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**Datasheet for the decision  
of 16 January 2023**

**Case Number:** T 2686/19 - 3.5.07

**Application Number:** 08877327.0

**Publication Number:** 2347355

**IPC:** G06F17/30

**Language of the proceedings:** EN

**Title of invention:**

System and method for controlling media rendering in a network using a mobile device

**Applicant:**

III Holdings 2, LLC

**Headword:**

Controlling media rendering/III HOLDINGS 2

**Relevant legal provisions:**

EPC Art. 56

RPBA Art. 12(4)

**Keyword:**

Inventive step - main request and auxiliary request 1 (no)  
Request not admitted by the examining division - auxiliary  
requests 2 to 5 - admitted (no)



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Case Number: T 2686/19 - 3.5.07

**D E C I S I O N**  
**of Technical Board of Appeal 3.5.07**  
**of 16 January 2023**

**Appellant:** III Holdings 2, LLC  
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**Representative:** Ablett, Graham Keith  
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**Decision under appeal:** **Decision of the Examining Division of the  
European Patent Office posted on 24 April 2019  
refusing European patent application  
No. 8877327.0 pursuant to Article 97(2) EPC**

**Composition of the Board:**

**Chair** J. Geschwind  
**Members:** R. de Man  
C. Barel-Faucheux

## **Summary of Facts and Submissions**

I. The appellant (applicant) appealed against the decision of the examining division refusing European patent application No. 08877327.0, which was published as international application WO 2010/042090.

II. The examining division decided that the subject-matter of claim 1 of the main request and auxiliary request 5 lacked inventive step over the following document:

D6: US 2008/0235733 A1, 25 September 2008.

Auxiliary requests 1 to 4 were not admitted into the proceedings under Rule 116 and 137(3) EPC.

III. In its statement of grounds of appeal, the appellant maintained the main request and auxiliary requests 1 to 4.

IV. In a communication accompanying the summons to oral proceedings, the board expressed the preliminary view that the main request did not comply with Article 84 and Rule 43(2) EPC, that the subject-matter of claim 1 of the main request lacked inventive step over document D6, and that auxiliary requests 1 to 4 should not be admitted into the appeal proceedings under Article 12(4) RPBA 2007.

V. With a letter dated 1 August 2022, the appellant filed a new main request and maintained its pending requests as auxiliary requests 1 to 5.

VI. In a further letter, the appellant indicated that it would not attend the oral proceedings. In response, the board cancelled the oral proceedings.

VII. The appellant requests 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, in the alternative, of one of auxiliary requests 1 to 5.

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

"A method for controlling media rendering in a network, wherein a first media rendering device (121), a media server (111) and a control element (100) are connected to the network, and further wherein a first mobile device (141) and a second mobile device (142) are connected to the control element (100), wherein a first multimedia file is available from the media server (111), wherein metadata is associated with the first multimedia file, the method comprising the steps of:

receiving at the control element (100) a first message transmitted from the first mobile device (141) requesting identification of available multimedia content;

transmitting a second message containing the metadata associated with the first multimedia file from the control element (100) to the first mobile device (141) in response to receipt of the first message;

receiving at the control element (100) a third message providing first queue creation instructions transmitted from the first mobile device (141) after receipt of the second message;

creating a first queue (131) at the control element (100) based on the first queue creation instructions, wherein the first queue (131) lists a

plurality of multimedia files in an order which begins with the first multimedia file;

transmitting a fourth message from the control element (100) to the first media rendering device (121);

rendering the multimedia files in the first queue (131) at the first media rendering device (121), wherein receipt of the fourth message from the control element (100) directs the first media rendering device (121) to initiate rendering by initiating playback of the first multimedia file; and

wherein the first mobile device (141) and the second mobile device (142) are capable of transmitting rendering instructions to the control element (100) in relation to the first queue (131) and in response to the received rendering instructions, the control element (100) controls the rendering of the multimedia files in the first queue (131) at the first media rendering device (121)."

