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**Datasheet for the decision
of 7 December 2023**

Case Number: T 1725/19 - 3.5.04

Application Number: 12732289.9

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Language of the proceedings: EN

Title of invention:

METHOD FOR ENCODING AND DECODING IMAGE INFORMATION AND DEVICE
USING SAME

Applicant:

LG Electronics Inc.

Headword:

Relevant legal provisions:

RPBA 2020 Art. 13(2)
EPC Art. 52(1), 54(1), 56

Keyword:

All requests - Admittance under Article 13(2) RPBA (yes)
Main request and first, second, fourth and fifth auxiliary
requests - Novelty (no)
Third auxiliary request - Inventive step (no)

Decisions cited:

Catchword:



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Case Number: T 1725/19 - 3.5.04

D E C I S I O N
of Technical Board of Appeal 3.5.04
of 7 December 2023

Appellant: LG Electronics Inc.
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Decision under appeal: **Decision of the Examining Division of the
European Patent Office posted on 21 January 2019
refusing European patent application
No. 12732289.9 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 decision to refuse European patent application No. 12 732 289.9. The application was accorded 6 January 2012 as date of filing. It claims priority from the following three previous applications:

P1: US 61/430,545 (filing date: 7 January 2011)

P2: US 61/449,699 (filing date: 6 March 2011)

P3: US 61/543,296 (filing date: 4 October 2011)

II. The decision under appeal was based, *inter alia*, on the grounds that the subject-matter of claim 1 of all requests did not meet the requirements of Article 52(1) EPC because it did not involve an inventive step within the meaning of Article 56 EPC.

III. The applicant (appellant) filed notice of appeal. With the statement setting out the grounds of appeal, the appellant filed sets of claims in accordance with a main request and first and second auxiliary requests.

IV. The appellant was summoned to oral proceedings. In a communication pursuant to Article 15(1) RPBA 2020, the board introduced the following document into the appeal proceedings pursuant to Article 114(1) EPC:

D9: T. Wiegand et al., "*WD3: Working Draft 3 of High-Efficiency Video Coding*", Joint Collaborative Team on Video Coding (JCT-VC) of ITU-T SG16 WP3 and ISO/IEC JTC1/SC29/WG11, 5th Meeting, Geneva, CH, 16-23 March 2011,

server date 27 June 2011, JCTVC-E603,
XP030227882

In its communication, the board also gave, *inter alia*, the following preliminary opinion.

- All claims of all requests filed with the statement of grounds of appeal did not enjoy priority from P1 and P2.
- D9 was published before the filing date of P3 and was thus part of the state of the art pursuant to Article 54(2) EPC for the subject-matter of all claims of all pending requests.
- The subject-matter of the independent claims of all requests filed with the statement of grounds of appeal was not new within the meaning of Article 54(1) EPC over the disclosure of D9.

V. By letter dated 6 November 2023, the appellant filed new sets of claims in accordance with a main request and first to fifth auxiliary requests.

VI. The oral proceedings before the board were held on 7 December 2023.

The appellant's final requests were that the decision under appeal be set aside and that a patent be granted on the basis of the claims of the main request or, alternatively, of the claims of one of the first to fifth auxiliary requests, all requests filed with the letter dated 6 November 2023.

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

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

"A method of encoding video information, comprising:
performing inter-prediction on a current block (300;
910; 1000) in a current picture;
performing entropy coding on information on the
inter-prediction including indicator information; and
outputting the entropy-coded information,
wherein in the performing of the inter-prediction,
merge mode is applied to the current block (300; 910;
1000), the merge mode is an inter-prediction mode using
motion information of a merge candidate as current
motion information of the current block (300; 910;
1000),
characterized in that performing the inter-prediction
includes:
determining that the merge mode is applied to the
current block (300; 910; 1000);
configuring merge candidates including spatial merge
candidates (A_0, A_1, B_0, B_1, B_2) and a temporal merge
candidate (Col), the spatial merge candidates ($A_0, A_1,$
 B_0, B_1, B_2) are derived from spatial neighboring blocks
of the current block (300; 910; 1000) and the temporal
merge candidate (Col) is derived from a collocated
block in a collocated picture;
selecting a merge candidate from the configured merge
candidates;
generating the indicator information indicating the
selected merge candidate;
deriving motion information specified by the selected
merge candidate as the current motion information of
the current block (300; 910; 1000), wherein the current
motion information includes a motion vector (600, 610,
620, 630) and a reference index ($refIdxLX, refIdxLXA,$
 $refIdxLXB, refIdxLXC$); and
deriving predicted pixels of the current block (300;
910; 1000) using the motion vector (600, 610, 620, 630)

