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**Datasheet for the decision
of 5 April 2022**

Case Number: T 1855/17 - 3.5.04

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Title of invention:

Multimedia system and method of performing a playback by means
of a multimedia system

Applicant:

Harman International Industries, Incorporated

Headword:

Relevant legal provisions:

EPC Art. 56
RPBA 2020 Art. 13(1), 13(2)

Keyword:

Main request and auxiliary requests I and II - Inventive step
(no)

Auxiliary requests III and IV - Admitted under Article 13 RPBA
2020 (no)

Decisions cited:

T 1294/16, T 0894/19, T 0012/07, T 1968/08, T 1045/12

Catchword:



Beschwerdekammern

Boards of Appeal

Chambres de recours

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Case Number: T 1855/17 - 3.5.04

D E C I S I O N
of Technical Board of Appeal 3.5.04
of 5 April 2022

Appellant: Harman International Industries, Incorporated
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Decision under appeal: **Decision of the Examining Division of the
European Patent Office posted on 3 April 2017
refusing European patent application
No. 12164548.5 pursuant to Article 97(2) EPC.**

Composition of the Board:

Chair B. Willems
Members: B. Le Guen
B. Müller

Summary of Facts and Submissions

- I. The appeal is against the decision to refuse European patent application No. 12 164 548.5. The decision was a decision according to the state of the file, referring to the communication of the examining division dated 21 December 2016 for the reasons.
- II. The prior-art documents cited in the examining division's communication included the following:
- D2 US 2012/0029670 A1
D3 WO 2006/020560 A2
- III. In that communication, the examining division held that claims 1 and 10 of the then-sole request on file were not clear and not supported by the description (Article 84 EPC), and that their subject-matter was insufficiently disclosed in the application (Article 83 EPC) and lacked inventive step (Article 56 EPC) in view of the disclosure of document D3.
- IV. The applicant (appellant) filed notice of appeal. In the notice of appeal, the appellant requested that the decision under appeal be set aside and that a European patent be granted on the basis of the claims of the sole request that had formed the basis of the decision under appeal or, alternatively, that oral proceedings be arranged. In its statement of grounds of appeal, the appellant provided arguments as to why the conclusions drawn by the examining division in its communication (see previous point) were incorrect.

- V. On 4 May 2021 the board issued a summons to oral proceedings. In a communication under Article 15(1) RPBA 2020 (see OJ EPO 2019, A63) dated 9 June 2021, the board introduced the following document into the appeal proceedings, pursuant to Article 114(1) EPC:

D6 US 2007/0124796 A

The board expressed its preliminary opinion that claim 1 of the sole request then on file was not clear and not supported by the description (Article 84 EPC). Moreover, on the basis of an interpretation of the claim consistent with the description, the board took the view that the subject-matter of claim 1 did not involve an inventive step in view of the disclosure of document D6 combined with the disclosure of document D2 and the common general knowledge of the person skilled in the art.

- VI. With a letter dated 4 March 2022, the appellant filed amended claims in accordance with auxiliary requests I and II and requested that a patent be granted on the basis of the claims of the main request that had formed the basis of the decision under appeal or, alternatively, on the basis of the claims of auxiliary requests I and II, in that order of preference.

In its letter, the appellant provided a basis in the application as filed for the amended claims of auxiliary requests I and II as well as arguments as to why (i) auxiliary requests I and II should be admitted into the appeal proceedings, (ii) claim 1 of all the requests was clear and supported by the description, and (iii) the subject-matter of claim 1 of all the requests involved an inventive step.

VII. By a communication from the board's registrar dated 10 March 2022, the appellant was informed that the oral proceedings scheduled for 5 April 2022 would be held by videoconference.

VIII. On 5 April 2022, the oral proceedings before the board were held by videoconference.

At the oral proceedings, the appellant filed amended claims in accordance with auxiliary requests III and IV.

The appellant's final requests were 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 that had formed the basis of the decision under appeal or, alternatively, on the basis of the claims of auxiliary requests I and II filed with the letter dated 4 March 2022 or on the basis of the claims of auxiliary requests III and IV filed during the oral proceedings of 5 April 2022, in this order of preference.

