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**Datasheet for the decision  
of 31 January 2023**

**Case Number:** T 1063/19 - 3.4.03

**Application Number:** 13822572.7

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**Language of the proceedings:** EN

**Title of invention:**

SYSTEMS AND METHODS FOR ASSESSING VIEWER INTEREST IN CONTENT  
AND ADVERTISEMENTS

**Applicant:**

DISH Technologies L.L.C.

**Headword:**

**Relevant legal provisions:**

EPC Art. 123(2)

**Keyword:**

Main request - added subject-matter (yes)

**Decisions cited:**

**Catchword:**



**Beschwerdekammern**  
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Case Number: T 1063/19 - 3.4.03

**D E C I S I O N**  
**of Technical Board of Appeal 3.4.03**  
**of 31 January 2023**

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

**Representative:** Beck Greener LLP  
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**Decision under appeal:** **Decision of the Examining Division of the  
European Patent Office posted on 23 October 2018  
refusing European patent application No.  
13822572.7 pursuant to Article 97(2) EPC.**

**Composition of the Board:**

**Chairman** T. Häusser  
**Members:** M. Papastefanou  
T. Bokor

## Summary of Facts and Submissions

- I. The appeal is against the decision of the examining division refusing European patent application No. 13 822 572.
- In the impugned the decision the examining division concluded that claim 1 of the then main and second auxiliary requests did not involve an inventive step (Articles 52(1) and 56 EPC) and that claim 1 of the then first auxiliary request contained subject-matter extending beyond the content of the application as originally filed (Article 123(2) EPC).
- II. At the end of the oral proceedings before the board, which were held as a video conference, the appellant (applicant) requested that the decision under appeal be set aside and that a patent be granted on the basis of the main request filed with the statement of the grounds of appeal, as sole request.
- III. Claim 1 of the main request reads as follows:
- A computer-implemented method in a receiving device, the method comprising:*
- receiving media content and metadata associated with the content over a network, and storing the media content and the metadata in a repository of the receiving device, wherein the media content comprises a media content segment interspersed with plural sub-segments and the metadata comprises a plurality of offsets relative to a beginning of the media content segment at which the plural sub-segments start or end, the offsets being a time count or frame count from the beginning of the media content segment;*
- receiving (502) an indication regarding a content*

*playback mode change occurring during playing of a media content segment of the media content from the repository;*

*associating (504) the content playback mode change with a sub-segment of the media content segment, wherein associating the content playback mode change with a sub-segment of the media content segment includes, in response to receiving the indication regarding the content playback mode change occurring during playing of a media content segment:*

*recording a first offset relative to a beginning of the media content segment at which the content playback mode change occurred, the first offset being a time count or frame count from the beginning of the media content segment;*

*determining a second offset relative to a beginning of the media content segment at which the sub-segment starts or ends by recalling from the repository said stored metadata associated with the media content segment identifying where the plural sub-segments start or end, the second offset being a time count or frame count from the beginning of the media content segment;*

*correlating the first offset and the second offset to determine whether the first and second offsets occur close to each other within a predetermined threshold value; and*

*associating the content playback mode change with a particular sub-segment of the plural sub-segments of the media content segment when the correlation determines that the first offset occurs close to the second offset for that sub-segment within the predetermined threshold value; and*

*assigning (506) a level of interest of a user in the sub-segment of the media content segment based on the associated content playback mode change.*

- IV. The appellant argued essentially that the implementation of the step of determining the second offset was left open for the skilled person, who could implement it on the basis of common general knowledge. The selection of one second offset from a plurality of offsets related to a plurality of sub-segments was implicitly disclosed in the application as filed.

### **Reasons for the Decision**

1. The claimed invention
  - 1.1 The application relates to monitoring user's interest when viewing streamed media content.
  - 1.2 Media content is received by a user. The content comprises a media content segment (i.e. a film) interspersed with several (plural) sub-segments (e.g. advertisements). Each sub-segment is identified by its start and end points, as points in time in relation to the beginning of the media content segment (offsets).
  - 1.3 When a change in the playback mode is identified (e.g. the user started fast-forwarding), the point in time of this playback mode change is recorded as a first offset. A second offset as a start or end point of a sub-segment is determined and it is checked whether the first and second offsets are close enough, i.e. whether the recorded change in the playback mode occurred within a certain time period ("a predetermined threshold") relative to the time point where the sub-segment starts or ends.
  - 1.4 If they are found to be close enough, then the change in the playback mode is associated to the corresponding sub-segment. In this way, the interest of the user with

respect to the specific sub-segment can be monitored, e.g. whether the user has fast-forwarded through the sub-segment, or whether they have paused and watched it in normal speed or whether they paused, rewound and watched it again, etc. (see e.g. Figure 4).