and a reference picture indicated by the reference index (refIdxLX, refIdxLXA, refIdxLXB, refIdxLXC) from a reference picture list for the current block (300; 910; 1000), and wherein a reference index of the temporal merge candidate (Col) is set equal to 0."

Claim 1 of the **first auxiliary request** differs from claim 1 of the main request by the following amendments (added features are underlined; deleted features are crossed out):

",~~and~~
wherein a reference index of the temporal merge candidate (Col) is set equal to 0, and
wherein when the temporal merge candidate (Col) is selected, the reference index (refIdxLX, refIdxLXA, refIdxLXB, refIdxLC) of the current block is set equal to 0".

Claim 1 of the **second auxiliary request** differs from claim 1 of the first auxiliary request by the following amendment: "a reference index of the temporal merge candidate (Col) is fixed to be~~set~~ equal to 0".

Claim 1 of the **third auxiliary request** differs from claim 1 of the second auxiliary request by the following amendment: "wherein a reference index of the temporal merge candidate (Col) is fixed to be equal to 0 regardless of any values of reference picture indices of the spatial neighboring blocks of the current block and the collocated block".

Claim 1 of the **fourth auxiliary request** differs from claim 1 of the second auxiliary request by the following amendment: "... and the temporal merge

candidate (Col) is derived from a collocated block in a collocated picture, wherein the collocated block is located in the collocated picture at a specific location in relation to a corresponding block in the collocated picture, wherein the corresponding block is a block in the collocated picture corresponding to the current block in the current picture".

Claim 1 of the **fifth auxiliary request** differs from claim 1 of the second auxiliary request by the following amendment: "*... and the temporal merge candidate (Col) is derived from a collocated block in a collocated picture, wherein the collocated block is located at a right-bottom corner of a corresponding block in the collocated picture, wherein the corresponding block is a block in the collocated picture corresponding to the current block in the current picture*".

VIII. The relevant appellant's arguments may be summarised as follows.

All requests - Admittance

The amendments were made in reaction to newly introduced document D9 and to the board's preliminary opinion on Articles 84 and 123(2) EPC.

Main request and first, second, fourth and fifth auxiliary requests - Novelty

- The feature "*a reference index of the temporal merge candidate (Col) is set equal to 0*" in claim 1 of the main request and the first auxiliary request and the feature "*a reference index of the temporal merge candidate (Col) is fixed to be equal to 0*" in

claim 1 of the second, fourth and fifth auxiliary requests would have been understood by the person skilled in the art as meaning that a reference index of the temporal merge candidate was always set to zero regardless of the circumstances. Since D9 taught setting the reference index of the temporal merge candidate to zero if the reference picture indices of the spatial neighbouring blocks of the current block satisfied certain conditions, D9 did not disclose the features in question. The term "*fixed*" meant "*not subject to change*".

- The feature "*wherein when the temporal merge candidate (Col) is selected, the reference index (refIdxLX, refIdxLXA, refIdxLXB, refIdxLXC) of the current block is set equal to 0*" in claim 1 of the first, second, fourth and fifth auxiliary requests clarified that a reference index of the temporal merge candidate was always set equal to zero regardless of the circumstances.

Third auxiliary request - Inventive step

- Fixing a reference index of the temporal merge candidate to be equal to zero regardless of any values of reference picture indices of the spatial neighbouring blocks of the current block and the collocated block simplified the method disclosed in D9 while still guaranteeing that the temporal merge candidate could be used for the merge mode regardless of the number of reference pictures in the reference picture list of the current picture.
- To not include pointers to the solution, the objective technical problem was to be formulated as simplifying the method disclosed in D9.
- D9 did not discuss complexity and did not hint at reducing complexity by setting the reference index

of the temporal merge candidate to a default value regardless of the values of the reference picture indices of the spatial neighbouring blocks.

