encryption with the purpose of regulating conditional access. The different purposes implied the use of different encryption methods.

Reasons for the Decision

1. The appeal is admissible.
2. Main request and first auxiliary request - inventive step (Article 56 EPC 1973)
 - 2.1 According to Article 56 EPC 1973, "*[a]n invention shall be considered as involving an inventive step if, having regard to the state of the art, it is not obvious to a person skilled in the art*". It is established case law that the "problem and solution approach" is an appropriate tool for assessing whether claimed subject-matter fulfils the requirements of Article 56 EPC 1973 (see Case Law of the Boards of Appeal of the European Patent Office, 9th edition 2019, I.D.2).
 - 2.2 It is common ground that document D1 may be considered the closest prior art for the assessment of inventive step of the subject-matter of claim 1.

- 2.3 Document D1 discloses that to transcode a stream of encoded video data, the video data is decrypted, decoded, encoded and re-encrypted (see D1, paragraphs [0004] to [0011] and Figure 3).
- 2.4 Document D1 does not disclose that the series of decryption, decoding, encoding and re-encryption operations is carried out in a conditional access module receiving data from a host and sending the transcoded data back to the host (see also point XI(a) above).
- 2.5 Hence, the objective technical problem may be formulated as how to implement the concatenation of means for decrypting, decoding, encoding and re-encrypting the video data.
- 2.6 In view of the modular structure shown in D1, Figure 3, the person skilled in the art would have, using common general knowledge, implemented all the elements shown in Figure 3 as one module, this module being part of the host or connected to it.

This module would decrypt the encoded video data and thus grant access to the decrypted encoded video data if a corresponding key was available. Thus, this module is a conditional access module. The board is not convinced that the wording of claim 1 of the main request and the first auxiliary request implies that conditional access is necessarily to be seen from the point of view of the host device. Therefore, the board does not share the appellants' view that the claimed subject-matter differs from the disclosure of D1 in that the former grants access to the host whereas the latter only grants access to the decoder and encoder (see point XI(a) above).

2.7 A module comprising the elements of Figure 3 of D1 receives a stream of encrypted encoded video data from a node, decrypts the data, decodes the data, encodes the data, re-encrypts the data and sends a stream of the transcoded (and encrypted) video data back to the node.

Irrespective of whether this node is an intermediate node or a client device (see point XI(b) above), the module sends the data back to the same node from which it received the data.

2.8 Hence, the person skilled in the art would have arrived at the subject-matter of claim 1 of the main request and the first auxiliary request in a straightforward manner.

2.9 In view of the above, the subject-matter of claim 1 of the main request and the first auxiliary request does not meet the requirements of Article 56 EPC 1973.

3. Second auxiliary request - admittance
(Article 13(2) RPBA 2020)

The board raised an inventive-step objection for the first time in the communication accompanying the summons to oral proceedings. In response to this communication, the appellants filed a second auxiliary request aimed at overcoming this new objection. This represents an exceptional circumstance within the meaning of Article 13(2) RPBA 2020. Exercising its discretion under this provision, the board thus decided to admit the second auxiliary request into the proceedings.

4. Second auxiliary request - inventive step
(Article 56 EPC 1973)
- 4.1 In comparison with claim 1 of the main request, claim 1 of the second auxiliary request further specifies that:
 - (a) The stream of video data includes encrypted video data which is decrypted in the conditional access module using a conditional access decrypter before being transcoded and re-encrypted.
 - (b) The re-encryption is carried out "*using a copy protection encrypter (28)*".
- 4.2 In its assessment of inventive step set out in points 2.3 to 2.7, the board referred to both the decryption of encrypted video data allowing access under the condition that a corresponding key was available and the re-encryption of the data. Thus, document D1 discloses the concatenation of decrypting (under the condition that a corresponding key is available), decoding, encoding and re-encrypting data.
- 4.3 The subject-matter of claim 1 of the second auxiliary request differs from the disclosure of document D1 by specifying that the re-encryption is carried out "*using a copy protection encrypter (28)*".

However, the board is not convinced that the different purposes of the encryption, namely copy protection or regulation of conditional access, imply any technical differences in the encryption (see point XI(c) above). The purpose is a label which does not prescribe a particular technical implementation. This is corroborated by the fact that the description does not disclose any specific technical details of the copy

protection encrypter (see page 4, first paragraph: "... the data stream is re-encrypted by a CP (Copy Protection) encrypter"; the paragraph bridging pages 6 and 7: "The transcoded data are then encrypted at 92 for copy protection ..."; and page 7, second full paragraph: "... and then copy protecting the data by encrypting the decrypted data").

- 4.4 Therefore, the technical features distinguishing the subject-matter of claim 1 of the second auxiliary request from the disclosure of document D1 are the same as those of claim 1 according to the main request and the first auxiliary request.
- 4.5 In view of the above, the subject-matter of claim 1 of the second auxiliary request does not meet the requirements of Article 56 EPC 1973 for the same reasons as set out for the main request and the first auxiliary request (see section 2 above).
5. Since none of the appellants' requests is allowable, the appeal is to be dismissed.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chair:



K. Boelicke

B. Willems

Decision electronically authenticated