

**Internal distribution code:**

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

**Datasheet for the decision  
of 18 January 2023**

**Case Number:** T 2853/18 - 3.5.04

**Application Number:** 13196296.1

**Publication Number:** 2741513

**IPC:** H04N21/422, H04N21/4722,  
H04N21/81, H04N21/845

**Language of the proceedings:** EN

**Title of invention:**

Method in a system for providing information about program  
content and system

**Applicant:**

DISH Technologies L.L.C.

**Headword:**

**Relevant legal provisions:**

RPBA Art. 12(4)  
RPBA 2020 Art. 13(1)  
EPC Art. 56

**Keyword:**

Main request - request could have been filed in first instance proceedings (yes)

First auxiliary request - amendment to appeal case - amendment gives rise to new objections (yes)

Second auxiliary request - inventive step - (no)

**Decisions cited:**

**Catchword:**



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

Boards of Appeal of the  
European Patent Office  
Richard-Reitzner-Allee 8  
85540 Haar  
GERMANY  
Tel. +49 (0)89 2399-0  
Fax +49 (0)89 2399-4465

Case Number: T 2853/18 - 3.5.04

**D E C I S I O N**  
**of Technical Board of Appeal 3.5.04**  
**of 18 January 2023**

**Appellant:** DISH Technologies L.L.C.  
(Applicant) 9601 S. Meridian Boulevard  
Englewood, CO 80112 (US)

**Representative:** Beck Greener LLP  
Fulwood House  
12 Fulwood Place  
London WC1V 6HR (GB)

**Decision under appeal:** **Decision of the Examining Division of the  
European Patent Office posted on 28 June 2018  
refusing European patent application  
No. 13196296.1 pursuant to Article 97(2) EPC.**

**Composition of the Board:**

**Chair** B. Willems  
**Members:** A. Seeger  
B. Müller

## **Summary of Facts and Submissions**

- I. The appeal is against the examining division's decision to refuse European patent application No. 13 196 296.1, published as EP 2 741 513 A1.
- II. The prior-art documents cited in the decision under appeal included the following:  
  
D1: US 2009/0144312 A1
- III. The decision under appeal was based on the ground that the subject-matter of claim 1 of all requests then on file did not involve an inventive step within the meaning of Article 56 EPC and that therefore the requirements of Article 52(1) EPC were not met.
- IV. The applicant (appellant) filed notice of appeal. With the statement of grounds of appeal, the appellant filed new claims according to a main request and a first auxiliary request. The appellant indicated a basis in the application as filed for the claimed subject-matter and provided arguments to support its opinion that the claims met the requirements of Articles 54 and 56 EPC.
- V. The board issued a summons to oral proceedings and a communication under Article 15(1) of the Rules of Procedure of the Boards of Appeal in the 2020 version (RPBA 2020, see OJ EPO 2019, A63). In this communication, the board gave the following preliminary opinion.
  - (a) In view of the amendments made to claim 1 of the main request, the board tended to exercise its discretion under Article 12(4) RPBA 2007 in not

admitting the main request into the appeal proceedings.

(b) Claim 1 of the first auxiliary request did not meet the requirements of Article 123(2) EPC.

(c) The subject-matter of claim 1 of the first auxiliary request did not involve an inventive step within the meaning of Article 56 EPC.

VI. By letter dated 17 December 2022, the appellant filed a new first auxiliary request and requested that the previous first auxiliary request be renumbered as the second auxiliary request. The appellant argued that the main request should be admitted into the appeal proceedings. It provided reasons to support its opinion that claim 1 of the now second auxiliary request met the requirements of Article 123(2) EPC and that the claims of all requests met the requirements of Article 56 EPC.

VII. The board held oral proceedings on 18 January 2023.

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 filed with the statement of grounds of appeal or, alternatively, on the basis of the claims of either the first auxiliary request filed with the letter dated 17 December 2022 or the second auxiliary request filed as first auxiliary request with the statement of grounds of appeal.