- Even if setting the reference index of the temporal merge candidate to a default value regardless of the values of the reference picture indices of the spatial neighbouring blocks had been obvious to the person skilled in the art, D9 did not hint at choosing zero as the default value. Many other default values would have been conceivable, including the reference index of the collocated block or any of the reference indices or combinations of the reference indices of the spatial neighbours specified in subclause 8.4.2.1.3 of D9.

Reasons for the Decision

1. The appeal is admissible.
 - A. *All requests - Admittance*
2. All requests in hand represent amendments to the appellant's case made after notification of the summons to oral proceedings. Since the summons was notified after the date on which the RPBA 2020 entered into force, Article 13(2) RPBA 2020 applies to whether to admit the appellant's requests pursuant to Article 25(1) and (3) RPBA 2020.
3. Pursuant to Article 13(2) RPBA 2020, any amendment to a party's appeal case made after notification of a summons to oral proceedings is, in principle, not to be taken into account unless there are exceptional

circumstances justified with cogent reasons by the party concerned.

4. The amendments made in all requests in hand are a reaction to new comments and objections put forward by the board in its communication pursuant to Article 15(1) RPBA 2020. The fact that these new comments and objections were put forward by the board can be considered to constitute exceptional circumstances within the meaning of Article 13(2) RPBA 2020.
5. Therefore, the board, exercising its discretion under Article 13(2) RPBA 2020, admitted all requests into the appeal proceedings.
- B. *All requests - Filing date of the claims for the purposes of Article 54(2) EPC*
6. Pursuant to Article 87(1) EPC and established case law, priority of a previous application for a claim is to be acknowledged only if the person skilled in the art can derive the combination of features in the claim directly and unambiguously from the previous application as a whole (see Case Law of the Boards of Appeal of the European Patent Office, 10th edition, 2022 (CLBoA), II.D.3.1.1).
7. It is undisputed that (i) P1 and P2 do not disclose setting a reference index of the temporal merge candidate to zero or configuring merge candidates including spatial merge candidates and a temporal merge candidate and (ii) the subject-matter of all claims of all requests does not enjoy priority from P1 and P2.

8. Therefore, the date of filing of all claims of all requests for the purpose of Article 54(2) EPC is the filing date of P3 at the earliest (Article 89 EPC).

C. *Main request - Novelty*

9. An invention is to be considered new if it does not form part of the state of the art (Article 54(1) EPC).

10. It is undisputed that D9 was made available to the public before the filing date of P3 and is part of the state of the art pursuant to Article 54(2) EPC for all claims of all requests.

11. D9 discloses the syntax and semantics of a coded video bitstream (subclause 7) as well as a process for decoding and parsing that bitstream (subclauses 8 and 9).

D9 anticipates the following decoding steps (the references in parentheses apply to D9):

- performing entropy decoding on received information including mode information and indicator information (see subclause 9.3: "*CABAC parsing process for slice data*"; subclause 9.3.1.1, Tables 9-26 and 9-27: "*merge_flag*", "*merge_index*"; subclause 7.4.7: "*merge_flag[x0][y0] specifies whether the inter prediction parameters for the current prediction unit are inferred from a neighbouring inter-predicted partition*", "*merge_idx[x0][y0] specifies the merging candidate index of the merging candidate list where ...*")
- performing inter-prediction on a current block in a current picture based on the entropy-decoded

information (see subclause 8.4.2: "*Decoding process for prediction units in inter prediction mode*"; subclause 8.4.2.1: "*Otherwise, if PredMode is equal to MODE_INTER and merge_flag[xP][yP] is equal to 1 ...*"; subclause 8.4.2.1.1: "*7. The following assignments are made with N being the candidate at position mergeIdx in the merging candidate list ...*"), the merge mode being applied to the current block based on the mode information (*ibid.*) and being an inter-prediction mode using motion information of a merge candidate as the current motion information of the current block (*ibid.*)

