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Datasheet for the decision of 14 April 2021

Case Number: T 1182/16 - 3.5.04

Application Number: 10769105.7

Publication Number: 2481219

IPC: H04N21/442, H04H60/65

Language of the proceedings: EN

Title of invention:
SYSTEMS AND METHODS FOR AUTOMATICALLY DETECTING USERS WITHIN DETECTION REGIONS OF MEDIA DEVICES

Patent Proprietor:
Rovi Guides, Inc.

Former Opponent:
Virgin Media Limited

Headword:

Relevant legal provisions:
EPC Art. 100(a), 56, 100(c), 123(2)

Keyword:
Inventive step - (yes)
added subject-matter - (no)

Decisions cited:

Catchword:

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Beschwerdekammern

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Case Number: T 1182/16 - 3.5.04

D E C I S I O N
of Technical Board of Appeal 3.5.04
of 14 April 2021

Appellant: (Patent Proprietor)	Rovi Guides, Inc. 2160 Gold Street San Jose, CA 95002 (US)
Representative:	Haley Guiliano International LLP 26-28 Bedford Row London WC1R 4HE (GB)
Decision under appeal:	**Decision of the Opposition Division of the European Patent Office posted on 11 March 2016 revoking European patent No. 2481219 pursuant to Article 101(3)(b) EPC.**

Composition of the Board:

Chairman	G. Decker
Members:	M. Paci
	A. Seeger

Summary of Facts and Submissions

I. The appeal was filed by the appellant (patent proprietor) against the decision of the opposition division to revoke the patent in suit ("the patent").

II. During the opposition proceedings, the opponent had raised the grounds for opposition under Article 100(a) EPC (novelty and inventive step), 100(b) EPC (insufficiency of disclosure) and 100(c) EPC (added subject-matter).

III. The following documents are relevant for the present decision:

D1: US 2007/0033607 A1
D2: WO 2009/067670 A1
D10: US 2009/0052859 A1

IV. The opposition division revoked the patent according to Article 101(3)(b) EPC for the following reasons:

Main request

- The subject-matter of dependent claims 2 to 6 and 8 to 15 of the main request was not directly and unambiguously derivable from the application as filed (Articles 100(c) and 123(2) EPC).

- The subject-matter of claims 1 and 7 of the main request was not new over the disclosure of document D10 (Articles 100(a), 52(1), and 54(1) and (2) EPC).

- The subject-matter of claims 1 and 7 of the main request lacked inventive step in view of documents D1 and D10, and also in view of document D2 and common general knowledge (Articles 100(a), 52(1) and 56 EPC).

Auxiliary request

- The auxiliary request was late filed. It was not admitted into the opposition proceedings (Rule 116 EPC) because the subject-matter of claim 1 of the auxiliary request was *prima facie* not directly and unambiguously derivable from the application as filed and did not *prima facie* overcome the objections with regard to patentability.

V. With the statement of grounds of appeal, the appellant filed claims according to a main request and two auxiliary requests.

VI. By letter dated 9 November 2017, the respondent (opponent) withdrew its opposition.

VII. With a letter dated 26 May 2020, the appellant re-filed the claims of the main request filed with the statement of grounds of appeal. It also filed claims according to five new auxiliary requests.

VIII. The board issued summons to oral proceedings and a communication under Article 15(1) RPBA 2020.

IX. Oral proceedings were held by videoconference on 14 April 2021.

X. The appellant's final request was that the decision under appeal be set aside and that the patent be

maintained in amended form on the basis of the following documents:

- description: columns 1 to 54 of the patent specification
- claims: No. 1 to 15 according to the main request filed with the statement of grounds of appeal
- drawings: Figures 1 to 20 of the patent specification

XI. Claim 1 of the appellant's sole request reads as follows:

"*A method for detecting users within a detectable range of a media device operable to detect a user within a first detectable range relative to the media device, the method comprising:*

providing the media device having a detection mechanism, wherein the detection mechanism is operable to detect a user within the first detectable range relative to the media device;

defining a first detection region associated with a first user, wherein the first detection region is within the first detectable range, and wherein the first detection region is smaller than the first detectable range;

storing parameters of the first detection region;

determining whether the first user is within the first detectable range and the first detection region;

activating the media device upon determining that the first user is within the first detection region;

applying first settings that are associated with the first user on the media device when the first user is within the first detection region;

transmitting a first media content based on the first settings;

stopping the application of the first settings on the media device when the first user is outside of the first detection region and within the first detectable range;

storing a second detection region associated with a second user, wherein the second detection region is within the first detectable range, and wherein the second detection region is different from the first detection region;

determining whether the second user is within both the first detectable range and the second detection region; and

applying second settings that are associated with the second user on the media device when the second user is within the second detection region."

