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**Datasheet for the decision
of 23 March 2023**

Case Number: T 1454/18 - 3.5.04

Application Number: 13718435.4

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H04N21/488, H04N21/478,
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G06F17/30

Language of the proceedings: EN

Title of invention:

A USER INTERFACE TO PROVIDE COMMENTARY UPON POINTS OR PERIODS
OF INTEREST IN A MULTIMEDIA PRESENTATION

Applicant:

ARRIS Enterprises LLC

Headword:

Relevant legal provisions:

EPC Art. 123(2)

RPBA Art. 12(4)

Keyword:

Main request and first, third, fourth and fifth auxiliary requests - Added subject-matter (yes)
Second auxiliary request - Admittance (no)

Decisions cited:

Catchword:



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Case Number: T 1454/18 - 3.5.04

D E C I S I O N
of Technical Board of Appeal 3.5.04
of 23 March 2023

Appellant: ARRIS Enterprises LLC
(Applicant) 3871 Lakefield Drive
Suwanee, GA 30024 (US)

Representative: Openshaw & Co.
8 Castle Street
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Decision under appeal: **Decision of the Examining Division of the
European Patent Office posted on 16 January 2018
refusing European patent application
No. 13718435.4 pursuant to Article 97(2) EPC.**

Composition of the Board:

Chair B. Willems
Members: B. Le Guen
G. Decker

Summary of Facts and Submissions

- I. The appeal is against the examining division's decision to refuse European patent application No. 13 718 435.4, published as international patent application WO 2013/162869 A1.
- II. The decision was based on the following grounds.
- The subject-matter of claim 1 of the main request and of the first and third auxiliary requests then on file did not involve an inventive step (Article 56 EPC).
 - The second auxiliary request then on file was not admitted into the examination proceedings.
 - The fourth and fifth auxiliary requests then on file were not admitted into the examination proceedings because they did not meet the requirements of Rule 137(5) EPC.
- III. The applicant ("appellant") filed notice of appeal and a statement setting out the grounds of appeal. With the statement of grounds of appeal, the appellant re-filed the claims of the requests that had formed the basis of the decision under 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 main request on which the decision was based or, alternatively, on the basis of one of the auxiliary requests on which the decision was based. The appellant also requested oral proceedings in the event that the board intended not to allow the appeal.

- IV. The board issued a summons to oral proceedings and a communication under Article 15(1) RPBA 2020 (OJ EPO 2021, A35). In its communication, the board provided reasons, *inter alia*, for its preliminary view that the main request and the first, third, fourth and fifth auxiliary requests did not meet the requirements of Article 123(2) EPC. The board also gave reasons why, exercising its discretion under Article 12(4) RPBA 2007 (OJ EPO 2007, 536), it was not minded to admit the second auxiliary request into the appeal proceedings.
- V. The appellant did not reply in substance to the board's communication. By letter dated 3 February 2023, it informed the board that it would not be attending the oral proceedings scheduled for 23 March 2023.
- VI. The oral proceedings before the board took place in the appellant's absence.

The board noted that it followed from the file that 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 on which the decision was based or, alternatively, on the basis of one of the auxiliary requests on which the decision was based.

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

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

"A method of displaying a plurality of presentation elements, the method comprising:

displaying, on a user interface (50), a progress bar (54), a length of the progress bar (54) being representative of a duration of a multimedia presentation, a point along the length of the progress bar (54) corresponding to a point within the multimedia presentation;

displaying, on the user interface (50), at least one communication box (58), each communication box (58) comprising at least one marker (68) and a communication (59) composed by a user in relation to a point or range within the multimedia presentation; and

receiving, via the user interface, a user input for defining a time interval by a pinching or squeezing action on the progress bar (54) at a first marker corresponding to a start time and a second marker corresponding to an end time;

wherein the progress bar (54) and each communication box (58) are displayed such that each marker is in alignment with a corresponding particular point or range along the length of the progress bar (54); and

wherein the corresponding particular point or range along the length of the progress bar (54) corresponds to the point or range within the multimedia presentation in relation to which the communication (59) was composed."