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

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

"A method in a system (118) for providing information about program content (402), comprising:  
receiving a signal (508) from a program distributor (202) over a transmission network;  
presenting a media program (402) on a user device (122), wherein the program is contained in the signal (508);  
receiving by the system (118) first program content metadata generally related to the program as a whole and making the first metadata available for presentation during presentation of the whole program, wherein the first program content metadata is multiplexed into the same signal (508) as the program (402) and is received before presentation of the program (402) commences;  
receiving, by the system (118), data representing a voice query (308) that was made by a user (306) at a first particular time during presentation of the program on the user device (122);  
correlating, by the system (118), the data representing the query with the first particular time during presentation of the program;  
receiving by the system (118) second program content metadata (208) related to particular portions of the program, wherein the second program content metadata (208) is multiplexed into the same signal (508) as the program (402) and received contemporaneously with the particular portion of the program to which it relates, and each item of the second program content metadata (208) is individually associated with beginning and ending frames of the program which are used to define the particular portion to which that individual item of metadata relates;

determining those items of the second program content metadata (208) that relate to portions of the program which correlate with the first particular time; in response to receiving the data representing the query, presenting on the user device (112) a response to the query based on the determined items of second program content metadata, wherein the second program content metadata (208) is stored and available for responding to queries during the presentation of the portion of the program to which it relates."

IX. Claim 1 of the first auxiliary request reads as follows (features deleted compared with claim 1 of the main request are ~~struck through~~):

"A method in a system (118) for providing information about program content (402), comprising:  
receiving a signal (508) from a program distributor (202) over a transmission network;  
presenting a media program (402) on a user device (122), wherein the program is contained in the signal (508);  
receiving by the system (118) first program content metadata generally related to the program as a whole and making the first metadata available for presentation during presentation of the whole program, wherein the first program content metadata is multiplexed into the same signal (508) as the program (402) and is received before presentation of the program (402) commences;  
receiving, by the system (118), data representing a voice query (308) that was made by a user (306) at a first particular time during presentation of the program on the user device (122);

correlating, by the system (118), the data representing the query with the first particular time during presentation of the program;  
receiving by the system (118) second program content metadata (208) related to particular portions of the program, wherein the second program content metadata (208) is multiplexed into the same signal (508) as the program (402) and received contemporaneously with the particular portion of the program to which it relates, and each item of the second program content metadata (208) is individually associated with beginning and ending frames of the program which are used to define the particular portion to which that individual item of metadata relates;  
~~determining those items of the second program content metadata (208) that relate to portions of the program which correlate with the first particular time;~~  
in response to receiving the data representing the query, presenting on the user device (112) a response to the query based on the ~~determined items of second program content metadata~~, wherein the second program content metadata (208) is stored and available for responding to queries during the presentation of the portion of the program to which it relates."

- X. Claim 1 of the second auxiliary request reads as follows (features added compared with claim 1 of the main request are underlined; deleted features are ~~struck through~~):

"A method in a system (118) for providing information about program content (402), comprising:  
receiving a signal (508) from a program distributor (202) over a transmission network;

presenting a media program (402) on a user device (122), wherein the program is contained in the signal (508);

receiving by the system (118) first program content metadata generally related to the program as a whole and making the first metadata available for presentation during presentation of the whole program, wherein the first program content metadata is multiplexed into the same signal (508) as the program (402) and is received before presentation of the program (402) commences;

receiving, by the system (118), data representing a voice query (308) that was made by a user (306) at a first particular time during presentation of the program on the user device (122);

~~associating correlating~~, by the system (118), the data representing the query with ~~the first particular time during presentation of the program~~;

receiving by the system (118) second program content metadata (208) related to a particular portions of the program presented at the first particular time, wherein the second program content metadata (208) is multiplexed into the same signal (508) as the program (402) and received contemporaneously with the particular portion of the program to which it relates, and each item of the second program content metadata (208) is individually associated with beginning and ending frames of the program which are used to define the particular portion to which that individual item of metadata relates;

~~determining those items of the second program content metadata (208) that relate to portions of the program which correlate with the first particular time;~~

in response to receiving the data representing the query, presenting on the user device (112) a response to the query based on the ~~determined items of second~~

program content metadata, wherein the second program content metadata (208) is stored and available for responding to queries during the presentation of the portion of the program to which it relates;  
continuing to present the program (402) and continuing to receive program content metadata (208) related to particular portions of the program presented at particular times;  
receiving third program content metadata (208) related to a particular portion of the program presented at a second particular time and also related to the response to the query received at the first particular time; and automatically presenting on the user device (112) at the second particular time additional program information based on the third program content metadata (208)."