Reasons for the Decision

1. The appeal is admissible.

Admittance of the sole request into the proceedings

2. The claims of the sole request are identical to those of the main request underlying the decision under appeal, except for the correction of an obvious clerical error ("*a first detectable range*" corrected to "*the first detectable range*" in claim 7).

The board therefore saw no reason not to admit the claims of the sole request into the appeal proceedings under Article 12(4) RPBA 2007.

Novelty over document D10 (Articles 100(a), 52(1), and 54(1) and (2) EPC)

3. The opposition division based its objection of lack of novelty on an interpretation of claim 1 of the main request according to which the term "*user*" could be an individual user or a group of users and the phrases "*first user*" and "*second user*" could refer to the same user in a different context. The former respondent concurred with the opposition division (see former respondent's letter of 5 April 2016, point 3.1).

4. The board shares the appellant's view that it is clear from the wording of the claim and from the description that the terms "*first user*" and "*second user*" do not refer to the same user (see statement of grounds of appeal, paragraph bridging pages 6 and 7). Therefore, the board concurs with the appellant that document D10 does not disclose to apply second settings functionally associated with the presence of a second user in a second detection region (see the appellant's letter dated 26 May 2020, page 7, penultimate paragraph).

5. In view of the above, the board comes to the conclusion that the subject-matter of claim 1 is new over the disclosure of document D10. The same conclusion applies to the subject-matter of claim 7 and the dependent claims.

Inventive step (Articles 100(a), 52(1) and 56 EPC)

6. Obviousness starting from document D2

6.1 The board concurs with the appellant that document D2, and more specifically the "dance floor" embodiment of Figure 15, represents **the closest prior art**.

6.2 Document D2 discloses a method for detecting users within a detectable range of a media device operable to detect a user within a first detectable range relative to the media device, the method comprising:

- providing the media device having a detection mechanism, wherein the detection mechanism is operable to detect a user within a detectable range relative to the media device (see paragraph [0178]: "*The processor 205 detects a user entering an area proximate to an electronic media device based on one or more images (1610). For instance, the processor 205 may continuously or periodically monitor images of an area proximate to the electronic media device to detect motion or changes to a background model. The processor 205 may analyze images of the area proximate to the electronic media device to detect users when the electronic media is operating and also when the electronic media device is in an off state. The processor 205 may detect a user based on one or more images using techniques similar to those described above with respect to numeral 520 shown in FIG. 5*");

defining a detection region associated with a first user, wherein the detection region is within the detectable range, and wherein the detection region is smaller than the detectable range (see paragraph [0169] "*As shown, four users 1510, 1520, 1530, and 1540 are present in the room with the music player 1550 (e.g., the four users 1510, 1520, 1530, and 1540 may be attending a party)*" and paragraph [0175]: "*In some implementations, the system 1500 may determine the combined media preferences based on position of users within the room. For example, a center of the room may be a dance floor and combined media preferences may be*

generated based on preferences of those users positioned on the dance floor");

storing parameters of the detection region (it is implicit that the parameters defining the confines of the dance floor are stored);

determining whether the first user is within the detectable range and the detection region (see paragraph [0175]);

applying first settings that are associated with the first user on the media device when the first user is within the detection region and stopping the application of the first settings on the media device when the first user is outside of the detection region (see paragraphs [0175] and [0176]: "*In this example, as shown, the system 1500 may analyze the positions of users in the room and determine that the users 1510 and 1520 are on the dance floor. The system 1500 than [sic] may generate a dancer play list 1554 to reflect the media preferences of the users 1510 and 1520 detected as being on the dance floor [...] The dancer play list 1554 may be dynamically updated (e.g., continuously or periodically) as users enter and exit the position of the room corresponding to the dance floor.*");

determining whether a second user is within both the detectable range and the detection region and applying second settings that are associated with the second user on the media device when the second user is within the detection region (see paragraphs [0175] and [0176]).

6.3 The board concurs with the appellant that the subject-matter of claim 1 **differs** from document D2 by the following features:

(a) activating the media device upon determining that the first user is within the first detection region
(b) storing a second detection region associated with a second user, wherein the second detection region is within the first detectable range, and wherein the second detection region is different from the first detection region
(c) applying second settings that are associated with the second user on the media device when the second user is within the second detection region

6.4 The opposition division held distinguishing feature (a) above to be disclosed in paragraph [0180] of D2. The board, however, concurs with the appellant that paragraph [0180] refers to embodiments other than the "dance floor" embodiment of Figure 15 which is the closest prior art.

6.5 The appellant submitted that **the objective technical problem** of the distinguishing features, in particular of distinguishing features (b) and (c), was "*to improve the provision of content by a media device by interpreting the preferences of users more accurately*".