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

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

"A multimedia system (1), the multimedia system (1) comprising:

- a plurality of multimedia sources (20-24) each being configured to provide multimedia data (42) for a playback (40, 41),
- a user interface (3) being configured to request the playback (40, 41) of a given one of the

plurality of the multimedia sources (20-24) or of a given multimedia data (42) based on an input of a user of the multimedia system (1),

- a playback unit (6, 7) being configured to perform the requested playback (40, 41),
- a control unit (2) being configured to automatically extract at least portions of the playback (40, 41) as tracks (45), the tracks (45) being characteristic audio (40) and / or video parts (41) of the playback (40, 41) allowing a unique identification of the playback (40, 41),
- a communication interface (5) being configured to connect to the Internet (30) and to automatically send first data (61) comprising the tracks (45) to a remote server (31) and further being configured to automatically receive second data (62) in response to the sent first data (61) from the remote server (31), the second data (62) comprising identification information (62a) of the playback (40, 41), the identification information (62a) being determined based on the tracks (45) and uniquely identifying the playback (40, 41),
- wherein the control unit (2) is further configured to automatically extract the tracks (45) based on an algorithm, the algorithm being dependent on a time interval (45a) between subsequently extracted tracks (45) and on a previously received second data (62) and on a type of the multimedia source (20-24)."

X. Claim 1 of **auxiliary request I** reads as follows
(features added to or deleted from claim 1 of the **main request** are underlined or crossed out, respectively):

"A multimedia system (1), the multimedia system (1) comprising:

- a plurality of multimedia sources (20-24) each being configured to provide multimedia data (42) for a playback (40, 41),
- a user interface (3) being configured to request the playback (40, 41) of a given one of the plurality of the multimedia sources (20-24) or of a given multimedia data (42) based on an input of a user of the multimedia system (1),
- a playback unit (6, 7) being configured to perform the requested playback (40, 41),
- a control unit (2) being configured to automatically extract ~~at least~~ portions of the playback (40, 41) as tracks (45), the tracks (45) being characteristic audio (40) and / or video parts (41) of the playback (40, 41) allowing an unique identification of the playback (40, 41),
- a communication interface (5) being configured to connect to the Internet (30) and to automatically send first data (61) comprising the tracks (45) to a remote server (31) and further being configured to automatically receive second data (62) in response to the sent first data (61) from the remote server (31), the second data (62) comprising identification information (62a) of the playback (40, 41), the identification information (62a)

being determined based on the tracks (45) and uniquely identifying the playback (40, 41),

- wherein the control unit (2) is further configured to automatically extract the tracks (45) based on an algorithm, the algorithm being dependent on a time interval (45a) between subsequently extracted tracks (45) and on a previously received second data (62) and on a type of the multimedia source (20-24) so that the tracks (45) are extracted with a fixed time interval if no second data including identification information has been received for a predefined time interval, wherein the fixed time interval depends on the type of the multimedia source."

XI. Claim 1 of **auxiliary request II** reads as follows (features added to or deleted from claim 1 of **auxiliary request I** are underlined or crossed out, respectively):

"A multimedia system (1), the multimedia system (1) comprising:

- a plurality of multimedia sources (20-24) each being configured to provide multimedia data (42) for a playback (40, 41),
- a user interface (3) being configured to request the playback (40, 41) of a given one of the plurality of the multimedia sources (20-24) or of a given multimedia data (42) based on an input of a user of the multimedia system (1),
- a playback unit (6, 7) being configured to perform the requested playback (40, 41),

- a control unit (2) being configured to automatically extract portions of the playback (40, 41) as tracks (45), the tracks (45) being characteristic audio (40) and / or video parts (41) of the playback (40, 41) allowing an unique identification of the playback (40, 41),
- a communication interface (5) being configured to connect to the Internet (30) and to automatically send first data (61) comprising the tracks (45) to a remote server (31) and further being configured to automatically receive second data (62) in response to the sent first data (61) from the remote server (31), the second data (62) comprising identification information (62a) of the playback (40, 41), the identification information (62a) being determined based on the tracks (45) and uniquely identifying the playback (40, 41),
- wherein the control unit (2) is further configured to automatically extract the tracks (45) based on an algorithm, the algorithm being dependent on a time interval (45a) between subsequently extracted tracks (45) and on a previously received second data (62) previously received from the remote server and on a type of the multimedia source (20-24) so that the tracks (45) are extracted with a fixed time interval if no second data including identification information has been received for a predefined time interval, wherein the fixed time interval depends on the type of the multimedia source,

wherein the type of the multimedia source is classified depending on whether the respective

multimedia source provides individual multiple data or provides predefined streams of multiple data."