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

*(a) Main request*

The main request should be admitted into the appeal proceedings because there was not a substantial change in the subject of the proceedings compared to the second auxiliary request on which the impugned decision was based (see letter dated 17 December 2022, section "Main Request", second and third paragraphs).

Only with the reasoning in the decision under appeal did the appellant become aware of exactly why the examining division had found the subject-matter of the claim in question to lack an inventive step. The main request filed with the statement of grounds of appeal should thus be admitted as this was the first opportunity to respond to the full reasoning of the

decision (see letter dated 17 December 2022, section "Main Request", penultimate paragraph).

*(b) First auxiliary request*

The first auxiliary request should be admitted into the appeal proceedings because the feature in claim 1 of the main request which the board had considered to cause a substantial change in the subject of the proceedings had been removed (see letter dated 17 December 2022, section "New 1st Auxiliary Request", first paragraph).

*(c) Second auxiliary request*

According to claim 1, there was a free choice of individually associating each item of the second programme content metadata with beginning and ending frames of the programme. Hence, a higher level of granularity was possible. In contrast, in a system according to document D1, a partition into segments was already given, and associating metadata was limited to segments identified by boundaries.

According to claim 1, "*additional program information*" was presented. This "*additional program information*" was not the same information as presented in response to the query previously defined in claim 1. Hence, the distinguishing features had the effect that the same query would lead to different answers as the programme advanced. This effect was different to merely repeating the same query and getting the same answer. The user would get further information they would not have otherwise become aware of.

## **Reasons for the Decision**

1. The appeal is admissible.
2. Main request - admittance (Article 12(4) RPBA 2007)
  - 2.1 In the case in hand, the statement of grounds of appeal was filed before the revised version of the Rules of Procedure of the Boards of Appeal (RPBA 2020) entered into force, i.e. 1 January 2020 (see OJ EPO 2019, A63). Thus, in accordance with Article 25(2) RPBA 2020, Article 12(4) to (6) RPBA 2020 does not apply. Instead, Article 12(4) of the Rules of Procedure of the Boards of Appeal in the version of 2007 (RPBA 2007 - see OJ EPO 2007, 536) continues to apply.

Under Article 12(4) RPBA 2007, the board has the discretionary power to hold inadmissible facts, evidence and requests which could have been presented in the first-instance proceedings.

Since, in fact, almost every claim request could have been presented before the department of first instance, the question within that context is whether the situation was such that the filing of this request should already have taken place at that stage (see Case Law of the Boards of Appeal of the European Patent Office, 10th edn. 2022 ("Case Law"), V.A.5.11.1).

- 2.2 During the oral proceedings, the examining division objected that the following features of claim 1 of the second auxiliary request then on file were anticipated by the disclosure of document D1 (see minutes of oral proceedings, points 4, 4.1 and 4.2):

- (a) *"the second program content metadata (208) is associated with beginning and ending frames of the program which are used to define the particular portion to which it relates"*
- (b) *"in response to receiving the data representing the query, presenting on the user device (112) a response to the query based on the second program metadata"*

The examining division held that it was common general knowledge that segment definitions were made by means of time stamps associated with starting or ending frames (see minutes of oral proceedings, point 4).

The applicant argued that document D1 did not disclose metadata for specific portions of the programme and did not identify a frame where e.g. an actor was present but referred coarsely to segments (see minutes of oral proceedings, point 4.1).

