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**Datasheet for the decision  
of 4 April 2019**

**Case Number:** T 2554/16 - 3.5.04  
**Application Number:** 13821147.9  
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**Title of invention:**

SYSTEMS AND METHODS FOR MULTI-CONTEXT MEDIA CONTROL AND  
PLAYBACK

**Applicant:**

Spotify AB

**Headword:**

**Relevant legal provisions:**

EPC Art. 56

**Keyword:**

inventive step - no, obvious alternative  
inventive step - could-would approach, non-inventive selection

**Decisions cited:**

T 0219/87, T 0061/90, T 0455/94, T 0414/98, T 0214/01,  
T 0190/03, T 1014/07, T 1317/08, T 1045/12

**Catchword:**



**Beschwerdekammern**  
**Boards of Appeal**  
**Chambres de recours**

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Case Number: T 2554/16 - 3.5.04

**D E C I S I O N**  
**of Technical Board of Appeal 3.5.04**  
**of 4 April 2019**

**Appellant:** Spotify AB  
(Applicant) Regeringsgatan 19  
111 53 Stockholm (SE)

**Representative:** Ström & Gulliksson AB  
Box 5275  
102 46 Stockholm (SE)

**Decision under appeal:** Decision of the Examining Division of the  
European Patent Office posted on 6 October 2016  
refusing European patent application  
No. 13821147.9 pursuant to Article 97(2) EPC.

**Composition of the Board:**

**Chairman** C. Kunzelmann  
**Members:** M. Paci  
T. Karamanli

## **Summary of Facts and Submissions**

- I. The appeal is against the decision of the examining division refusing European patent application No. 13 821 147.9, published as international patent application WO 2014/057356 A2.
- II. The documents cited in the decision under appeal included the following:  
  
D1: EP 2 434 491 A1 and  
D2: EP 2 045 704 A2.
- III. The decision under appeal was based on the grounds that the subject-matter of the independent claims according to the main and first to third auxiliary requests then on file did not involve an inventive step (Article 56 EPC) in view of prior-art document D1 and common general knowledge. The subject-matter of the dependent claims according to all four requests was also found to lack an inventive step when starting from D1.
- IV. With the statement of grounds of appeal, the appellant maintained its main request underlying the decision under appeal as the main request and reordered its auxiliary requests as follows: the first, second and third auxiliary requests underlying the decision under appeal became the second, third and first auxiliary requests, respectively.
- V. By letter of 23 October 2018, the appellant requested accelerated processing of the appeal for the reason that the outcome of a co-pending divisional application at least partly hinged upon the outcome of the present appeal.

- VI. By a communication dated 5 November 2018, the board informed the appellant that it had decided to allow the request for accelerated processing of the appeal in view of the Notice from the Vice President DG3 dated 17 March 2008 concerning accelerated processing before the boards of appeal (OJ EPO 2008, 220).
- VII. The appellant was summoned to oral proceedings to be held on 4 April 2019.
- VIII. In a communication under Article 15(1) of the Rules of Procedure of the Boards of Appeal (RPBA, OJ EPO 2007, 536), the board gave its preliminary opinion that, *inter alia*, the subject-matter of claim 1 according to each of the main and first to third auxiliary requests did not involve an inventive step (Article 56 EPC) when starting from prior-art document D1.
- IX. By letter dated 25 February 2019, the appellant submitted arguments in support of the presence of an inventive step.
- X. By letter dated 5 March 2019, the appellant informed the board that it would not be attending the oral proceedings and requested a decision according to the state of the file.
- XI. The board held oral proceedings on 4 April 2019. As announced, the duly summoned appellant did not attend.

At the oral proceedings, the chairman noted that the appellant had requested in writing 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 filed on 28 January 2016, or in the alternative, of one of the first auxiliary request filed as third auxiliary

request on 21 September 2016, the second auxiliary request filed as first auxiliary request on 22 August 2016, and the third auxiliary request filed as second auxiliary request on 22 August 2016.

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

XII. Claim 1 according to the appellant's **main request** reads as follows:

"A method of previewing streamed media content performed by an electronic device having one or more processors and memory storing instructions for execution by the one or more processors, the method comprising:

detecting a beginning of a first user input, the first user input representing a user selection of media content;

determining whether the first user input is released at a time before expiration of a first time period after detecting the beginning of the first user input;

in accordance with a determination that the first user input is released at a time before expiration of the first time period after detecting the beginning of first user input, adding first media content to a playlist; else

in accordance with a determination that the first user input is not released at a time before expiration of the first time period after detecting the beginning of the first user input, initiating presentation of the first media content."