XII. Claim 1 of **auxiliary request III** differs from claim 1 of **auxiliary request II** in that it contains the following text before the full stop:

",
wherein the playback (40, 41) comprises an audio playback (40) and a video playback (41),

and wherein in order to identify the audio playback (40) a track of shorter duration is extracted than in order to identify the video playback (41)".

XIII. Claim 1 of **auxiliary request IV** differs from claim 1 of **auxiliary request II** in that it contains the following text before the full stop:

",
wherein, if unique identification of the playback (40, 41) is already available, the algorithm is configured to adapt the time intervals (45a) to a comparably longer value".

XIV. The appellant's arguments as to why the subject-matter of claim 1 of the main request involved an inventive step may be summarised as follows:

(a) The expression "*previously received second data*" in the last feature of claim 1 clearly related to second data received from the server. Moreover, the expression "*being dependent ... on a previously received second data*" in the same feature was to be interpreted as meaning being dependent on whether

second data had been previously received, not on the content of previously received second data.

- (b) Document D3 was a more appropriate starting point than document D6 for assessing whether the subject-matter of claim 1 involved an inventive step.
- (c) Document D6 did not disclose an algorithm being dependent on both previously received second data and the type of the multimedia source.
- (d) The distinguishing technical features vis-a-vis D6 allowed efficient extraction of tracks. The objective technical problem was to be formulated as allowing efficient extraction of tracks of playbacks for automated generation of a library of previously-consumed content. Alternatively, the objective technical problem could be formulated as being how to select appropriate parameters for automatic extraction of the tracks.
- (e) There was no incentive in document D6 to use the type of the multimedia source to automatically extract tracks. Therefore, following the established "could-would approach", it was incorrect to conclude that this feature was obvious.

XV. The appellant argued that auxiliary requests I and II should be admitted into the appeal proceedings because they addressed new objections raised by the board in its communication under Article 15(1) RPBA 2020.

XVI. Moreover, according to the appellant, the subject-matter of claim 1 of auxiliary request I was inventive for the reasons given for the main request and also

because the additional feature of claim 1 increased the efficiency of the automatic extraction of tracks. The subject-matter of claim 1 of auxiliary request II was inventive for the reasons given for the main request and auxiliary request I and also because paragraph [0174] of document D6 was silent as to the use of different types of multimedia sources.

- XVII. The appellant argued that the amended claim 1 of auxiliary request III *prima facie* did not contain subject-matter extending beyond the content of the application as filed (Article 123(2) EPC) because the added features were disclosed on page 19, lines 17 to 20 of the application as filed.
- XVIII. The appellant also expressed its opinion that the amended claim 1 of auxiliary request IV was *prima facie* clear because it was clear that the criterion "*if unique identification of the playback is already available*" corresponded to the criterion of whether "*second data including identification information has been received from the remote server for a predefined time interval*".

Reasons for the Decision

1. The appeal is admissible.
2. *Main request - Interpretation of claim 1*
 - 2.1 Objections of clarity and lack of support were raised during the first-instance and appeal proceedings in relation to claim 1 of the main request (see points III. and V. above). In the case in hand, the board finds it expedient to interpret certain features

of claim 1 in the light of the description and assess whether the subject-matter of the claim involves an inventive step on the basis of that interpretation.

2.2 The conclusions reached under points 2.3 to 2.5 below were not rebutted by the appellant.

2.3 Claim 1 of the main request specifies *"a control unit (2) being configured to automatically extract at least portions of the playback (40, 41) as tracks (45), the tracks (45) being characteristic audio (40) and / or video parts (41) of the playback (40, 41) allowing an unique identification of the playback (40, 41)"* and *"a communication interface (5) being configured to connect to the Internet (30) and to automatically send first data (61) comprising the tracks (45) to a remote server (31) ..."*.