The applicant did not file a further auxiliary request in reaction to these discussions specifying features allowing the identification of a particular portion of programme content to which an individual item of metadata related (e.g. identifying a frame in which an actor was present) (see minutes of oral proceedings, point 4.3).

2.3 Claim 1 of the main request differs from claim 1 of the second auxiliary request on which the impugned decision was based in that the former specifies:

- (a) *"each item of the second program content metadata (208) is individually associated with beginning and ending frames of the program which are used to*

*define the particular portion to which that individual item of metadata relates"*

(b) *"determining those items of the second program content metadata (208) that relate to portions of the program which correlate with the first particular time"*

(c) *"in response to receiving the data representing the query, presenting on the user device (112) a response to the query based on the determined items of second program content metadata"*

2.4 As a basis for these amended features, the appellant referred to Figure 9 and the description (page 19, lines 6 to 17; page 7, lines 23 to 29; page 9, line 24 to page 10, line 2 and page 23, line 23 to page 24, line 5) (see statement of grounds of appeal, section "Main Request", "Amendments and A123(2) EPC").

2.5 Claim 1 thus now specifies a further step (see feature (b) quoted under point 2.3 above) in which the items of second programme metadata which correlate with the first particular time are determined. A response to a user query is then presented based on this determined subset of second programme metadata (see feature (c) quoted under point 2.3 above).

2.6 The appellant argued that in this manner it was possible to correlate the query with just the subset of metadata relevant at the particular time of the query. The job of answering the query was thus made much simpler in that there was less metadata to consider as possible candidate answers and thus less further evaluation to perform (see statement of grounds of appeal, page 6, third paragraph).

- 2.7 In fact, the entire argument provided by the appellant concerning inventive step is based on this newly specified further step and its technical effect (see statement of grounds of appeal, section "Main Request", "Novelty and Inventive Step").
- 2.8 Hence, the board finds that the addition of this further step results in a substantial change in the subject of the proceedings.
- 2.9 The appellant argued that there was not a substantial change in the subject of the proceedings compared to the second auxiliary request on which the impugned decision was based (see point XI.(a) above). The appellant referred to its letter dated 15 May 2018 (page 4, heading "2nd Auxiliary Request, Inventive Step"), where it was set out that the new features allowed a more accurate and flexible association of metadata with relevant particular portions of the programme. According to the appellant, these were essentially the same arguments as put forward in the statement of grounds of appeal in identifying a technical effect in support of inventive step.

The board is not convinced by these arguments for two reasons.

Firstly, according to the first page of the appellant's letter dated 17 December 2022, the appellant had been aware of which aspect might render the claimed subject-matter inventive. However, the appellant never filed a corresponding request in the first-instance proceedings.

Secondly, feature a) quoted under point 2.2 above was added in the second auxiliary request filed with the letter dated 15 May 2018. This feature only specifies that the portion of a programme to which some metadata relates is defined by beginning and ending frames of the programme. This is the same as in document D1 where metadata relates to a segment, i.e. a portion of a programme, and it is implicit that segments of a video programme are delimited by beginning and ending frames. Hence, feature a) quoted under point 2.2 above did not lead to a substantial change in the subject of the proceedings. This only happened due to the joint insertion of the features a) to c) quoted under point 2.3 above.

2.10 Furthermore, the appellant argued that it thought that the required distinction was already present in the claims that formed the basis for the decision under appeal. Only with the reasoning in the decision did it become aware of exactly why the examining division had found the subject-matter of the claim in question to lack inventive step. The main request filed with the statement of grounds of appeal should thus be admitted as this was the first opportunity to respond to the full reasoning of the decision (see point XI.(b) above).

The board is not convinced by this argument because during the oral proceedings an extensive discussion on this issue took place (see minutes of oral proceedings, section 4). It was clear already at this time that the examining division found that the features quoted under point 2.2 above related to segment identification (see minutes of oral proceedings, point 4.2).

2.11 In view of the above, the board finds that the current main request could and should have been already filed in the first-instance proceedings. Thus, the board has discretion not to admit the current main request into the appeal proceedings under Article 12(4) RPBA 2007.

