

Internal distribution code:

- (A) [-] Publication in OJ
- (B) [-] To Chairmen and Members
- (C) [-] To Chairmen
- (D) [X] No distribution

**Datasheet for the decision
of 2 December 2020**

Case Number: T 2046/16 - 3.5.04

Application Number: 09173259.4

Publication Number: 2187637

IPC: H04N7/173

Language of the proceedings: EN

Title of invention:

Method and apparatus for creating and using video playlists
within a network

Applicant:

Comcast Cable Communications, LLC

Headword:

Relevant legal provisions:

EPC Art. 84

Keyword:

Claims - clarity - main and auxiliary request (no)

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 2046/16 - 3.5.04

D E C I S I O N
of Technical Board of Appeal 3.5.04
of 2 December 2020

Appellant: Comcast Cable Communications, LLC
(Applicant) One Comcast Center
Philadelphia, PA 19103 (US)

Representative: Jaeger, Michael David
Withers & Rogers LLP
4 More London Riverside
London SE1 2AU (GB)

Decision under appeal: Decision of the Examining Division of the
European Patent Office posted on
16 February 2016 refusing European patent
application No. 09173259.4 pursuant to
Article 97(2) EPC.

Composition of the Board:

Chairman M. Paci
Members: B. Willems
B. Müller

Summary of Facts and Submissions

- I. The appeal is against the decision of the examining division dated 16 February 2016 refusing European patent application No. 09 173 259.4, which was published as EP 2 187 637 A2.
- II. The documents cited in the decision under appeal included the following:
- D1: US 7 281 034 B1;
- D5: US 5 996 015 A.
- III. The decision under appeal was based on the following grounds:
- Claim 1 of the then main request did not meet the requirements of Article 84 EPC.
 - The subject-matter of claim 1 of the then first auxiliary request extended beyond the disclosure of the application as filed (Article 123(2) EPC).
 - The subject-matter of claims 1, 9, 11, 13 and 15 of the then main request and the then first auxiliary request lacked inventive step over the disclosure of D1 (Article 56 EPC).
 - The subject-matter of claims 1, 9, 11, 13 and 15 of the second auxiliary request lacked inventive step over the combined disclosures of D1 and D5 (Article 56 EPC).

IV. The applicant (hereinafter: appellant) filed notice of appeal. With the statement of grounds of appeal, the appellant submitted claims according to a main request and an auxiliary request. It submitted that the claims of the main request corresponded to the claims of the second auxiliary request underlying the decision under appeal. It requested that "*section 'III. Auxiliary Request 2' of the decision of the Examining Division dated 16 February 2016 be set aside*" and that a European patent be granted on the basis of the claims according to the main request or the auxiliary request submitted with the statement of grounds of appeal. The appellant indicated a basis in the application as filed for the claims of the auxiliary request and provided arguments as to why the claims of both requests met the requirements of Article 56 EPC.

V. The board issued a summons to oral proceedings. In a communication under Article 15(1) RPBA 2020 (Rules of Procedure of the Boards of Appeal, OJ 2019, A63), annexed to the summons, the board introduced the following document into the appeal proceedings:

D6: WO 2007/056532 A1.

The board gave the following preliminary opinion:

- Claim 1 of neither the main request nor the auxiliary request met the requirements of Article 84 EPC.
- The subject-matter of claim 1 of neither request met the requirements of Article 56 EPC.

VI. With its reply dated 5 October 2020, the appellant filed amended claims of a main request to replace the

main request on file. It indicated a basis for the amendments in the application as filed and submitted arguments as to why the amended claims met the requirements of Articles 54, 56 and 84 EPC. The appellant announced that it would not be attending the oral proceedings scheduled for 5 November 2020. It requested that the decision under appeal be set aside and a European patent be granted on the basis of the claims of the main request filed by letter dated 5 October 2020 or, alternatively, the claims of the auxiliary request filed with the statement of grounds of appeal.

VII. By letter dated 20 October 2020, the registry of the board informed the appellant that the oral proceedings had been cancelled.

VIII. Claim 1 of the main request reads as follows:

"A method of sharing video playlists in a network amongst a plurality of users of the network, the method comprising the steps of:

storing, at a node of the network, a playlist comprising a plurality of pointers to memory locations for a plurality of video segments, the plurality of pointers comprising a pointer to a memory location storing a first video segment uploaded from a user of the network, a pointer to a memory location storing a second video segment from video on-demand, and a pointer to a memory location reserved for a third video segment that will be available in the future;

permitting users of the network to select the playlist;

responsive to determining that the third video segment has been broadcasted, storing the third video segment at the memory location reserved for the third video segment;

responsive to receiving a selection of the playlist by a requesting user:

retrieving, using the plurality of pointers, the first video segment, the second video segment, and the third video segment;

assembling, into a single video file, the first video segment, the second video segment, and the third video segment; and

transmitting the single video to the requesting user."