The first paragraph on page 20 of the description of the application in hand states that *"it may be desired to provide the tracks 45 with a smaller file size per playback duration, i.e., at a higher compression factor and / or lower quality, than the multimedia data 42"*.

Thus, when interpreted in the light of the description, the term "tracks" encompasses excerpts of the playbacks which have been post-processed to provide files of smaller size and lower quality.

2.4 Claim 1 of all the requests further specifies *"second data (62) comprising identification information (62a) of the playback (40, 41), the identification information (62a) ... uniquely identifying the playback (40, 41)"*.

The paragraph bridging pages 18 and 19 of the application in hand states that "*[t]he remote server 31 is configured to identify, based on the received tracks, the playback and to create the identification information which uniquely identifies the playback by parameters such as artist, **title** etc.*" (emphasis added by the board).

Thus, when interpreted in the light of the description, the expression "*identification information ... uniquely identifying the playback*" in claim 1 of the main request covers information such as a title.

- 2.5 The last feature of claim 1 of all the requests specifies that "*the control unit (2) is further configured to automatically extract the tracks (45) based on an algorithm, the algorithm being dependent on a time interval (45a) between subsequently extracted tracks (45) and on a previously received second data (62) and on a type of the multimedia source (20-24)*".

The description discloses a single example for adapting an automatic extraction algorithm based on previously received second data. The last paragraph on page 25 teaches adapting the time intervals between subsequently extracted tracks to a comparably longer value if unique identification of the playback is already available.

The description also discloses a single example for adapting an automatic extraction algorithm based on a type of the multimedia source. The paragraph bridging pages 11 and 12 teaches changing the time interval between the extracted tracks depending on the multimedia source, for example depending on whether the

multimedia source is an FM radio or a Bluray player (see also page 19, lines 17 to 20).

The last feature of claim 1 is read in a manner consistent with these examples as covering the case in which the time interval between subsequently extracted tracks depends on (i) previously received second data and (ii) the type of the multimedia source.

2.6 The board shares the appellant's view that the expression "*previously received second data*" in the last feature of claim 1 should be understood as relating to second data received from the server (see point XIV.(a) above). However, it disagrees that the expression "*being dependent ... on a previously received second data*" should be interpreted as being dependent on whether previously received second data is present, not on the content of previously received second data (*ibid.*). It is common ground that the claim does not specify how the parameters in the last feature of claim 1 are used to determine the time interval. The board does not see any reason to interpret the expression "*being dependent ... on a previously received second data*" more narrowly than suggested by the explicit wording of the claim.

3. *Main request - Inventive step (Article 56 EPC)*

3.1 An invention is to 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 (Article 56 EPC).

3.2 In the following, the board applies the "problem/solution approach" to assess whether the subject-matter of claim 1 of the main request involves an inventive

step (Case Law of the Boards of Appeal of the European Patent Office, 9th edition, 2019 ("Case Law"), I.D.2).

3.3 *"Closest prior art"*

The board endorses the view expressed in appeal case T 1294/16 that the choice of starting point for assessing inventive step is not restricted because Article 56 EPC *"does not exclude the skilled person starting their considerations from any piece of prior art they might be aware of"* (see Reasons, point 5). Thus, although the board disagrees with the appellant that document D3 constitutes a more appropriate starting point than document D6 for assessing inventive step (see point XIV.(b) above), there is no need to consider this issue further.

Claim 1 is directed to a multimedia system automatically sending first data comprising tracks of a playback to a remote server and receiving in response, from the remote server, second data comprising identification information of the playback. Since document D6 discloses such a multimedia system (see next point), it is an appropriate starting point for assessing whether the claimed invention involves an inventive step.