Performing inter-prediction according to D9 also anticipates the following decoding steps:

- configuring merge candidates including spatial merge candidates and a temporal merge candidate, the spatial merge candidates being derived from spatial neighbouring blocks of the current block, the temporal merge candidate being derived from a collocated block in a collocated picture (see subclause 8.4.2.1.1: "*3. The derivation process for temporal luma motion vector prediction in subclause 4 is invoked ...*", "*4. The merging candidate list, mergeCandList, is constructed ... A ... B ... Col*"; subclause 8.4.2.1.2, Figure 8-3; subclause 8.4.2.1.6: "*the variable colPic, specifying the picture that contains the co-located partition, is derived as follows. ... RefPicList1[0]... RefPicList0[0] ...*", "*Variable colPu and its position (xPCol, yPCol) are derived in the following ordered steps ...*"), a reference index of the temporal merge candidate being set equal to zero (see subclause 8.4.2.1.3: "*Derivation process of reference indices for temporal merging*

candidate", "The variable refIdxLX is derived as follows. - If refIdxLXA is equal to refIdxLXB and refIdxLXB is equal to refIdxLXC, the following applies. - If refIdxLXA is equal to -1 then refIdxLX = 0")

- selecting a merge candidate from the configured merge candidates based on the indicator information and deriving motion information specified by the selected merge candidate as the current motion information of the current block, the current motion information including a motion vector (subclause 8.4.2.1.1: *"7. The following assignments are made with N being the candidate at position mergeIdx in the merging candidate list ... mvLX[0] = mvLXN[0] mvLX[1] = mvLXN[1] ..."*)
- deriving predicted pixels of the current block using the motion vector and a reference picture indicated by the reference index from a reference picture list for the current block (subclause 8.4.2.2: *"Decoding process for inter prediction samples", "Inputs to this process are: ... luma motion vectors mvL0 and mvL1 ... reference indices refIdxL0 and refIdxL1 ..."*)

12. It is implicit that the coded bitstream disclosed in D9 is created by an encoding method comprising encoding steps mimicking the decoding steps disclosed in D9 referred to in point 11. above. This has not been disputed by the appellant.

13. The board disagrees with the appellant that the skilled person would have read the feature *"a reference index of the temporal merge candidate (Col) is set equal to 0"* as meaning that a reference index of the temporal

merge candidate is always set to zero regardless of the circumstances. Claim 1 does not exclude that certain conditions are checked before setting the reference index of the temporal merge candidate to zero. This exclusion cannot be derived from the term "set". The board sees no reason to read into the claim an implicit restrictive feature not suggested by its explicit wording as this would deprive it of its intended function.

14. The board also notes that the description of some embodiments in the application in hand use the expression "is set to 0" to specify setting the temporal merge candidate to zero only if certain conditions are satisfied (see page 45, lines 13 to 15 and page 46, lines 21 and 22). Thus, the fact that the phrase "set to 0" does not imply assigning a value "regardless of the circumstances" can be derived from the application itself.
15. In view of the above, the board finds that the subject-matter of claim 1 of the main request is anticipated by D9 and is thus not new within the meaning of Article 54(1) EPC.

D. *First auxiliary request - Novelty*

16. In comparison to claim 1 of the main request, claim 1 of the first auxiliary request further specifies that the reference index of the current block is set equal to zero if the temporal merge candidate is selected.
17. This amendment does not address the fact that claim 1 does not exclude that certain conditions are checked before setting the reference index of the temporal merge candidate to zero. Hence, the board does not see

any reason to understand the feature *"a reference index of the temporal merge candidate (Col) is set equal to 0"* differently for claim 1 of the first auxiliary request than for claim 1 of the main request.

