

Internal distribution code:

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

**Datasheet for the decision
of 9 October 2019**

Case Number: T 0059/17 - 3.5.05

Application Number: 07775225.1

Publication Number: 2008408

IPC: H04L12/28, H04L29/06, H04N5/76,
H04N7/173, H04N21/2668,
H04N21/436, H04N21/443,
H04N21/472, H04N21/4722,
H04N21/482, H04N21/61,
H04N21/6377, H04N21/6587

Language of the proceedings: EN

Title of invention:

Interactive media content delivery using a separate
backchannel communications network

Patent Proprietor:

Rovi Guides, Inc.

Former Opponent:

Virgin Media Limited (until 9 November 2017)

Headword:

Converted media control messages/ROVI

Relevant legal provisions:

EPC Art. 54, 56, 123(2)

Keyword:

Added subject-matter - (no, after amendments)

Novelty and inventive step - (yes, after amendments)



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 0059/17 - 3.5.05

D E C I S I O N
of Technical Board of Appeal 3.5.05
of 9 October 2019

Appellant: Rovi Guides, Inc.
(Patent Proprietor) 2160 Gold Street
San Jose, CA 95002 (US)

Representative: Pisani, Diana Jean
Haley Guiliano International LLP
Central Court
25 Southampton Buildings
London WC2A 1AL (GB)

Former Respondent: Virgin Media Limited
(Opponent) Media House
Bartley Wood Business Park
Hook Hampshire RG27 9UP (GB)

Representative: Martin, Philip John
Marks & Clerk LLP
62-68 Hills Road
Cambridge
CB2 1LA (GB)

Decision under appeal: **Decision of the Opposition Division of the
European Patent Office posted on 8 November 2016
revoking European patent No. 2008408 pursuant to
Article 101(3) (b) EPC**

Composition of the Board:

Chair A. Ritzka
Members: K. Bengi-Akyuerek
D. Prietzel-Funk

Summary of Facts and Submissions

I. The patent proprietor's appeal is against the opposition division's decision to revoke the present European patent as amended. The decision was based on the finding of added subject-matter (Article 123(2) EPC) with respect to the claims of a main request and a fourth auxiliary request, and of lack of novelty and inventive step (Articles 54 and 56 EPC) with respect to the claims of a first and a third auxiliary request, having regard to the following prior-art document only:

D6: US-A-2003/0050062.

Furthermore, the opposition division did not admit the set of claims of a second auxiliary requests into the proceedings on the grounds that it was late-filed and was not clearly allowable under Article 123(2) EPC.

II. With the statement setting out the grounds of appeal dated 20 March 2017, the appellant filed amended claims according to a main request and two auxiliary requests and requested that the decision under appeal be set aside and that the opposed patent be maintained on the basis of one of those claim requests.

III. The opponent (respondent) withdrew its opposition with its letter dated 9 November 2017.

IV. In a communication annexed to the summons to oral proceedings pursuant to Article 15(1) RPBA, the board gave its preliminary opinion on the appeal. In particular, it raised objections under Articles 123(2) and 56 EPC with respect to all claim requests on file.

- V. By letter of reply, the appellant filed amended sets of claims according to a new main request and four auxiliary requests, and put forward arguments regarding the board's communication under Article 15(1) RPBA.
- VI. Oral proceedings were held on 9 October 2019, during which the appellant filed an amended set of claims as a new main request ("Revised Main Request") and withdrew all the other claim requests on file.
- 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 claims of the new main request filed during the oral proceedings before the board.

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

- VII. **Claim 1** of the main request reads as follows:

"A clearinghouse server (150) for a system (100) for controlling media content delivery, the system (100) including a plurality of media content sources (102) connected to a distribution facility (104), and a user equipment device (108), the clearinghouse server (150) comprising a transceiver and a processor in communication with the transceiver, the processor configured for: i) receiving a media control message in a first information format from the user equipment device; ii) processing the media control message, including determining one of the media content sources (102) to send a converted media control message to from the plurality of media content sources (102) and further including converting the media control message from the first information format into a second

information format to generate the converted media control message that can be interpreted by the distribution facility (104); and iii) sending the converted media control message to the distribution facility (104)."

The further independent **claim 8** of the main request is directed to corresponding method steps.