3.4 *Disclosure of document D6*

- 3.4.1 Document D6 discloses a multimedia system comprising a plurality of multimedia sources each being configured to provide multimedia data for a playback (see Figure 1: *"(1) Sender, Transmitter", "(2) Playing Unit"*; paragraph [0106]: *"A transmitter or broadcaster (1) sends audio/video data (25) via a receiving channel (100)"*; paragraph [0107]:

"Alternatively, video content can be delivered from a client-sided, available display or playback unit (2), such as a video recorder, DVR, PVR or DVD or HD-DVD or a hard disk of a PC or the like, or a data stream"). In view of this, a user interface that enables a user to request the playback of a given one of the plurality of the multimedia sources or of a given multimedia content based on an input of a user of the multimedia system must also exist in the system of D6.

3.4.2 The multimedia system disclosed in D6 further comprises a playback unit being configured to perform the requested playback (see Figure 1: "(30) Display Unit"; see also paragraph [0040]) and a control unit being configured to extract portions of the playback as tracks being characteristic video parts of the playback allowing an unique identification of the playback (see Figure 1: "(50) Function-Unit", "(65) Signature data Unit"; paragraph [0112]: *"The signature data unit (62) [sic] extracts a video frame from the audio video data. ... Subsequently, via averaging (mathematical average value creation) over all pixels, in which pixels are assigned to one pixel after reduction in the size of the thumbnail, the thumbnail will be calculated"*; paragraph [0046]: *"The signature data can be assigned to a single video frames [sic] and/or to a set of video frames, such as a scene, or to the complete content"*; see also the board's interpretation of the term "tracks" under point 2.3 above).

3.4.3 The multimedia system of D6 also comprises a communication interface being configured to connect to the Internet and to automatically send first data comprising the tracks to a remote server (see Figure 1: "(70) Transmission-Unit"; paragraph [0114]: *"signature data ... are transferred to the server by means of a*

*back channel (20) which can be an Internet capable network as well") and further being configured to automatically receive second data in response to the sent first data from the remote server (see Figure 1: "(80) Additional Data-Reception Unit"; see also paragraph [0054]), the second data comprising identification information of the playback, the identification information being determined based on the tracks and uniquely identifying the playback (see paragraph [0069]: "With the registration of video data, corresponding additional data, such as **title**, ... are transferred and/or stored on the video index server ... After the registration of the signature data, the user or the viewer of the video data can request the additional data by means of the signature data"; see also the board's interpretation of the expression "second data uniquely identifying the playback" under point 2.4 above).*

- 3.4.4 Paragraph [0174] further discloses that the activation signal that activates the activation unit to trigger the signature data unit (Figure 1, "(46) Signal") may be created or produced "in a time-controlled and/or periodical and/or algorithmically-controlled manner" and that "[i]n an embodiment of the invention script instructions or program software instructions that are contained in the additional data, which are delivered by the server, can be used to activate the activation unit in order to update the client-sided displayed or output content".

D6 thus discloses automatically extracting tracks at times determined by program software instructions contained in additional data received from the server, i.e. an algorithm being dependent on previously

received second data (see the board's interpretation of this expression under point 2.6 above).

3.5 *Distinguishing feature*

It is common ground that the system of claim 1 differs from the system of document D6 in that the time interval between subsequently extracted tracks also depends on the type of the multimedia source (see the board's interpretation of the last feature of claim 1 of the main request under point 2.4 above; see also the appellant's argument under point XIV.(c) above).

3.6 *Technical effect and objective technical problem*

It is common ground that claim 1 does not specify how the previously received second data and the type of the multimedia source are used to determine the time interval. This means that the last feature of claim 1 essentially defines inputs to an algorithm without defining the algorithm itself. It is self-evident to the board that efficiency can only be improved by an algorithm that has been specified. For these reasons, it disagrees with the appellant that the objective technical problem is to be formulated as allowing efficient extraction of tracks of playbacks for automated generation of a library of previously consumed content (see point XIV.(d) above).

However, the board agrees with the appellant's alternative formulation of the objective problem of how to select appropriate parameters for automatic extraction of the tracks (ibid.).

3.7 *Obviousness*

As seen under point 3.4 above, the system described in document D6 provides a viewer with information about the content they are watching by extracting one or more frames of the watched content, sending a signature of the one or more frames to a remote server and receiving additional data corresponding to the sent signature in exchange. According to paragraph [0174], the extraction of the one or more frames may be periodical. It is common ground that D6 does not specify how to determine the extraction period. Thus the person skilled in the art implementing D6's system would have searched for ways of determining it.