VIII. Claim 1 of the **first auxiliary request** reads as follows (features added to claim 1 of the **main request** are underlined; features deleted are crossed out):

"A method of displaying a plurality of presentation elements, the method comprising:

displaying, on a user interface (50), a progress bar (54), a length of the progress bar (54) being representative of a duration of a multimedia

presentation, a point along the length of the progress bar (54) corresponding to a point within the multimedia presentation;

~~displaying, on the user interface (50), at least one communication box (58), each communication box (58) comprising at least one marker (68) and a communication (59) composed by a user in relation to a point or range within the multimedia presentation; and~~

wherein a plurality of communication boxes, each communication box (58) comprising at least one marker (68) and a communication (59) composed by a user in relation to a respective different point within the multimedia presentation, are associated with the multimedia presentation;

receiving, via the user interface (50), a user input for defining a time interval (74) by a pinching or squeezing action on the progress bar (54) at a first marker corresponding to a start time of the time interval and a second marker corresponding to an end time of the time interval, wherein the start time of the time interval is after the start time of the multimedia presentation, and the end time of the time interval is after the start time of the time interval and before the end time of the multimedia presentation; and

displaying, on the user interface (50), one or more communication boxes (58) selected from the plurality of communication boxes,; [sic] wherein

~~wherein the progress bar (54) and each selected communication box (58) are displayed such that each marker is in alignment with a corresponding particular point or range along the length of the progress bar (54);~~

~~wherein the corresponding particular point or range along the length of the progress bar (54) corresponds to the point or range within the multimedia~~

presentation in relation to which the communication (59) was composed; and

the one or more selected communication boxes are those communication boxes (58) comprising a marker (68) within the defined time interval (74)."

IX. Claim 1 of the **second auxiliary request** reads as follows (features added to claim 1 of the **first auxiliary request** are underlined; features deleted are crossed out):

"A method of displaying a plurality of presentation elements, the method comprising:

displaying, on a user interface (50), a progress bar (54), a length of the progress bar (54) being representative of a duration of a multimedia presentation, a point along the length of the progress bar (54) corresponding to a point within the multimedia presentation;

wherein a plurality of communication boxes, each communication box (58) comprising at least one marker (68) and a communication (59) composed by a user in relation to a respective different point within the multimedia presentation, are associated with the multimedia presentation;

receiving, via the user interface (50), a user input for defining a time interval (74) by a pinching or squeezing action on the progress bar (54) at a first marker corresponding to a start time of the time interval and a second marker corresponding to an end time of the time interval, wherein the start time of the time interval is after the start time of the multimedia presentation, and the end time of the time interval is after the start time of the time interval and before the end time of the multimedia presentation; and

displaying, on the user interface (50), one or more communication boxes (58) selected from the plurality of communication boxes,; [sic] wherein the progress bar (54), the length of which being representative of the duration of the multimedia presentation, and each selected communication box (58) are displayed such that each marker is in alignment with a corresponding particular point or range along the length of the progress bar (54);

the corresponding particular point or range along the length of the progress bar (54) corresponds to the point or range within the multimedia presentation in relation to which the communication (59) was composed; and

the one or more selected communication boxes are those communication boxes (58) comprising a marker (68) within the defined time interval (74)."

- X. Claim 1 of the **third auxiliary request** reads as follows (features added to claim 1 of the **main request** are underlined; features deleted are crossed out):

"A method of displaying a plurality of presentation elements, the method comprising:

displaying, on a user interface (50), a progress bar (54), a length of the progress bar (54) being representative of a duration of a multimedia presentation, a point along the length of the progress bar (54) corresponding to a point within the multimedia presentation;

receiving, via the user interface (50), a user input for defining a time interval (74) by a pinching or squeezing action on the progress bar (54) at a first marker corresponding to a start time of the time interval and a second marker corresponding to an end time of the time interval; and

displaying, on the user interface (50), at least one communication box (58), each communication box (58) comprising at least one marker (68) and a communication (59) composed by a user in relation to a point or range within the multimedia presentation; and

displaying, on the user interface (50), a summary of the communications (59) comprised in those communication boxes (58) that comprise a marker (68) within the defined time interval (74); wherein

~~receiving, via the user interface, a user input for defining a time interval by a pinching or squeezing action on the progress bar (54) at a first marker corresponding to a start time and a second marker corresponding to an end time;~~

~~wherein~~ the progress bar (54) and each communication box (58) are displayed such that each marker is in alignment with a corresponding particular point or range along the length of the progress bar (54); and

~~wherein~~ the corresponding particular point or range along the length of the progress bar (54) corresponds to the point or range within the multimedia presentation in relation to which the communication (59) was composed."