IX. Claim 1 of auxiliary request 1 is identical to claim 1 of the main request.

X. Claim 1 of auxiliary request 2 differs from claim 1 of the main request in that the last two paragraphs have been replaced with the following text:

"rendering the multimedia files in the first queue (131) at the first media rendering device (121), wherein receipt of the fourth message from the control element (100) directs the first media rendering device (121) to initiate rendering by initiating playback of the first multimedia file obtained from the media server (111); and

wherein the first mobile device (141) and the second mobile device (142) are capable of transmitting

rendering instructions to the control element (100) in relation to the first queue (131) being rendered at the first rendering device (121), and in response to the received rendering instructions, the control element (100) controls the further rendering of the multimedia files in the first queue (131) at the first media rendering device (121)."

- XI. Claim 1 of auxiliary request 3 differs from claim 1 of the main request in that the last two paragraphs have been replaced with the following text:

"rendering the multimedia files in the first queue (131) at the first media rendering device (121), wherein receipt of the fourth message from the control element (100) initiates rendering by directing the first media rendering device (121) to obtain the first multimedia file and initiate playback thereof; and

wherein the control element (100) is hosted on a media server and the control element (100) monitors a playback state of the first media rendering device (121) and maintains the rendering of the multimedia files in the first queue (131), and

wherein the first mobile device (141) and the second mobile device (142) are capable of transmitting rendering instructions to the control element (100) in relation to the first queue (131) being rendered at the first rendering device (121), and in response to the received rendering instructions, the control element (100) further controls the rendering of the multimedia files in the first queue (131) at the first media rendering device (121)."

- XII. Claim 1 of auxiliary request 4 differs from claim 1 of the main request in that the last two paragraphs have been replaced with the following text:

"rendering the multimedia files in the first queue (131) at the first media rendering device (121), wherein receipt of the fourth message from the control element (100) directs the first media rendering device (121) to initiate rendering by initiating playback of the first multimedia file obtained from the media server (111); and

wherein the control element (100) is hosted on a media server and comprises a control point component, and the first mobile device (141) and the second mobile device (142) are connected to the control element (100) through a control interface (152,152,153), and wherein the first mobile device (141) and the second mobile device (142) are capable of transmitting rendering instructions to the control element (100) in relation to the first queue (131) being rendered at the first rendering device (121), and in response to the received rendering instructions, the control element (100) transmits control point instructions to the first media rendering device (121) for controlling the further rendering of the multimedia files in the first queue (131) at the first media rendering device (121)."

XIII. Claim 1 of auxiliary request 5 differs from claim 1 of the main request in that "wherein a first mobile device (141) and a second mobile device (142)" has been replaced with "wherein a first mobile device (141), a second mobile device (142), and a third mobile device (143)" and in that the last two paragraphs have been replaced with the following text:

"rendering the multimedia files in the first queue (131) at the first media rendering device (121), wherein receipt of the fourth message from the control element (100) directs the first media rendering device

(121) to initiate rendering by initiating playback of the first multimedia file obtained from the media server (111); and

wherein the control element (100) is hosted on a media server, and the first mobile device (141) and the second mobile device (142) are capable of transmitting rendering instructions to the control element (100) in relation to the first queue (131) being rendered at the first rendering device (121), and in response to the received rendering instructions, the control element (100) controls the further rendering of the multimedia files in the first queue (131) at the first media rendering device (121);

and wherein the method further comprises the step of creating a second queue (133) at the control element (100) listing a further plurality of multimedia files, wherein the control element (100) creates the second queue (133) based on second queue creation instructions transmitted from the third mobile device (143), and the control element (100) transmits rendering instructions to a second media rendering device (123) to render the multimedia files in the second queue (133)."

XIV. The appellant's arguments, where relevant to the decision, are discussed in detail below.

### **Reasons for the Decision**

1. The application relates to controlling media rendering in a network using a mobile device.



*Main request*

2. *Admission*

The main request was obtained from the previous main request (now auxiliary request 1) by deleting independent method claim 16. Since this amendment leaves claim 1 as the sole independent method claim, it overcomes the objection of lack of conciseness raised for the first time in the board's communication. This is an exceptional circumstance which justifies the admission into the appeal proceedings of the main request under Article 13(2) RPBA 2020.

3. *The invention as defined by claim 1*

3.1 Claim 1 is directed to a method for controlling media rendering in a network.

Connected to the network are a first media rendering device, a media server and a control element. Connected to the control element are first and second mobile devices.