XIII. Claim 1 according to the appellant's **first auxiliary request** reads as follows (additions to claim 1 of the **main request** are underlined):

"A method of previewing streamed media content performed by an electronic device having one or more processors and memory storing instructions for execution by the one or more processors, the method comprising:

detecting a beginning of a first user input, the first user input representing a user selection of first media content;

determining whether the first user input is released at a time before expiration of a first time period after detecting the beginning of the first user input;

in accordance with a determination that the first user input is released at a time before expiration of the first time period after detecting the beginning of first user input, adding first media content to a playlist without initiating presentation of the first media content; else

in accordance with a determination that the first user input is not released at a time before expiration of the first time period after detecting the beginning of the first user input, initiating presentation of the first media content after expiration of the first time period."

XIV. Claim 1 according to the appellant's **second auxiliary request** reads as follows (additions to claim 1 of the **main request** are underlined):

"A method of previewing streamed media content performed by an electronic device having one or more processors and memory storing instructions for

execution by the one or more processors, the method comprising:

detecting a beginning of a first user input, the first user input representing a user selection of media content;

determining whether the first user input is released at a time before expiration of a first time period after detecting the beginning of the first user input;

in accordance with a determination that the first user input is released at a time before expiration of the first time period after detecting the beginning of first user input, adding first media content to a playlist; else

in accordance with a determination that the first user input is not released at a time before expiration of the first time period after detecting the beginning of the first user input, initiating presentation of the first media content after expiration of the first time period."

XV. Claim 1 according to the appellant's **third auxiliary request** reads as follows (additions to claim 1 of the **main request** are underlined):

"A method of previewing streamed media content performed by an electronic device having one or more processors and memory storing instructions for execution by the one or more processors, the method comprising:

detecting a beginning of a first user input, the first user input representing a user selection of media content;

determining whether the first user input is released at a time before expiration of a first time



period after detecting the beginning of the first user input;

in accordance with a determination that the first user input is released at a time before expiration of the first time period after detecting the beginning of first user input, adding first media content to a playlist; else

in accordance with a determination that the first user input is not released at a time before expiration of the first time period after detecting the beginning of the first user input, initiating presentation of the first media content after expiration of the first time period; and

wherein the beginning of the first user input is detected during presentation of second media content."

### **Reasons for the Decision**

1. The appeal is admissible.

*Main request - inventive step (Article 56 EPC)*

2. For the reasons set out below, the board concurs with the examining division that the subject-matter of claim 1 according to the main request does not involve an inventive step.

3. Closest prior art

The examining division held document D1 (more specifically, the embodiment shown in figures 12 and 13) to represent the closest prior art.

The appellant did not dispute that document D1 could be regarded as the closest prior art.

The board concurs that document D1 may be regarded as the closest prior art.

4. Disclosure of D1

Document D1 discloses an electronic device, such as a mobile phone, having a touch panel (touch screen) displaying a list of titles of reproducible songs. In a first embodiment (illustrated by figures 12 and 13), during reproduction of a first song by the electronic device (16 in figure 1), a user may select one of two different functions by touching a second song title on the touch screen of the device for either a short or long time (see paragraphs [0089] to [0098]):

If the touch is a "tap", i.e. shorter than a predetermined duration, the reproduction of the second song starts and that of the first song stops (see paragraph [0090]).

If the touch is a "long press", i.e. longer than the predetermined duration, the reproduction of the second song starts while the reproduction of the first song continues (see paragraphs [0091] and [0092]). In this case, the audio data of the first and second songs are processed to make the two simultaneously reproduced songs more easily separable by the human ear (see paragraphs [0091] and [0040] to [0084]). When the long press finishes, reproduction of the second song stops while reproduction of the first song continues (see paragraphs [0093] and [0094]). In other words, during a "long press", the user gets a "preview" of the second song (see paragraph [0097]), while reproduction of the first song continues.

In D1, the songs are either stored locally on the device or remotely on a server accessible via a network (see paragraph [0025]).

The above disclosure of D1 appears to be common ground between the examining division and the appellant.