6.6 The board is satisfied with the appellant's formulation of the objective technical problem because distinguishing features (b) and (c) enable an interpretation of user preferences based not only on the detection of users as in D2 but also on user-specific detection regions.

6.7 The opposition division considered that the area outside the dance floor in Figure 15 of D2 was a second detection region and that it would have been an obvious possibility for a skilled person to also associate this area with each user and to consider the settings of the users in the second area with a weighting factor to prioritise the user on the dance floor (see point 8.2 of the reasons of the impugned decision). The opposition division thus concluded that the subject-matter of claim 1 was obvious in view of D2 and common general knowledge.

6.8 The appellant argued, *inter alia*, that the opposition division's reasoning was based on hindsight and that, in any case, it did not arrive at first and second detection regions associated with first and second users, respectively, as in claim 1. This remained true if, instead of common general knowledge, the teaching of D10 was applied to D2 because the three detections areas disclosed in D10 were not user-specific (see paragraph [0046]).

6.9 The board holds that it is the core teaching of the dance floor embodiment that there is only a single region in which a particular music can be played. Thus, this music has to be determined as a compromise of the music taste of the persons in this region. The persons leaving the region are no longer considered (see D2, paragraphs [0175] and [0176]). Hence, the board agrees with the appellant that the skilled person would not have arrived at distinguishing features (b) and (c) of claim 1, which are method steps concerning a second detection region, neither from common general knowledge nor from paragraph [0046] of D10. The same conclusion applies to the subject-matter of claim 7 and the dependent claims.

7. Obviousness in view of documents D1 and D10

7.1 The board concurs with the appellant that D1 only discusses detecting multiple users within a single detection region. While D1 may disclose that the program viewing area may be modified to accommodate a super-user who is a child, no hint or suggestion is provided to use a first detection region and a second detection region for a first user and a second user. Instead, in D1, one single detection region is used, and the program preference displayed depends on who is in that one detection region.

7.2 Since neither D1 nor D10 suggests user-specific detection regions, the skilled person would not have arrived in an obvious manner at distinguishing features (b) and (c) above. Hence, the subject-matter of claim 1 is not rendered obvious by D1 and D10. The same conclusion applies to the subject-matter of claim 7 and the dependent claims.

Added subject-matter (Articles 100(c) and 123(2) EPC)

8. The opposition division held that the dependent claims according to the present main request did not meet the requirements of Article 100(c) and 123(2) EPC (see point 4.3 of the reasons of the impugned decision) for the following reasons.

Present claim 1 was a combination of original claims 1, 22 and 23, and claim 7 was a combination of original claims 24, 45 and 46. Since present dependent claims 2 to 6 and 8 to 15 were not originally dependent on claim 23 or 46, the present combination of claim 1 with any of claims 2 to 6 and claim 7 with any of claims 8 to 15

was not originally disclosed. The description and figures of the application as filed did not disclose the combination of features of the present dependent claims either.

9. The board notes that the following features of present claim 1 were disclosed in original dependent claims 22 and 23 but not in any other claim dependent on original claim 1 and not in the original description and figures either: a second detection region different from the first detection region is associated with a second user, and second settings associated with the second user are applied when the second user is within the second detection region.

Most of many embodiments disclosed in the description of the application as filed refer to only one detection region. None mentions a second detection region of a media device associated with a second user. However, as pointed out by the appellant, several passages of the original description use the expression "*detection region*" in the plural form in relation to a single media device. The appellant referred, *inter alia,* to paragraphs [0006] and [0097] of the application as filed. Paragraph [0097] in particular uses the plural form "*detection regions*" three times, which shows that it is not due to a clerical error.

In light of original dependent claims 22 and 23 and paragraph [0097] of the application as filed, the board considers that it would have been clear to the skilled person reading the application as filed that all embodiments describing a single detection region had to be understood as extendable to a second detection region associated with a second user, provided that it made technical sense.

10. For the above reasons, the board considers that the present dependent claims 2 to 6 and 8 to 15 meet the requirements of Articles 100(c) and 123(2) EPC.

Conclusion

11. In view of the above, the board is satisfied that, taking into consideration the amendments made by the appellant during the opposition proceedings, the patent and the invention to which it relates meet the requirements of the EPC (Article 101(3)(a) EPC).

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.

2. The case is remitted to the opposition division with the order to maintain the patent as amended in the following version:

Description:
Columns 1 to 54 of the patent specification

Claims:
No. 1 to 15 according to the main request filed with the statement of grounds of appeal

Drawings:
Figures 1 to 20 of the patent specification

The Registrar: The Chairman:

K. Boelicke G. Decker

Decision electronically authenticated