A first media file associated with metadata is available from the media server.

3.2 In response to a message from the first mobile device "requesting identification of available multimedia content", the control element transmits the metadata associated with the first multimedia file to the first mobile device.

3.3 Next, in response to "first queue creation instructions" received from the first mobile device, the control element creates a first queue listing a

plurality of multimedia files "in an order which begins with the first multimedia file".

- 3.4 The control element then transmits a message to the first media rendering device, which directs the first media rendering device to start rendering the first multimedia file.
- 3.5 The claim further specifies that each of the first and second mobile devices is "capable of transmitting rendering instructions to the control element in relation to the first queue", and that the control element is arranged to control the rendering of the multimedia files in the first queue at the first media rendering device in response to receiving the "rendering instructions".
4. *The board's interpretation of "queue creation instructions" and "rendering instructions"*
  - 4.1 In its letter of 1 August 2022, the appellant submitted that the board in its communication had incorrectly conflated the "first queue creation instructions" of claim 1 with the "rendering instructions". According to the appellant, the queue creation instructions caused the control element to create a queue and then to instruct the rendering device to render the tracks in the queue. The rendering instructions were used by the first and second mobile devices to control rendering of the queue. The appellant referred to Figures 12A and 12B of the published application and the associated description.
  - 4.2 The board notes that Figures 12A and 12B do not depict any queue creation instructions. According to Figures 8A and 8B and the description on page 62,

line 12, to page 64, line 15, a "CreateQueue" instruction 829 transmitted from a mobile device to the control element cause the control element to create an empty device queue 131. One or more content items are then added to the queue by means of an "AddToQueue" instruction 833 transmitted from the ("first") mobile device to the control element. Next, the queue is associated with a rendering device by means of an "AssociateRenderer" instruction 837 and the playback of the queue is initiated by means of a "PlayQueue" instruction 841.

On the other hand, according to claim 1, the "first queue creation instructions" cause the control element to create a queue which "lists a plurality of multimedia files in an order which begins with the first multimedia file". Moreover, the claim does not mention any separate "PlayQueue" instruction transmitted by the mobile device to cause the control element to instruct the rendering device to initiate playback of the first multimedia file.

Hence, the term "queue creation instructions" as it is used in claim 1 cannot be narrowly interpreted as referring only to the "CreateQueue" instruction but also covers the "AddToQueue", "AssociateRender" and "PlayQueue" instructions. This is in line with the appellant's position that the "first queue creation instructions" cause the control element to create a queue and to then instruct the rendering device to render the tracks in the queue.

4.3 The only "rendering instructions" transmitted from a mobile device to the control element depicted in Figures 12A and 12B is the "SkipInQueue" instruction 1223, which is transmitted by a second mobile device to

the control element to control rendering of the media files in the queue by the first media rendering device. According to the description on page 82, lines 3 to 15, the "SkipInQueue(Q1,1)" instruction directs the control element to control rendering by the first media rendering device by advancing to the first multimedia content file in the device queue Q1.

Hence, the "rendering instructions ... in relation to the first queue" of claim 1 include instructions which cause the control element to instruct the first media rendering device to start rendering files in the first queue, for example from the head of the queue or from some other position within the queue. It follows that the "PlayQueue" instruction is a "rendering instruction" (as well as a "queue creation instruction") within the meaning of claim 1.

5. *Inventive step - Article 56 EPC*

5.1 Document D6 discloses a control element in the form of "gateway" content management device 101 for coordinating media streams between media devices in a network (paragraph [0028] and Figure 1A). The media devices include personal computers and multimedia servers 109, voice over IP phones 110, wireless devices 111 such as cell phones and laptops, and televisions 113 and 115 connected to media adaptors 117 and 119 (ibid.).

Paragraphs [0039] and [0040] explain that the gateway 101 provides a "content transfer feature" to support a user who is watching multimedia content on one device and may occasionally decide to continue watching the same content on a different device. The gateway allows the user to select from existing streams and redirects

the selected stream to a new device, where it is rendered starting from the location within the stream at which it was paused.