However, the examining division further considered that, by mentioning that the songs could be stored remotely on a server, D1 also implicitly disclosed the "streaming" of the songs from the server (see points 1.1.2 and 1.1.12.1 of the Reasons for its decision).

The appellant has disputed the implicit disclosure of the streaming of songs in D1 (see points 2.1.1 and 2.2.2.2 of the statement of grounds of appeal).

On this point, the board concurs with the appellant that D1 does **not** implicitly disclose that the songs may be streamed. Indeed, D1 only discloses that songs may be downloaded from a remote server if they are not already stored locally, but not that the downloading could take the form of "streaming". In other words, "streaming", which is a specific type of downloading, is not implicitly disclosed by the generic disclosure that songs may be downloaded from a remote server.

## 5. Distinguishing features

5.1 For the above reasons, the board considers that the method of claim 1 differs from the method of D1 by the following distinguishing features:

- (1) the media content to be previewed is "streamed";  
and
- (2) in response to a short user input, i.e. an input lasting less than a predetermined duration ("said first

time period" in claim 1), the step of "adding first media content to a playlist" is performed.

5.2 The appellant agreed with the board that (1) was a distinguishing feature but disagreed with the phrasing of distinguishing feature (2), which, according to the appellant, should read as follows (see letter of 25 February 2019, point 2.2.2):

*(2) In response a first user input being released at a time before expiration of the first time period after detecting the beginning of first user input (i.e., a 'release action'), adding first media content to a playlist ('add-to-playlist function'); else in response to the first user input not being released at a time before expiration of the first time period after detecting the beginning of the first user input, initiating presentation of the first media content ('pre-view function').*

The appellant did not explain why it disagreed with the board's phrasing of distinguishing feature (2). However, it seems to the board from the arguments relating to inventive step submitted on pages 10, 11 and 15 of the appellant's letter of 25 February 2019 that they may be summarised as follows:

- (a) there is no "release" selection mechanism in D1, i.e. no disclosure of determining which of the two functions is triggered in response to a release (or non-release) of the user input; and
- (b) because the two possible responses are separated by the term "else" in claim 1, these two responses should be considered as one indivisible block.

5.3 The board does not find these arguments persuasive for the following reasons.

Claim 1, from the "determining" step onwards, effectively comprises the following steps:

- (S1) determining whether the time elapsed between the beginning and the release of the first user input is less than a first time period; in other words, determining whether the first user input is a "short user input" or a "long user input", with the first time period being the boundary between the two;
- (S2) if it is determined in (S1) that it is a "short user input", the first media content is added to a playlist;
- (S3) if it is determined in (S1) that it is a "long user input", presentation of the first media content is initiated.

In the embodiment shown in figures 12 and 13 of D1, the user input is the user's finger 78 touching "song name 4" on the touch panel (see paragraph [0090] and figure 13). The duration of the "touch state" (see paragraph [0091], first sentence) is compared to a constant time duration (called "standby time" in D1) to determine whether the time elapsed between the beginning and the release of the first user input is less ("a tap") or more ("a long press") than the "standby time" (see paragraph [0090], lines 30 to 35). Hence, **step S1** above is disclosed in D1. The appellant's **argument (a) supra** that the release of the user input is not used in the determining step of D1 does not make technical sense because the duration of the "touch state" can only be from the beginning to the release of the first user input. **Step S3** is also disclosed in D1 because if it is determined in step S1

that the user input is a "long press", presentation of the selected "song 4" is initiated (see paragraph [0091]). It should be noted that the presentation of "song 4" is a preview of this song because the presentation stops when the long press finishes (see paragraph [0097]).

Thus, of steps S1, S2 and S3, only the feature "then the first media content is added to a playlist" in step S2 is not disclosed in D1.

As to the appellant's **argument (b) supra**, the term "else" in claim 1 does not make an indivisible block out of the two possible responses (steps S2 and S3). The determining step S1 yields a binary result, i.e. the user input is either short or long. Depending on this result, either step S2 or step S3 is performed. Consequently, the term "else" between steps S2 and S3 in claim 1 should be construed as meaning "or".

6. Technical effect

In the board's view, the distinguishing features (1) and (2) identified by the board under point 5.1 *supra* achieve separate technical effects.

The technical effect of distinguishing feature (1), i.e. of "streamed" media content as opposed to media content downloaded and stored locally as a file, is the well-known advantages and disadvantages of streaming. The advantages are instant playback and piracy protection. The disadvantages are the necessity to be connected to a remote server and bandwidth use.