Reasons for the Decision

1. *The opposed patent*

The opposed patent is concerned with a media content delivery system based on processing, converting and distributing the user's media control commands by means of a central "clearinghouse server" and a "distributing facility" in order to control media delivery from several media content sources associated with multiple media service operators (MSOs).

According to the patent specification, the alleged technical problem to be solved by the subject-matter of the independent claims is "to provide interactive media content delivery using an intermediate communications server between an end user and the media content provider to enable communications regardless of the information format used by an MSO network" (see paragraph [0013] of the underlying application as filed).

2. MAIN REQUEST

Claim 1 of the main request comprises the following limiting features, as labelled by the board (amendments

compared with claim 1 of the first auxiliary request underlying the appealed decision underlined by the board):

- A) A clearinghouse server for a system for controlling media content delivery, the system including a plurality of media content sources connected to a distribution facility, and a user equipment device, the clearinghouse server comprising a transceiver and a processor in communication with the transceiver, the processor configured for:
 - B) receiving a media control message in a first information format from the user equipment device,
 - C) processing the media control message,
 - D) the processing including determining one of the media content sources to send a converted media control message to from the plurality of media content sources,
 - E) the processing further including converting the media control message from the first information format into a second information format to generate the converted media control message that can be interpreted by the distribution facility;
 - F) sending the converted media control message to the distribution facility.

2.1 *Added subject-matter (Article 123(2) EPC)*

2.1.1 The board is satisfied that the amendments to features A) to F) are supported e.g. by page 5, lines 11-12, page 26, lines 3-4 and page 29, lines 21-24, in conjunction with Figure 10, steps 1004 to 1010 of the underlying application as originally filed.

2.1.2 Moreover, given that former independent claims 14 and 24 have been removed, the objections raised under Article 123(2) EPC in the impugned decision (see points 92 and 93) are also overcome.

2.2 *Novelty and inventive step (Articles 54 and 56 EPC)*

2.2.1 Prior-art document **D6** discloses the following features of present claim 1, as labelled by the board (differences compared with present claim 1 highlighted by the board):

- A) A clearinghouse server ("mobile service platform, MSP 340, 460") for a system for controlling media content delivery, the system including a plurality of media content sources ("live TV channels 450a"; "VCR server 450b"; "X10 server 450n") connected to a multiple distribution facilities ("multimedia servers 412a, 412b, 412n") and a user equipment device (e.g. "multimedia client 410a"), the clearinghouse server comprising a transceiver and a processor in communication with the transceiver (see e.g. Fig. 3), the processor configured for:
 - B) receiving a media control message ("user command request") in a first information format from the user equipment device (see e.g. paragraph [0015]: "... a multimedia source controller [included in MSP 340; see Fig. 2] adapted to receive ... user command requests for controlling at least one multimedia source ..."); paragraph [0097]; Fig. 5, step 502);
 - C) processing the media control message (see e.g. paragraph [0101]; Fig. 5, step 512),
 - D) including determining one of the media content sources (e.g. "VCR server 450b") to send the media control message to from the plurality of media

content sources (see e.g. paragraph [0082]: "... The mobile service platform 460 determines which multimedia sources can be controlled by which users ..."; Fig. 5, steps 514, 516 and 518);

- E) ~~further including converting the media control message from the first information format into a second information format to generate the converted media control message that can be interpreted by the distribution facility;~~
- F) sending the media control message to the ~~distribution facility~~ media content source (see e.g. paragraph [0085]: "... The control signals issued from the end user travel via the mobile service platform 460 to the VCR server 450b ...").

2.2.2 As regards feature E), the opposition division held that, on the basis of paragraphs [0079] and [0097] of D6, a conversion had to take place at the mobile service platform in order for the protocol used for communication between the mobile service platform and the multimedia servers to be a standard-based signalling scheme (see decision under appeal, points 48 and 49).