XI. Claim 1 of the **fourth auxiliary request** reads as follows (features added to claim 1 of the **third auxiliary request** are underlined; features deleted are crossed out):

"A method of displaying a plurality of presentation elements, the method comprising:

displaying, on a user interface (50), a progress bar (54), a length of the progress bar (54) being representative of a duration of a multimedia presentation, a point along the length of the progress

bar (54) corresponding to a point within the multimedia presentation;

receiving, via the user interface (50), a user input for defining a time interval (74) by a pinching or squeezing action on the progress bar (54) at a first marker corresponding to a start time of the time interval and a second marker corresponding to an end time of the time interval; and

displaying, on the user interface (50), at least one communication box (58), each communication box (58) comprising at least one marker (68) and a communication (59) composed by a user in relation to a point or range within the multimedia presentation; and

~~displaying~~generating, ~~on the user interface (50),~~ a video summary of the defined time interval (74) of the multimedia presentation using communications (59) comprised in those communication boxes (58) that comprise a marker (68) within the defined time interval (74); wherein

the progress bar (54) and each communication box (58) are displayed such that each marker is in alignment with a corresponding particular point or range along the length of the progress bar (54); and

the corresponding particular point or range along the length of the progress bar (54) corresponds to the point or range within the multimedia presentation in relation to which the communication (59) was composed."

XII. Claim 1 of the **fifth auxiliary request** reads as follows (features added to claim 1 of the **fouth auxiliary request** are underlined; features deleted are crossed out):

"A method of displaying a plurality of presentation elements, the method comprising:

displaying, on a user interface (50), a progress bar (54), a length of the progress bar (54) being representative of a duration of a multimedia presentation, a point along the length of the progress bar (54) corresponding to a point within the multimedia presentation;

receiving, via the user interface (50), a user input for defining a time interval (74) by a pinching or squeezing action on the progress bar (54) at a first marker corresponding to a start time of the time interval and a second marker corresponding to an end time of the time interval; and

displaying, on the user interface (50), at least one communication box (58), each communication box (58) comprising at least one marker (68) and a communication (59) composed by a user in relation to a point or range within the multimedia presentation; and

generating a video summary of the defined time interval (74) of the multimedia presentation using communications (59) comprised in those communication boxes (58) that comprise a marker (68) within the defined time interval (74); wherein

the progress bar (54) and each communication box (58) are displayed such that each marker is in alignment with a corresponding particular point or range along the length of the progress bar (54); ~~and~~

the corresponding particular point or range along the length of the progress bar (54) corresponds to the point or range within the multimedia presentation in relation to which the communication (59) was composed; and

generating the video summary comprises harvesting video clips from the multimedia presentation using the one or more communications (59)."

Reasons for the Decision

1. The appeal is admissible.
 - A. Appellant's non-attendance at the oral proceedings before the board**
2. Although the duly-summoned appellant did not attend the oral proceedings, this did not prevent the board from continuing the oral proceedings (Rule 115(2) EPC). In accordance with Article 15(3) RPBA 2020 (applicable in accordance with Article 25(1) RPBA 2020), the board relied for its decision on the appellant's written submissions. The board was in a position to announce a decision at the conclusion of the oral proceedings since the case was ready for decision (Article 15(5) and (6) RPBA 2020, applicable in accordance with Article 25(1) RPBA 2020), and the voluntary absence of the appellant was not a reason for delaying the decision (Article 15(3) RPBA 2020).
 - B. Main request and first, third, fourth and fifth auxiliary requests - added subject-matter (Article 123(2) EPC)**
3. The European patent application may not be amended in such a way that it contains subject-matter which extends beyond the content of the application as filed (Article 123(2) EPC). This means that any amendment can only be made within the limits of what the person skilled in the art would derive directly and unambiguously, using common general knowledge, and seen objectively and relative to the date of filing, from the whole disclosure of the description, claims and drawings of the application as filed (see Case Law of

the Boards of Appeal of the European Patent Office, 10th edition, 2022 ("Case Law"), II.E.1.1).