The technical effect of distinguishing feature (2) is that it provides an easy way to add media content to a playlist.

7. Objective technical problem(s)

7.1 In view of the above technical effects, the board considers that the distinguishing features (1) and (2) solve two separate partial objective technical problems, which should be formulated, without pointers to the solution, as follows.

Distinguishing feature (1) solves the partial objective technical problem P1 of "finding an alternative to locally storing media content".

Distinguishing feature (2) solves the partial objective technical problem P2 of "how to implement a user interface that improves a user's control of media content".

Regarding partial objective technical problem P2, the board concurs with the appellant that this problem should not mention a "playlist" as this would be a pointer to the solution.

7.2 In the statement of grounds of appeal (under point 2.2.2.4), the appellant argued that distinguishing features (1) and (2) solved the objective technical problem of "how to implement a user interface that improves a user's control of **streamed** media content" (emphasis by the board).

The appellant explained that the "streamed" nature of the media content should be added into the formulation of the objective technical problem as contextual

information (see statement of grounds of appeal, last paragraph of point 2.2.2.1 and third paragraph of point 2.2.2.4).

- 7.3 The board disagrees with the appellant's formulation of the objective technical problem for the following reasons.

Distinguishing feature (1), i.e. that the media content is "streamed", solves a separate partial technical problem (P1). Moreover, whether media content is "streamed" has no effect on the partial objective problem (P2) solved by distinguishing feature (2) or on how this problem is solved. The step of "adding first media content to a playlist" in response to a short user input does not depend on whether the media content is streamed.

8. Obviousness

- 8.1 Re distinguishing feature (1)

As acknowledged in paragraph [0003] of the present application, the streaming of media content and its advantages were common general knowledge at the relevant date of the application. It would therefore have been obvious for the person skilled in the art (skilled person) to perform the downloading of songs from a remote server as mentioned in paragraph [0025] of D1 by streaming the songs to achieve these advantages.

In its reply to the board's communication under Article 15(1) RPBA, the appellant did not submit arguments disputing the board's preliminary view which



essentially corresponds to the above finding (see point 14.1 of the board's communication).

8.2 Re distinguishing feature (2)

8.2.1 The examining division held that it was generally known that various types of user input actions could be assigned to various commands depending on the particular focus of the user interface, application or task (see point 1.1.9 of the Reasons for its decision).

8.2.2 The board concurs with this finding. With a computer mouse, for instance, a user could single click, double click, left click, right click or hover to trigger various functions. With a touch screen, the number of possible user input actions multiplied, with commonly used actions such as one-time touch, multi-time touch, one-point touch, multi-point touch, short touch, long touch, swipes in various directions and others (see, for instance, paragraph [0093] of prior-art document D2). Each of these user input actions could trigger a different function. Which user input action was associated with which function was essentially a matter of design and could arbitrarily vary from one user interface to another.

As to the two specific user input actions referred to in claim 1, i.e. a short user input and a long user input, they were well known in the art, including from D1 (see figures 12 and 13 and paragraphs [0089] to [0098]).

In D1, the long user input triggers a preview of the selected song, like in claim 1. However, the short user input triggers a reproduction of the selected song in

D1, whereas it triggers an add-to-playlist function according to claim 1.

The appellant did not dispute that the add-to-playlist function for songs, which is mentioned in D1 (see paragraphs [0005], [0126] and [0130]), was a commonly used function.

In the board's view, the choice of associating the add-to-playlist function to a short user input action is essentially based on design considerations. It was a well-known guiding principle for the design of user interfaces that the most often used functions should preferably be associated with the easiest user input actions. Since the add-to-playlist function was a commonly used function and a short user input was an easy input action to perform, it would have been an obvious and desirable design option for the skilled person to associate these two.

- 8.2.3 According to **a first line of argumentation**, the appellant essentially submitted that it was the very essence of the teaching of the first embodiment of D1 that the short user input was associated to the function of exchanging one currently reproduced song with another song. Thus, the person skilled in the art would not have modified this association. If they had nevertheless considered modifying this association, they would have been motivated to apply the teaching of the second embodiment of D1. Because in the second different embodiment shown in figures 21 to 23 of D1 the add-to-playlist function was associated to a drag-and-drop user action, it would "go against the very essence of the teaching" of D1 to replace the exchange-of-two-songs function associated with a short user input with the add-to-playlist function. Instead, the

skilled person would have followed the teaching of the second embodiment of D1 and associated the add-to-playlist function with the drag-and-drop user input. Moreover, in any case, the person skilled in the art would have maintained the particular type of preview disclosed in both embodiments of D1, i.e. the simultaneous reproduction of two songs.