2.12 In view of the amendments made to claim 1, the board did not admit the main request into the appeal proceedings under Article 12(4) RPBA 2007 because the amendments added new, complex subject-matter.

If the board had admitted the claims of the main request into the appeal proceedings, it would have had to consider whether it should examine and decide for the first time on appeal whether the new subject-matter (including the additional step of determining a subset of metadata) met the requirements of Article 56 EPC or whether it should remit the case to the department of first instance for further prosecution.

However, the first of these procedural options is not appropriate because the amended features in claim 1 have no equivalent in the original claims and are only derived from the description (see point 2.4 above). Hence, the examining division never gave an opinion on the patentability of the claimed subject-matter, and the claimed combination of features might not have been searched for.

The second of these procedural options is also not appropriate because a remittal of the case in accordance with Article 111(1), second sentence, EPC would make the proceedings considerably longer. This approach is also in line with the aim of the new provision of Article 11 RPBA 2020 to reduce the likelihood of a "ping-pong" effect between the boards

and the departments of first instance and a resulting undue prolongation of the entire proceedings before the EPO (see document CA/3/19, section VI, explanatory remarks on Article 11, second sentence; see also Supplementary publication 2, OJ EPO 2020). Under Article 11 RPBA 2020, the boards of appeal should therefore not remit a case to the department whose decision was appealed for further prosecution unless special reasons present themselves for doing so.

These two inappropriate options would never have arisen if the claims of the current main request had been presented in the proceedings before the examining division (see Case Law, V.A.5.11.4a)).

3. First auxiliary request - admittance  
(Article 13 RPBA 2020)

3.1 The first auxiliary request was filed after the statement of grounds of appeal. It is thus an amendment to this appeal case within the meaning of Article 13(1) RPBA 2020.

Under Article 13(1) RPBA 2020, any amendment to a party's appeal case after it has filed its grounds of appeal may be admitted only at the discretion of the board.

Under Article 13(1) RPBA 2020, the board exercises its discretion in view of, *inter alia*, whether the party has demonstrated that any such amendment does not give rise to new objections.

3.2 According to the appellant, the claims of the first auxiliary request were identical to the claims of the main request except that feature b) identified in

point 2.3 above had been removed (see letter dated 17 December 2022, section "New 1st Auxiliary Request", first paragraph). The main request was in turn based on the second auxiliary request on which the impugned decision was based (see statement of grounds of appeal, first page, penultimate paragraph).

The appellant argued that the first auxiliary request should be admitted into the appeal proceedings because feature b) - identified under point 2.3 above - in claim 1 of the main request, which the board considered to cause a substantial change in the subject of the proceedings, had been removed (see point XI.(b) above).

- 3.3 Claim 1 of the first auxiliary request contains the following passage (features added compared with claim 1 of the second auxiliary request on which the decision under appeal was based are underlined; deleted features are ~~struck through~~):

*"receiving by the system (118) second program content metadata (208) related to a particular portions of the program ... and each item of the second program content metadata (208) is individually associated with beginning and ending frames of the program which are used to define the particular portion to which ~~it~~ that individual item of metadata relates"*

- 3.4 Hence, the amendments to claim 1 of the first auxiliary request compared to the main request do not result in a reversal to the wording of the second auxiliary request which had formed the basis for the appealed decision.

In particular, the passage of claim 1 quoted under point 3.3 above sets out that the second programme

content metadata relates to particular portions of the programme (emphasis added by the board).

Therefore, it is not clear whether the same metadata possibly identifying multiple elements is available for multiple portions and whether "each item" refers to each occurrence of that same metadata or whether an individual item of metadata refers to a single element of metadata related to a particular portion of the programme.

Hence, the board finds that the appellant did not demonstrate that the amendments in claim 1 of the first auxiliary request do not give rise to a new objection of lack of clarity (Article 84 EPC).

3.5 In view of the above, the board exercised its discretion under Article 13(1) RPBA 2020 in deciding not to admit the first auxiliary request into the appeal proceedings.