18. Moreover, subclause 8.4.2.1.1 of D9 teaches setting the reference index of the current prediction unit to the reference index of the selected merge candidate (see *"7. The following assignments are made with N being the candidate at position mergeIdx... mvLX[0] ... mvLX[1]"*) and 8.4.2.1.3 (*If refIdxLXA is equal to -1 then refIdxLX = 0*). This implies setting the reference index of the current prediction unit to the reference index of the temporal merge candidate if the temporal merge candidate is selected. As set out in point 11. above, subclause 8.4.2.1.3 of D9 teaches setting the reference index of the temporal merge candidate to zero if certain conditions are satisfied. Therefore, the case in which the current prediction unit is set to zero if the temporal merge candidate is selected is considered implicitly disclosed in D9.
 19. In view of the above, the board finds that the subject-matter of claim 1 of the first auxiliary request is anticipated by D9 and is thus not new within the meaning of Article 54(1) EPC.
- E. *Second auxiliary request - Novelty*
20. In contrast to claim 1 of the first auxiliary request, which specifies that a reference index of the temporal merge candidate is *"set equal to 0"*, claim 1 of the second auxiliary request specifies that a reference index of the temporal merge candidate is *"fixed to be equal to 0"*.

21. The board disagrees with the appellant that the term "*fixed*" implies that the value zero is always assigned to the reference index of the temporal merge candidate regardless of the circumstances. Even if the board accepted the appellant's view that this term was to be read as meaning "*not subject to change*", specifying that a value of a parameter is not subject to change merely prohibits that this value be changed after it has been assigned to the parameter. It does not exclude that conditions have been checked before assigning the value to the parameter. Again, the board sees no reason to read into the claim an implicit restrictive feature not suggested by its explicit wording as this would deprive it of its intended function.

22. It follows from the previous point that the amendment identified in point 20. above does not further distinguish the subject-matter of claim 1 from the disclosure of D9.

23. Therefore, the board finds that the subject-matter of claim 1 of the second auxiliary request is not new within the meaning of Article 54(1) EPC.

F. *Third auxiliary request - Inventive step*

24. An invention is to be considered to involve 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).

25. In comparison to claim 1 of the second auxiliary request, claim 1 of the third auxiliary request further specifies that a reference index of the temporal merge candidate is fixed to be equal to zero "*regardless of any values of reference picture indices of the spatial*

neighboring blocks of the current block and the collocated block".

26. This feature, not disclosed in D9, simplifies the method disclosed in that document. Therefore, as put forward by the appellant, the objective technical problem may be formulated as simplifying the method specified in D9.
27. The board notes that neither Article 56 EPC nor the well-established problem-solution approach (see CLBoA, I.D.2) requires that the document used as the starting point for the assessment of inventive step discuss the objective technical problem or hint at the distinguishing features. The teaching towards the distinguishing features may come from another item of the state of the art or the skilled person's common general knowledge. Thus, whether D9 discusses complexity or hints at the feature identified in point 25. above is not decisive.
28. Subclause 8.4.2.1.3 of D9 describes a process for deriving reference indices for the temporal merge candidate. According to this subclause, the priority is to assign a value derived from reference indices associated with spatially neighbouring prediction units to the reference index of the temporal merge candidate. If no reference index can be derived from the spatially neighbouring prediction units, the fallback value of zero is assigned to the reference index of the temporal merge candidate.
29. It would have been evident to the skilled person in view of their common general knowledge that each step of the process described in subclause 8.4.2.1.3 of D9 adds computational complexity to this process and that

a way of reducing that complexity is to remove some steps. It would also have been evident to the skilled person in view of their common general knowledge that assigning a constant to a parameter in a single step is the simplest way of setting a parameter. Thus, the motivation to set or fix the reference index of the temporal merge candidate to the same constant regardless of the circumstances would have come from the skilled person's common general knowledge (see point 27. above).

30. The board disagrees with the appellant that D9 does not hint at choosing zero as a default value. As indicated in point 28. above, D9 discloses zero as a fallback value for the reference index of the temporal merge candidate if the preferred option (i.e. a value derived from reference indices associated with spatially neighbouring prediction units) is not available. It would have been clear to the skilled person that the fallback value zero enables the coding process to work under all circumstances since the reference picture lists constructed for inter-predicted slices include at least one reference picture. Therefore, the skilled person would have found it obvious to use that value as the value to assign to the reference index of the temporal merge candidate regardless of the circumstances and, thus, "*regardless of any values of reference picture indices of the spatial neighboring blocks of the current block and the collocated block*".