8.2.4 The board does not find this first line of argumentation persuasive for the following reasons.

The skilled person would have been well aware that there were many different user inputs which could be used for triggering an add-to-playlist function and that the drag-and-drop user input of the embodiment of figures 21 to 23 of D1 was only one of many possible user inputs for this function. They would have understood that in D1 the disclosed associations of user inputs to functions resulted from design considerations for the user interface of the electronic device of D1 but were not the essence of the technical teaching of D1. The skilled person would thus not have gone "against the very essence of the teaching" of D1 by replacing the drag-and-drop user input with a short user input. Moreover, the particularities of the preview disclosed in D1 are not decisive in the present case since the method of claim 1 of the main request is not concerned with the particularities of the "presentation of the first media content".

8.2.5 According to **a second line of argumentation**, the appellant recalled that according to the established case law of the boards of appeal, it is not sufficient for denying an inventive step that the skilled person **could** have arrived at the claimed invention when starting from the closest prior art. Instead, it must

be established that the skilled person **would** have done so in the hope of solving the underlying technical problem or in the expectation of some improvement or advantage (the "**could-would approach**"). In its letter of 25 February 2019, the appellant referred to several decisions of the boards of appeal and summarised their relevant findings as follows:

*"The prior art must incite the skilled person to arrive at the invention by adapting or modifying the closest prior art (GLs, G, VII, 5.3). The skilled person must, in expectation of the advantages actually achieved (i.e. in the light of the partial objective technical problem(s) addressed), have modified the teaching in the closest prior art document in the light of other teachings in the prior art so as to arrive at the claimed invention because of promptings in the prior art (T 1014/07, T 219/87, T 455/94, T 414/98). It is necessary to identify conclusive reasons on the basis of tangible evidence that would have prompted the skilled person to act in one way or the other (T 1014/07). Technical feasibility and the absence of obstacles are not sufficient to render obvious what was actually achievable for the skilled person (T 61/90). If it is to be established that the skilled person would actually have used the relevant features, it must be possible to ascertain a pointer in the prior art which would have prompted him to do so (T 1317/08)."*

As to the method of claim 1, the appellant argued, based on the above case law, that the board had only established that the skilled person starting from D1

**could** have associated an add-to-playlist function to a short user input, but not that they **would** have done so.

8.2.6 The board does not find this second line of argumentation persuasive for the following reasons.

The board concurs with the appellant's summary of the case law of the boards of appeal on the "could-would approach" under point 8.2.5 *supra* (see also Case Law of the Boards of Appeal of the European Patent Office, 8th edition 2016 (hereinafter "CLBoA"), I.D.5, which summarises this case law and discusses the decisions cited by the appellant).

The board explained under points 8.2.1 and 8.2.2 *supra* why the skilled person **would have wanted** to replace the exchange-of-two-songs function associated with a short user input with an add-to-playlist function in the method of D1. The skilled person's motivation for doing so may be summarised as follows.

It was well known from common general knowledge that various types of user input actions could be assigned to various commands depending on the particular focus of the user interface, application or task and on design considerations.

It was a well-known guiding principle for the design of user interfaces that the most often used functions should preferably be associated with the easiest user input actions. Since the add-to-playlist function was a commonly used function and a short user input was an easy input action to perform, it would have been an obvious and desirable design option for the skilled person to associate these two.

The board's above reasoning complies with the case law of the boards of appeal on the "could-would approach".

The prompting in the prior art for associating an add-to-playlist function with the short user input in the method of D1 would have come from the common general knowledge that (1) various types of user input actions could be assigned to various commands depending on the particular focus of the user interface, application or task and on design considerations and (2) often used functions should advantageously be associated with the easy-to-perform user input actions.

Since the add-to-playlist function was a commonly used function and a short user input was an easy input action to perform, it would have been an obvious and desirable design option for the skilled person to associate these two.