4. Second auxiliary request - inventive step (Article 56 EPC)

4.1 Document D1 may be regarded as the closest prior art for the assessment of inventive step.

4.2 Document D1 discloses a method in a system for providing information about programme content (see paragraph [0013]: "*method for presenting interactive multimedia programs, where the user can interact with the multimedia program to retrieve additional content associated with the multimedia program*"), comprising:

receiving a signal from a programme distributor over a transmission network (see paragraph [0015]: "*The IMS*

*can receive interactive multimedia programs from a variety of remote sources ... Remote sources can include both wireline sources 106a and wireless 106b sources ... wireline sources can include Internet protocol television (IPTV) subsystems, cable television (CATV) subsystems...Wireless sources 106b, for example, can include satellite television", paragraph [0026]: "a multimedia program is delivered in step 214 to the IMS 102" and Figure 2: 214)*

*presenting a media programme on a user device, where the programme is contained in the signal (see paragraph [0014]: "an IMS can present the multimedia programs using media devices 104 such as ... video devices 104b")*

*receiving by the system first programme content metadata generally related to the programme as a whole and making the first metadata available for presentation during presentation of the whole programme, where the first programme content metadata is multiplexed into the same signal as the programme and is received before presentation of the programme commences (see paragraph [0010]: "when viewing programs using interactive program guide services, the user can obtain title, date and participant information")*

*receiving, by the system, data representing a voice query made by a user at a first particular time during presentation of the programme on the user device (see paragraph [0016]: "the input device 110 can also include an audio input 113 for accepting speech-based commands" and paragraph [0029]: "in a speech-based system, the QP 122 can be configured to convert all input speech using a speech-to-text system")*

associating, by the system, the data representing the query with the programme (see paragraph [0029]: *"If the QP 122 does detect an input in step 230, then the QP 122 can determine whether the input is associated with a valid command or query for retrieving content from the data stream ... the QP 122 can use the query grammar to determine whether the input corresponds to a valid command"* and paragraph [0024]: *"By providing a limited grammar rather than a full grammar for recognizing any command to the IMS 102, the IMS can be configured to be responsive to commands regarding only available content"*)

receiving by the system second programme content metadata related to a particular portion of the programme presented at the first particular time (see paragraph [0018]: *"a multimedia program having one or more segments can be selected for transmission or presentation. The segments can be defined by any type of division in the multimedia program. For example, a multimedia presentation may be divided into segments by time"* and paragraph [0022]: *"content not considered relevant to the content in current segment of the multimedia presentation is not included in the current portion of the data stream"*), where the second programme content metadata is multiplexed into the same signal as the programme and received contemporaneously with the particular portion of the programme to which it relates (see paragraph [0026]: *"the program including a one or more program content streams in one or more content data channels, a data stream of additional content in a data channel, and associated query grammar(s) in a same or separate data channel"*), and each item of the second programme content metadata is individually associated with beginning and ending frames of the programme which are used to define the

particular portion to which that individual item of metadata relates (according to paragraph [0022], the portions of the data stream are associated with programme segments which in turn may be divided by time according to paragraph [0018]; it is implicit that a time segment of a multimedia programme has a beginning and an ending frame)

in response to receiving the data representing the query, presenting on the user device a response to the query based on the second programme content metadata, with the second programme content metadata being stored and available for responding to queries during the presentation of the portion of the programme to which it relates (see paragraph [0031]: "*Once the QP 122 determines in step 234 that the input detected corresponds to a valid command, the QP 122, in step 236, can access a memory location for the additional content associated with the input command recognized. Afterwards, in step 238, the QP 122 can retrieve the content and present the retrieved content to the user*")

continuing to present the programme and continuing to receive programme content metadata related to particular portions of the programme presented at particular times; receiving third programme content metadata related to a particular portion of the programme presented at a second particular time (according to paragraph [0018], the multimedia presentation may be divided into multiple segments by time, and, according to paragraph [0022], as the multimedia programme moves from segment to segment, the content of the data stream can also vary)

4.3 The appellant argued that according to claim 1, there was a free choice of individually associating each item of the second programme content metadata with beginning and ending frames of the programme. Hence, a higher level of granularity was possible as set out in the description (the paragraph bridging pages 9 and 10). In contrast, in a system according to document D1, the partition into segments was already given, and associating metadata was limited to the segment boundaries (see point XI.(c) above).