Fixing the extraction period regardless of any characteristics of the content items being watched would have been an obvious and simple way of automatically determining the time at which to extract tracks. However, it is self-evident that the greater the mismatch between the frequency at which tracks are extracted and how often content items change, the higher the chance of either missing the identification of some content items or unnecessarily extracting multiple tracks for the same content item. Therefore the person skilled in the art would have wanted to reduce this mismatch and would have searched for parameters that correlate with how often the content items being watched are expected to change.

Paragraphs [0106] and [0107] and Figure 1 of document D6 disclose different types of multimedia sources: a transmitter that may be a broadcaster sending audio-video data via a channel (reference sign (1) in Figure 1) and a playback unit that may be a video recorder, a DVR, a PVR, a DVD, an HD-DVD, a hard disk of a PC or the like (reference sign (2) in Figure 1). As mentioned under point 3.4.1 above, a user

interface that enables a user to select a given one of these multimedia sources must also exist in the system of D6. Thus the system necessarily has knowledge about the type of multimedia source from which the content is being played.

It is common ground that the fact that the expected duration of the content items being watched depends on the type of the multimedia source is part of the common general knowledge of the person skilled in the art. It follows logically that how often content items being watched are expected to change depends on this parameter. Thus it would have been obvious to use the type of the multimedia source as a parameter for automatically determining the time interval between the extraction of tracks.

It is established case law that applying one of the possible solutions which are available to the person skilled in the art requires no particular skill and hence does not involve an inventive step (see Case Law, I.D.9.19.8). The could-would approach does not normally apply in that case (see T 894/19, T 12/07, T 1968/08, T 1045/12; see also the appellant's argument under point XIV.(e) above).

Thus the board finds that the mere idea of using the type of the multimedia source as an additional parameter for automatic extraction of tracks cannot represent an inventive contribution to the state of the art.

3.8 In view of the above, the board concludes that the subject-matter of claim 1 of the main request does not involve an inventive step (Article 56 EPC) in view of

the disclosure of document D6 combined with the common general knowledge of the person skilled in the art.

4. *Auxiliary requests I and II - Admittance (Article 13(2) RPBA 2020)*

4.1 Auxiliary requests I and II were filed after notification of the summons to oral proceedings. Since the summons was notified after 1 January 2020, the date on which the RPBA 2020 entered into force, Article 13 RPBA 2020 applies to the question of whether to admit these requests into the appeal proceedings (see Article 25(1) and (3) RPBA 2020).

4.2 According to Article 13(2) RPBA 2020, any amendment to a party's appeal case made after notification of a summons to oral proceedings must, in principle, not be taken into account unless there are exceptional circumstances, which have been justified with cogent reasons by the party concerned.

4.3 In the case in hand, the board accepts that the fact that new objections had been raised for the first time in the board's communication under Article 15(1) RPBA 2020 represents exceptional circumstances justifying the admittance of auxiliary requests I and II into the appeal proceedings. Thus the board, exercising its discretion pursuant to Article 13(2) RPBA 2020, admits these requests into the appeal proceedings.

5. *Auxiliary request I - Inventive step (Article 56 EPC)*

5.1 The differences between claim 1 of auxiliary request I and claim 1 of the main request are identified under point X. above.

- 5.2 The deletion of the expression "at least" has no bearing on the analysis conducted by the board in the previous section because, as stated under point 3.4.2 above, document D6 discloses a control unit configured to extract **portions** of the playback as tracks being characteristic video parts of the playback allowing an unique identification of the playback.
- 5.3 The addition of the feature reading "*so that the tracks (45) are extracted with a fixed time interval if no second data including identification information has been received for a predefined time interval, wherein the fixed time interval depends on the type of the multimedia source*" does not render the claimed subject-matter inventive for the following reasons.
- 5.3.1 As indicated under point 3.4.4 above, paragraph [0174] discloses that the activation signal that activates the activation unit to trigger the signature data unit may be created or produced "*in a time-controlled and/or periodical and/or algorithmically-controlled manner*" and that "*[i]n an embodiment of the invention script instructions or program software instructions that are contained in the additional data, which are delivered by the server, can be used to activate the activation unit in order to update the client-sided displayed or output content*".
- 5.3.2 In the case disclosed in paragraph [0174] in which the activation signal is activated periodically and using software instructions contained in the additional data, a fixed interval between track extraction (the period) will be used until software instructions have been received from the server, which can only happen after at least one signature has been sent to the server, i.e. after at least one track has been extracted, i.e.