2. Added subject-matter (Article 123(2) EPC)

2.1 According to claim 1, the step of associating a playback mode change to a sub-segment includes recording a first offset (i.e. the time point in the media content relative to the beginning of the media content segment), where the change of playback mode occurred. It also includes *determining a second offset ... at which the sub-segment starts or ends by recalling from the repository said stored metadata ... identifying where the plural sub-segments start or end.* It further includes *correlating the first offset and the second offset to determine whether the first and second offsets occur close to each other within a predetermined threshold.*

2.1.1 Hence, according to the claim, the correlating step takes place once the second offset has been determined. This correlation is subject to a determination that the first offset occurs within a certain time period ("a predetermined threshold") relative to the second offset. There are, thus, two distinct steps, first it is determined which offset (start or end point of the plural sub-segment) will be taken as the second offset and thereafter it is checked whether this second offset is close enough to the first offset so they can be associated to one another.

2.1.2 The expressions in claim 1 (emphasis by the board):

- **"determining a second offset relative ... by recalling from the repository said stored metadata associated with the media content segment identifying where the plural sub-segments start or end"** and
- **"associating the content playback mode change with a particular sub-segment of the plural sub-segments of the media content segment"**

imply that some form of selection between the potential second offsets (i.e. the start and end points of the plural sub-segments) takes place. Such a selection step, however, is not described in the application as originally filed.

2.2 The appellant acknowledged that there was no explicit disclosure in the application of how the second offset was determined. It explained that it was left open to the skilled person how to implement this step. The important aspect of the claimed method was how the relevant sub-segment was identified and associated with the content play mode change and not how the other sub-segments were rejected.

2.2.1 The appellant referred to original claim 11 and argued that it also gave no details about how the second offset (sub-segment) was determined. The only important aspect was whether the second offset fulfilled the correlation condition, i.e. whether it was close enough to the first offset to be correlated with it. How the determination was done had been left open from the beginning.

2.2.2 The appellant also referred to paragraph [0045] and Figure 3, which described plural sub-segments with boundaries that corresponded to potential second



offsets. Hence the plural sub-segments and the multiple possible second offsets were explicitly described in the application and were thus implied in the claimed method. They were also mentioned in the beginning of claim 1 of the current main request. Even claim 11 as originally filed, on proper interpretation, implied the plural potential second offsets because the method started already with plural sub-segments, as the application described. Hence, there was no added subject-matter in claim 1 of the main request.

2.3 The board is not convinced by the appellant's arguments. The board never contested that there were multiple (plural) sub-segments in the media content segment and that their start and end points represented potential second offsets. There were indeed plural potential second offsets in the stored metadata related to the plural sub-segments. For the correlation step to take place, however, it has to be determined which one of those potential second offsets is to be selected as the second offset of claim 1.

2.3.1 Original claim 11 does not mention anything about plural sub-segments or plural second offsets. It merely defines the step of *determining a second offset relative to a beginning of the media content segment at which the sub-segment starts or ends*. The fact that the application describes plural sub-segments does not necessarily imply that such features are implicitly included in the claim. The disclosure of original claim 11 corroborates the appellant's argument that the determination step had been left open to the skilled person to implement.

2.3.2 The relevant question, however, is not whether the skilled person would know how to determine the second

offset. The board agrees with the appellant that, based on the original disclosure of the application, this question can be left open for the skilled person to implement it on the basis of common general knowledge.

- 2.3.3 The relevant question is rather whether the skilled person would directly and unambiguously derive from the application as originally filed the steps identified in point 2.1.2 above and, more specifically, that the determination of the second offset is done by recalling from the repository the stored metadata identifying where the plural sub-segments start or end. This feature defines a specific step in the determination of the second offset. As further defined in claim 1, this second offset will lead to the selection of a *particular sub-segment of the plurality of sub-segments*, to which the content play back more will be associated.

Hence, according to claim 1 of the main request, the question of how to determine the second offset is no longer left open (as in original claim 11) and the skilled person is not free to determine the second object as they see fit on the basis of common general knowledge. Claim 1 of the main request defines specific steps in this determination process of the second offset.

These steps, however, are not directly and unambiguously disclosed in the application as originally filed. The mere mention that the media content segment contains plural sub-segments and their start and end points are stored as offsets in the metadata, does not disclose in the sense of Article 123(2) EPC the specific determination steps defined in

claim 1.

2.4 The board's conclusion is therefore that claim 1 of the main request contains subject-matter extending beyond the originally filed content of the application, contrary to the requirements of Article 123(2) EPC.

3. Since the sole request on file is not allowable, the appeal must fail.

### **Order**

#### **For these reasons it is decided that:**

The appeal is dismissed.

The Registrar:

The Chairman:



S. Sánchez Chiquero

T. Häusser

Decision electronically authenticated