The board is not convinced by these arguments for two reasons.

Firstly, document D1 discloses that for each segment of a programme, different metadata is provided (see paragraph [0022]: "*content not considered relevant to the content in the current segment of the multimedia presentation is not included in the current portion of the data stream*"). The metadata for each segment in document D1 can thus be regarded as an item of second programme content metadata as defined in claim 1. Furthermore, each segment described in document D1 has beginning and ending frames which define this particular segment or portion of the programme. Hence, document D1 discloses the feature of claim 1 reading: "*each item of the second program content metadata (208) is individually associated with beginning and ending frames of the program which are used to define the particular portion to which that individual item of metadata relates*".

Secondly, paragraph [0018] of document D1 discloses that: "*a multimedia presentation may be divided into segments by time, topic(s), participant(s), location(s), or any combination thereof-to name a few.*

*For example, a multimedia program regarding a number of locations may be divided by location, but can also be further divided by topics discussed at each location".* Hence, each programme segment in document D1 may be further divided such that each item of programme content metadata, e.g. identifying a topic discussed at one location, is individually associated with the beginning and ending frames defining this particular part of a segment.

4.4 The subject-matter of claim 1 therefore differs from the disclosure of document D1 in that the former specifies that the third programme metadata is related to the response to the query received at the first particular time and automatically presenting on the user device at the second particular time additional programme information based on the third programme content metadata.

4.5 The effect of these distinguishing features is that if the same programme content metadata presented in response to a previous user query appears a second time, this programme content metadata is then automatically presented on the user device.

In other words, information in which a user has previously indicated their interest is automatically presented once it appears again.

4.6 The appellant argued that according to claim 1, "*additional program information*" was presented. This "*additional program information*" was not the same information as presented in response to the query. Hence, the distinguishing features had the effect that the same query would lead to different answers as the programme advances. Hence, the effect was different to

merely repeating the same query and getting the same answer. The user would get further information they would not otherwise have become aware of (see point XI.(c) above).

The board is not convinced that claim 1 requires the "*additional program information*" to be different to the response presented to the query. This is not specified in claim 1. The board finds that the term "*additional program information*" can be understood as information that is additional to the information provided by the programme itself.

Furthermore, claim 1 does not specify that the third programme content metadata related to the response to the query received at the first particular time is different to the second programme content metadata based on which the response to the query is presented.

Hence, the effect submitted by the appellant is not causally related to the technical features of the claimed invention.

- 4.7 Regarding the effect set out under point 4.5 above, the board finds that it is a subjective preference of a user whether an automatic presentation of information in which a user has previously indicated their interest is considered helpful. Some users may prefer this automatic presentation mode since it saves them the effort of repeating a query. Other users may prefer to get information about programme content only if they request it.

Such a subjective preference or wish of a user is an aim to be achieved in a non-technical field which may

legitimately appear in the formulation of the objective technical problem (see Case Law, I.D.9.2.6).

4.8 The objective technical problem may thus be formulated as to automatically present programme information on which a user has previously indicated their interest.

4.9 Faced with this problem, it would have been obvious to the person skilled in the art that a previous user query is a way to indicate interest and to automatically present the requested programme information each time it becomes available.

Thus, the person skilled in the art would have arrived at the subject-matter of claim 1 in a straightforward manner.

4.10 Therefore, the board finds that the subject-matter of claim 1 of the first auxiliary request does not involve an inventive step within the meaning of Article 56 EPC.

## 5. Conclusion

The main request and the first auxiliary request were not admitted into the appeal proceedings. The second auxiliary request is not allowable because the subject-matter of claim 1 of this request does not involve an inventive step within the meaning of Article 56 EPC. 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