at least one period. Thus the only feature distinguishing the subject-matter of claim 1 from D6's disclosure is the determination of the fixed interval (i.e. the period) depending on the type of the multimedia source.

5.3.3 The board disagrees with the appellant that this feature increases the efficiency of the automatic track extraction process (see point XVI. above) because it does not specify how the type of the multimedia source is used to determine the fixed interval.

5.3.4 Moreover, the mere idea of using this parameter to determine the period between the extraction of two tracks would have been obvious for the reasons given under point 3.7 above.

5.4 In view of the above, the board concludes that the subject-matter of claim 1 of auxiliary request I does not involve an inventive step (Article 56 EPC) in view of the disclosure of document D6 combined with the common general knowledge of the person skilled in the art.

6. *Auxiliary request II - Inventive step (Article 56 EPC)*

6.1 The differences between claim 1 of auxiliary request II and claim 1 of auxiliary request I are identified under point XI. above.

6.2 The further specification, in claim 1 of auxiliary request II, that the algorithm depends on second data previously received from the remote server has no bearing on the analysis made under section 3. above because the board already read the expression "second data" of claim 1 of the main request as referring to

second data previously received from the remote server (see point 2.6 above).

- 6.3 The further specification, in claim 1 of auxiliary request II, that the type of the "multiple" source is classified depending on whether the respective multimedia source provides individual "multiple" data or predefined streams of "multiple" data does not render the claimed subject-matter inventive either.
- 6.4 The passage from page 1, line 15 to page 2, line 8 of the application as filed distinguishes between (i) a multimedia source from which the user does not have the possibility to individually select multimedia data for playback (multimedia source providing predefined streams) and (ii) a multimedia source from which the user may specifically select certain multimedia data for playback for example from a storage unit (multimedia source providing individual multimedia data). The board reads the expression *"multimedia source provides individual 'multiple' data" or provides predefined streams of 'multiple' data"* in that sense.
- 6.5 The board disagrees with the appellant that the feature identified under point 6.3 above increases the efficiency of the automatic track extraction process (see point XVI. above) because the claim does not specify how the type of the multimedia source is used to control the fixed time interval.
- 6.6 Moreover, as suggested under point 3.7 above (third paragraph), document D6 already discloses a multimedia source providing predefined streams (the broadcaster sending audio-video data via a channel) and a multimedia source providing individual multimedia data

(the video recorder or DVR, PVR, DVD, HD-DVD, hard disk of a PC).

- 6.7 Thus, by using the type of the multimedia source to control the period between extraction of two tracks (see point 5.3.4 above), the person skilled in the art would have implicitly taken into account whether the multimedia source provides individual multimedia data or provides predefined streams of multimedia data.
- 6.8 The board agrees with the appellant that paragraph [0174] of document D6 is silent as to the use of different types of multimedia sources (see point XVI. above). However, this paragraph must be read in the context of the whole document. The activation unit referred to in paragraph [0174] of document D6 is the activation unit illustrated in Figure 1 and discussed in paragraph [0043] of D6, i.e. the unit responsible for activating the signal that triggers the extraction of one or more video frames of the content currently being viewed, irrespective of whether this content is provided by the broadcaster (1) or the playback unit (2).
- 6.9 In view of the above, the board concludes that the subject-matter of claim 1 of auxiliary request II does not involve an inventive step (Article 56 EPC) in view of the disclosure of document D6 combined with the common general knowledge of the person skilled in the art.
7. *Auxiliary request III - Admittance (Article 13 RPBA 2020)*
- 7.1 Auxiliary request III was filed after notification of the summons to oral proceedings. Thus Article 13 RPBA

2020 applies to the question of whether to admit this request into the appeal proceedings.