The board disagrees. Cited paragraphs [0079] and [0097] of D6 read as follows:

"[0079] ... The protocol used for communication between the mobile service platform 460 and each of the multimedia servers 412 can include a proprietary protocol that uses signaling based on TCP/IP communications. Alternatively a standards based signaling scheme such as the media gateway control protocol, (MGCP) or real time control protocol (RTCP)."

and

"[0097] At step 502, the mobile service platform 340 (FIG. 2) receives a request from mobile device over a wireless request path. The request can be formatted, for example, using an HTTP protocol; an instant messaging protocol, a WAP protocol; an SMS protocol, an e-mail protocol, a user defined control signal transported on a TCP/IP protocol, and a user defined control signal transported on a UDP/IP protocol format. The request can include a request for data delivery and can optionally include a request to control a multimedia source."

2.2.3 From the above teaching, the board concludes merely that a user request message may be formatted according to various communication protocols. Even though D6 further teaches that the mobile service platform provides communications (i.e. in general terms) with a variety of protocols and includes a message gateway for allowing mobile devices using different protocols to control the multimedia sources (see e.g. D6, paragraph [0012], first two sentences), the board concurs with the appellant that it cannot be necessarily and inevitably inferred therefrom that a specific format *conversion* of such a user request does indeed take place at the *mobile service platform* of D6.

In other words, the mere possibility of using distinct protocols and information formats for generic communications within the described system does not compellingly mean that those protocols and formats are used concurrently and thus have to be converted between each other. This issue therefore has to be dealt with under the heading of inventive step (see points 2.2.4 and 2.2.5 below) rather than under novelty.

Hence, the subject-matter of present claim 1 differs from the disclosure of D6 in that the media control message is converted from a message format supported by the user into a message format readable by a single distribution facility to which media content sources are connected. Consequently, D6 does not take away the novelty of present claim 1 (Article 54 EPC).

2.2.4 As regards the assessment of inventive step, the board holds that the above distinguishing feature is associated with the objective problem of "how to ensure the inter-operability of heterogeneous multimedia sources in the content delivery system of D6".

2.2.5 Starting out from document D6 and confronted with the above-defined objective problem, the person skilled in the field of content delivery systems would have noticed that in D6 the original user request (e.g. "user command request") may be formatted in different ways (see e.g. paragraph [0097]). Moreover, assuming that the multimedia sources do not support all of those message formats due to the presence of heterogeneous multimedia sources, the skilled person would have most probably considered applying two optional solutions, namely converting the originally supported message format to the appropriate format supported by the multimedia source within *either* the "mobile service platform" *or* the "multimedia server" of D6.

However, the skilled person would not have envisaged, within the underlying system of D6, adapting a possible conversion process to an intermediary device (such as a "distribution facility" as claimed) rather than to the relevant multimedia sources as the final destinations. This is even more so since the multimedia servers of D6 are evidently dedicated to *distributing* the requested

media content files to the respective users (e.g. including transcoding processes) instead of *forwarding* the media control messages to the multimedia sources (see e.g. paragraph [0085]: "*... The control signals issued from the end user travel via the mobile service platform 460 to the VCR server 450b ...*" and paragraph [0094]: "*... mobile server platform 460 can signal a multimedia server 412n to deliver the video in the right format as transcoded by transcoder 414n to an authorized mobile device's multimedia client 410n ...*").

Thus, D6 neither teaches nor hints at converting user control commands into a message format that may be properly interpreted by an intermediary device, which is mainly supposed to distribute the requested media content to the respective media users. Such a modification would, moreover, not be a minor and straightforward one, since it would involve a substantially distinct assignment of tasks within the underlying infrastructure and thus an entirely different functioning of the relevant sub-units of the system of D6.

2.2.6 In view of the above, the skilled person would not have arrived at the solution defined in claim 1 without the application of a hindsight analysis.

2.2.7 Given that document D6 represents the only prior-art document on which the impugned decision was based, the subject-matter of claim 1 is held to be new and to involve an inventive step within the meaning of Articles 54 and 56 EPC. Moreover, as the features of independent process claim 8 correspond to those of claim 1, the above observations also apply to claim 8.

- 2.3 In conclusion, the main request is allowable under Articles 123(2), 54 and 56 EPC.
3. Since there are no other objections to be raised as regards the present set of claims, the board decides that the patent is to be maintained on the basis of the main request on file.

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 in amended form based on claims 1 to 13 of the main request submitted during the oral proceedings before the board, and a description and drawings to be adapted.

The Registrar:

The Chair:



K. Götz-Wein

A. Ritzka

Decision electronically authenticated