8.2.7 For the sake of completeness, the board notes that the association of an add-to-playlist function with a short user input was only one of a host of possible associations between function and user-input type, many of which would have been obviously desirable starting from D1 depending on which design considerations and which functions were given priority. There is no unknown or unexpected technical effect achieved by this particular association, but only predictable ones. Hence, the particular association specified in claim 1 is to be regarded as a non-inventive choice of one of several obvious solutions (see CLBoA, I.D.9.18.7, confirmed by, for instance, decisions T 190/03 of 29 March 2016, point 14 of the Reasons; T 214/01, points 3.11 and 3.12 of the Reasons; and T 1045/12, point 4.7.7 of the Reasons).

9. Conclusions on the main request

For the above reasons, the board considers that the subject-matter of claim 1 does not involve an inventive step over the disclosure of prior-art document D1.

Accordingly, the appellant's main request is not allowable.

*First auxiliary request - inventive step (Article 56 EPC)*

10. Claim 1 of the first auxiliary request substantially differs from claim 1 of the main request by the additional features underlined below (see point XIII *supra*):

- (A) initiating presentation of the first media content after expiration of the first time period;
- (B) adding first media content to a playlist without initiating presentation of the first media content.

11. Re additional feature (A)

11.1 The board concurs with the examining division (see point 2.1.3 of the Reasons for the decision) that this feature is known from D1 because it is clear from paragraph [0091] of D1 that the reproduction of the music data selected by a long press (e.g. song 4 in figure 13) only begins after it has been determined that the user touch is a "long press", i.e. **after** the expiration of the "standby time" (corresponding to the "first time period" in claim 1). Hence, feature (A) does not add anything inventive to the subject-matter of claim 1 when starting from D1.

11.2 The appellant did not submit arguments specific to additional feature (A).

12. Re additional feature (B)

12.1 Prior-art add-to-playlist functions typically did not include initiating reproduction of the media content added to the playlist (see paragraph [0005] of D1). Hence, feature (B) corresponds to a straightforward implementation of an add-to-playlist function. Accordingly, feature (B) does not add anything inventive to the subject-matter of claim 1 when starting from D1.

12.2 The appellant's arguments were essentially that the skilled person would not have associated an add-to-playlist function with a short touch when starting from D1. The board explained under section 8.2 *supra* why it did not find this argumentation persuasive.

13. Conclusions on the first auxiliary request

For the above reasons, the board considers that the subject-matter of claim 1 of the first auxiliary request does not involve an inventive step over the disclosure of prior-art document D1.

Accordingly, the appellant's first auxiliary request is not allowable.

*Second auxiliary request - inventive step (Article 56 EPC)*

14. Claim 1 of the second auxiliary request differs from claim 1 of the main request only by additional feature



(A) discussed under section 11 *supra* in relation with the first auxiliary request (see point XIV *supra*).

15. The appellant did not submit arguments specific to the second auxiliary request.
16. Conclusions on the second auxiliary request

For the reasons given under section 11 *supra*, the board considers that the subject-matter of claim 1 of the second auxiliary request does not involve an inventive step over the disclosure of prior-art document D1.

Accordingly, the appellant's second auxiliary request is not allowable.

*Third auxiliary request - inventive step (Article 56 EPC)*

17. Claim 1 of the third auxiliary request differs from claim 1 of the main request by additional feature (A) discussed under section 11 *supra* in relation with the first auxiliary request and the following additional feature (C) (see point XV *supra*):

(C) wherein the beginning of the first user input is detected during presentation of second media content.

18. Re additional feature (C)

- 18.1 The board concurs with the examining division (see point 3.1.4 of the Reasons for the decision) that this feature is known from D1 because it is clear from paragraphs [0089] to [0091] and figure 13 of D1 that the beginning of the first user input (finger touch on "song 4" in figure 13) is detected during the

presentation of second media content ("song 2" in figure 13). Hence, feature (C) does not add anything inventive to the subject-matter of claim 1 when starting from D1.

18.2 The appellant did not submit arguments specific to the third auxiliary request.

19. Conclusions on the third auxiliary request

For the reasons given under sections 11 and 18 *supra*, the board considers that the subject-matter of claim 1 of the third auxiliary request does not involve an inventive step over the disclosure of prior-art document D1.

Accordingly, the appellant's third auxiliary request is not allowable.

*Conclusion*

20. Since none 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

C. Kunzelmann

Decision electronically authenticated