4. Claim 1 of the main request specifies a step of receiving, via the user interface, a user input for defining a time interval by a pinching or squeezing action on the progress bar **at a first marker** corresponding to a start time and **a second marker** corresponding to an end time.
5. This step was not specified in the claims as filed.
6. In the context of the application at hand, a marker is an element that is displayed on the user interface (see for example the second displaying step of claim 1 of the main request).
7. Paragraph [0127] of the application as filed defines how a user can interact with the interface to define a time interval. This paragraph teaches selecting a start time by touching the progress bar with one digit (e.g. the user's thumb), and simultaneously (or before or afterwards) selecting the end time by touching the progress bar with another digit on the same hand (e.g. the user's forefinger). Only then can the user change the length of the selected part by moving their digits closer together or further apart. This further action is called a "pinching" action.
8. Paragraph [0127] - and the application as filed as a whole - is silent about a pinching or squeezing action at first and second markers displayed on the user interface, as required by claim 1 of the main request.
9. The reasons provided under points 4. to 8. above are essentially those given by the board in its

communication pursuant to Article 15(1) RPBA 2020 in support of its preliminary view that the main request did not meet the requirements of Article 123(2) EPC.

10. In its communication pursuant to Article 15(1) RPBA 2020, the board had also provided its preliminary opinion that the first, third, fourth and fifth auxiliary requests did not meet the requirements of Article 123(2) EPC for the same reasons.
11. The appellant did not reply in substance to the board's communication. Therefore the board sees no reason to depart from its preliminary view expressed in its communication, and concludes that the main request and the first, third, fourth and fifth auxiliary requests do not meet the requirements of Article 123(2) EPC.

C. Second auxiliary request - admittance (Article 12(4) RPBA 2007)

12. The statement of grounds of appeal was filed on 22 May 2018, i.e. before the date on which the RPBA 2020 entered into force (1 January 2020). Thus, in accordance with Article 25(2) RPBA 2020, Article 12(4) to (6) RPBA 2020 does not apply to whether to admit the second auxiliary request. Instead, Article 12(4) RPBA 2007 applies.
13. Article 12(4) RPBA 2007 gives the board the power to hold inadmissible requests which were not admitted in the first-instance proceedings.
14. In comparison with claim 1 of the first auxiliary request, claim 1 of the second auxiliary request specifies in the second-to-last feature that the length

of the progress bar is representative of the duration of the multimedia presentation.

15. This amendment is intended to specify that the length of the progress bar does not change in reaction to the pinching or squeezing action (see point 15.2 of the impugned decision and page 5 of the statement of grounds of appeal, last paragraph).
16. The examining division had already interpreted claim 1 of the first auxiliary request as if this feature had been specified (see point 15.3 of the impugned decision). Thus the board is of the view that the non-admittance of the second auxiliary request by the examining division was justified.
17. The board notes that the appellant has not submitted any argument as to why the second auxiliary request should be admitted into the appeal proceedings. On page 5 of its statement of grounds of appeal, the appellant merely submitted that "*this request [was] only maintained in this appeal from a formal point of view in case the Board of Appeal found it allowable but, for some reason, not the 1st Auxiliary Request*". Furthermore, the appellant did not reply in substance to the board's communication pursuant to Article 15(1) RPBA 2020, in which the board had indicated that it was not minded to admit the second auxiliary request into the appeal proceedings.
18. In view of the above, the board, exercising its discretion under Article 12(4) RPBA 2007, holds the second auxiliary request inadmissible.
19. As an aside, the board notes that, even if it had admitted the second auxiliary request into the appeal

proceedings, it would likely have held that request unallowable for the reasons provided in section B. above.

D. Conclusion

20. Since none of the appellant's requests 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