31. The board cannot exclude that there would have been other obvious ways of simplifying the process disclosed in D9. However, this issue is not decisive because it is established case law that selecting one solution from a host of obvious solutions does not render the selected solution inventive if that selection does not

achieve an unexpected technical effect (see CLBoA, I.D.9.21.9).

32. In any case, the board disagrees with the appellant that the reference index of the collocated block or any of the reference indices or combinations of the reference indices of the spatial neighbours specified in subclause 8.4.2.1.3 of D9 would have been conceivable values to assign to the reference index of the temporal merge candidate regardless of the circumstances. It is clear from subclauses 8.4.2.1.3 and 8.4.2.1.6 of D9 that there is no guarantee that the collocated prediction unit or any spatially neighbouring prediction unit is always associated with a reference index. The skilled person would not have chosen to assign the value of a syntax element to the reference index of the temporal merge candidate regardless of the circumstances if that syntax element were not guaranteed to exist in all circumstances.

33. For the above reasons, the board finds that the distinguishing feature identified in point 20. above would have been obvious to the skilled person. Since the other features of claim 1 of the third auxiliary request are anticipated by D9 (see point 23. above), the board concludes that the subject-matter of claim 1 of the third auxiliary request would have been obvious to the skilled person within the meaning of Article 56 EPC.

G. *Fourth and fifth auxiliary requests - Novelty*

34. In comparison to claim 1 of the second auxiliary request, claim 1 of the fourth auxiliary request further specifies that "*the collocated block is located in the collocated picture at a specific location in*

relation to a corresponding block in the collocated picture, wherein the corresponding block is a block in the collocated picture corresponding to the current block in the current picture". In comparison to claim 1 of the second auxiliary request, claim 1 of the fifth auxiliary request further specifies that "the collocated block is located at a right-bottom corner of a corresponding block in the collocated picture, wherein the corresponding block is a block in the collocated picture corresponding to the current block in the current picture".

35. Subclause 8.4.2.1.6 of D9 describes a process for determining the collocated prediction unit in the collocated picture. Its position is derived taking into account the position of the top-left sample of the current prediction unit of the current picture (see subclause 8.4.2.1.6: "*Inputs to this process are ... a luma location (x_P , y_P) specifying the top-left luma sample of the current prediction unit relative to the top-left sample of the current picture*", "*Variable col_{Pu} and its position (x_{PCol} , y_{PCol}) are derived in the following ordered steps: ... x_P ... y_P* "). Therefore, D9 anticipates deriving a temporal candidate from a collocated block in a collocated picture located at a specific location in relation to a block in the collocated picture corresponding to the current block in the current picture.

36. Subclause 8.4.2.1.6 of D9 further specifies determining the collocated prediction unit by carrying out the following steps, *inter alia* (see subclause 8.4.2.1.6):

"1. Right-bottom luma position of the current prediction unit is defined by

$$xPRb = xP + nPSW \quad (8-114)$$

$$yPRb = yP + nPSH \quad (8-115)$$

2. The variable *colPu* is set as the prediction unit covering the modified position given by ((*xPRb* >> 4) << 4, (*yPRb* >> 4) << 4) inside the *colPic*."

..."

Therefore, D9 anticipates deriving a temporal merge candidate from a collocated block located at the right-bottom corner of a block in the collocated picture corresponding to the current block in the current picture.

37. The conclusions in points 35. and 36. above have not been disputed by the appellant.
38. In view of the above, the board finds that the subject-matter of claim 1 of the fourth and fifth auxiliary requests is anticipated by D9 and is thus not new within the meaning of Article 54(1) EPC.
- H. *Conclusions*
39. The subject-matter of claim 1 of the main request and of the first, second, fourth and fifth auxiliary requests does not meet the requirements of Article 52(1) EPC because it is not new within the meaning of Article 54(1) EPC.
40. The subject-matter of claim 1 of the third auxiliary request does not meet the requirements of Article 52(1) EPC because it does not involve an inventive step within the meaning of Article 56 EPC.

41. Since none of the pending 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