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

"A method of sharing video playlists in a network amongst a plurality of users of the network, the method comprising the steps of:

storing, at a node of the network, a playlist comprising a plurality of pointers to memory locations for a plurality of video segments, the plurality of pointers comprising a pointer to a memory location storing a video segment uploaded from a user of the network, a pointer to a memory location storing a video segment from video on-demand;

permitting users of the network to select the playlist; and

responsive to receiving a selection of the playlist by a requesting user:

retrieving, using the plurality of pointers, the video segment uploaded from the user of the network, the video segment from video on-demand;

assembling, into a unit, the video segment uploaded from the user of the network, the video segment from video on-demand; and

transmitting the unit to the requesting user,

wherein the unit is a single video file, and the assembling step is performed at the network node."

X. The appellant's arguments, where relevant to the present decision, may be summarised as follows.

Functional features defining a technical result in a claim met the requirements of Article 84 EPC "*(i) if, from an objective viewpoint, such features could not otherwise be defined more precisely without restricting the scope of the invention, and (ii) if these features provided instructions which were sufficiently clear for the expert to reduce them to practice without undue burden, if necessary with reasonable experiments*" (see Case Law of the Boards of Appeal of the European Patent Office, 9th edition 2019 ("Case Law"), II.A.3.4; T 1048/10 and T 68/85).

It would be clear to the person skilled in the art that "*assembling*" multiple video segments "*into a single video file*" meant that video segments were combined into a single video file by any known video combining technique, regardless of the format of the video segments. Reciting a specific technique to assemble the

multiple video segments into a single video file would unduly narrow the scope of the invention.

Reasons for the Decision

1. The appeal is admissible.
2. *Main request and auxiliary request - clarity (Article 84 EPC)*
 - 2.1 Claims must be clear in themselves when read by the person skilled in the art, without any reference to the content of the description. The meaning of the essential features should be clear for the person skilled in the art from the wording of the claim alone (see Case Law, II.A.3.1).
 - 2.2 Claim 1 of the main request specifies "*a playlist comprising a plurality of pointers to memory locations for a plurality of video segments ... assembling, into a single video file, the first video segment, the second video segment, and the third video segment; and transmitting the single video to the requesting user*".

Claim 1 of the auxiliary request specifies a "*playlist comprising a plurality of pointers to memory locations for a plurality of video segments ... [and] assembling, into a unit, the video segment uploaded from the user of the network and the video segment from video on-demand ... wherein the unit is a single video file*".
 - 2.3 It is essential to the claimed invention that video segments are "*assembled*" into a single video file. The board is not convinced that it is clear to the person skilled in the art how to "*assemble*" or "*combine*" multiple video segments "*into a single video*

file", regardless of the format of the video segments, and that from an objective viewpoint the processing of the segments could not be defined more precisely without unduly narrowing the scope of the invention (see point X above).

- 2.3.1 Claim 1 does not specify the input format of the segments or how the segments are "assembled".
- 2.3.2 According to the Oxford English Dictionary, Second Edition on CD-ROM, 2009, "to assemble" means to put together separate parts (see example: "Assemble, to carry out the first process in film editing, namely to collect together the required shots and join them in provisional order").
- 2.3.3 The segments result from different sources (uploaded, video-on-demand, stored after broadcast) and may be stored on different servers.

Video segments are normally spliced to form one video stream. It is not apparent from the claim whether the segments are spliced and the resulting stream stored in a file format, or whether the segment files are merged in another manner.

According to the paragraph bridging pages 11 and 12 of the description, "the playlist content actually may be assembled into a single video segment". This suggests that segments are spliced, which, depending on the formats of the segments, requires complex format conversion of the segments and complex processing at the splice points.

The paragraph of the description referred to above also specifies that the "headend assembles playlist contents

into a single file and delivers it to subscriber as a single video segment". It is not clear from either the claims or the description whether the segments are uploaded and stored in a common file format or different file formats. If the segments are stored in different formats, they cannot be merged without previous format conversion. Hence, the verb "*to assemble*" would not only refer to combining files but also any necessary, not further specified, processing preceding the combining. Moreover, converting each of the segments into a common file format and simply merging the files does not result in a file with a single continuous video segment.

- 2.4 In view of the above, claim 1 of neither request meets the requirements of Article 84 EPC.

3. Since neither of the appellant's requests is allowable, the appeal is to be dismissed.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:



K. Boelicke

M. Paci

Decision electronically authenticated