- 7.2 Auxiliary request III is an amendment within the meaning of both Article 13(1) and (2) RPBA 2020, with paragraph 1 applying to amendments made after the grounds of appeal have been filed and paragraph 2 applying *inter alia* to amendments made after notification of a summons to oral proceedings.

Articles 13(1) and 13(2) RPBA 2020 implement the second and third levels of the convergent approach applicable in appeal proceedings, respectively (see Supplementary publication 2, OJ EPO 2020, explanatory remarks on Article 13(1) and (2), first paragraphs, first sentences). At the third level of the convergent approach, which follows the second level, Article 13(1) RPBA 2020 also applies. The board may therefore also rely on criteria applicable at the second level of the convergent approach, i.e. as set out in Article 13(1) RPBA 2020.

- 7.3 Article 13(1) RPBA 2020 provides that, in the case of an amendment to a patent application, the board shall exercise its discretion in view of, *inter alia*, whether the party has demonstrated that the amendment, *prima facie*, does not give rise to new objections.

- 7.4 The differences between claim 1 of auxiliary request III and claim 1 of auxiliary request II are identified under point XII. above.

- 7.5 The passage on page 19, lines 17 to 20 of the application as filed - provided by the appellant as a basis for the amended claim 1 - specifies that "*in order to uniquely identify a certain segment of the*

audio playback 40, it may be sufficient to extract a track 45 of comparably short duration if compared to the video playback 41" and, therefore, seems to disclose the additional features of claim 1 of auxiliary request III **in isolation**. However, on a *prima facie* basis, this passage does not disclose the **combination** of the criterion used in these additional features for the extraction of a track (namely, whether the playback is audio or video) with the other requirements of the claim, namely that the tracks be extracted with a fixed time interval if no second data including identification information has been received from the remote server for a predefined time interval, the fixed time interval depending on the type of the multimedia source, the type of the multiple source being classified depending on whether the respective multimedia source provides individual multiple data or provides predefined streams of multiple data.

7.6 Therefore the appellant has not demonstrated that the amendment, *prima facie*, does not extend the claimed subject-matter beyond the content of the application as filed (Article 123(2) EPC) and, as a consequence, that the amendment, *prima facie*, does not give rise to new objections.

7.7 In view of this, the board, exercising its discretion relying on the criteria set out in Article 13(1) RPBA 2020, decided not to admit auxiliary request III into the appeal proceedings.

8. *Auxiliary request IV - Admittance (Article 13 RPBA 2020)*

8.1 Auxiliary request IV was filed after notification of the summons to oral proceedings. Thus Article 13 RPBA

2020 applies to the question of whether to admit this request into the appeal proceedings.

- 8.2 Auxiliary request IV is an amendment within the meaning of both Article 13(1) and (2) RPBA 2020. Therefore, when exercising its discretion and deciding on the admittance of auxiliary request IV, the board may rely on the criteria set out in Article 13(1) RPBA 2020.
- 8.3 The differences between claim 1 of auxiliary request IV and claim 1 of auxiliary request II are identified under point XIII. above.
- 8.4 The board disagrees with the appellant that it is clear, on a *prima facie* basis, that the criterion "*if unique identification of the playback is already available*" corresponds to the criterion of whether "*second data including identification information has been received from the remote server for a predefined time interval*". Nothing in the claim explicitly links these two criteria and there is no reason to consider such a link implicit since "unique identification of the playback" may be received from means other than the server: it may for example be received from the multimedia source. Because no link can be *prima facie* established between these two criteria, it is *prima facie* impossible to understand what exact distinctions delimiting the scope of protection can be learnt from the expression "already available" (see Case Law, II.A.3.1).
- 8.5 Therefore the appellant has not demonstrated that the amended claim 1 of auxiliary request IV is *prima facie* clear (Article 84 EPC) and, as a consequence, that the amendment, *prima facie*, does not give rise to new objections.

8.6 In view of this, the board, exercising its discretion relying on the criteria set out in Article 13(1) RPBA 2020, decided not to admit auxiliary request IV into the appeal proceedings.

9. *Conclusion*

9.1 Since none of the admitted requests on file is allowable, the appeal must 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