- 5.2 Paragraph [0041] and Figure 3 describe the content transfer feature in more detail. When a user signs into the gateway from a device (which the board will refer to as the "user's device"), the gateway displays a list of content items, and the user selects a content item from the list (Figure 3, steps 301 and 302). The gateway then streams the selected item to a target device on which the user wishes the selected item to be rendered (steps 304, 307 and 308). If the selected content item is a paused stream, the stream will be rendered starting from the paused location (steps 305, 306 and 307). Otherwise, the stream is simply sent to the target device (steps 304 and 308) and, presumably, rendered from the start.

In the board's reading of this paragraph, the list of content items is displayed on the user's device, which means that the device requests from the gateway (which corresponds to the "control element" of claim 1) information representing an "identification of available multimedia content" and receives metadata which is associated with, and identifies, a plurality of content items.

Since the gateway streams the content item selected by the user to a target device, the user's device transmits rendering instructions including an identification of the selected item to the gateway, which then transmits a message to the target device to direct the target device to start rendering the item.

5.3 The user's device can be a mobile device such as a cellphone, PDA or mobile media player (paragraphs [0004], [0028], [0042] and [0063]). As explained above, this device is capable of transmitting rendering instructions to the gateway, and in response to these rendering instructions the gateway controls the rendering of a selected content item on a target device.

Document D6, paragraph [0028] and Figure 1A, discloses multiple such mobile devices 111 connected to the gateway 101 and thus discloses first and second mobile devices capable of transmitting rendering instructions to the gateway.

5.4 Hence, the subject-matter of claim 1 differs from document D6 in that the user's device instructs the gateway to create a "queue" with the selected content item, and in that the mobile devices are capable of transmitting rendering instructions "in relation" to that queue.

5.5 The concept of a "queue" for queuing selected content items for sequential rendering at a target device was well-known at the priority date. Indeed, the background section of the present application on page 4, lines 11 to 26, admits that such queues were known. The appellant did not dispute this (see e.g. point 11 of its letter of 1 August 2022).

5.6 Document D6 does not explain what happens if a user instructs the gateway to direct a content item stream to a target device that is already rendering a stream, for example a stream corresponding to a content item selected from a different user device.

In the board's view, the skilled person implementing the system described in document D6, in which content streams can be directed from different user devices to the same target device (whether controlled by the same user or by different users), would inevitably be confronted with the problem of how to deal with the situation in which the target device is already rendering a different stream.

In the board's view, there are essentially three possibilities: (1) rendering of the current stream is interrupted/paused and the new stream is rendered; (2) the request to render the new content stream is refused; or (3) rendering of the new content stream is delayed until rendering of the current stream is completed.

Each of these possibilities is equally obvious and does not achieve any unexpected technical effect. Hence, the skilled person would consider option (3) as one obvious possibility. Moreover, the skilled person at the priority date was aware of the concept of "queues" as a means to implement option (3), for example by letting the gateway manage a queue, and doing so would enable any user device, including the first and second mobile devices, to instruct the gateway to add further content items to the queue and to start rendering items from the queue, i.e. to transmit queue creation instructions and rendering instructions "in relation" to the queue (see point 4. above) to the gateway control element in accordance with claim 1.

5.7 The appellant argued that, starting from document D6, option (1) was the only feasible option. Document D6 was concerned with allowing a user to continue watching content when they moved from their TV to a different

target device. Figure 3 of document D6 showed that if a user instructed a device to stream content, the content was streamed to the target device, therefore interrupting any content already being streamed to the target device. Establishing a queue would prevent the user from being able to immediately continue watching the content.

The board does not agree that option (3) would go against the teaching of document D6. Paragraph [0040] discloses that a user can pause a stream, which results in a token being stored by the gateway indicating the location of the pause. Paragraph [0041] explains that, as a separate action at a later point in time, the user can select a stream to be sent to a target device. This stream may be a new stream, in which case it is streamed from the start, or a paused stream, in which case it is streamed from the paused location indicated by the token. Hence, there is no requirement for a seamless transition from one device to another without any interruption of the stream.

- 5.8 The appellant further disputed that modifying document D6 in accordance with option (3) would lead to the first and second mobile devices being "capable of transmitting rendering instructions" as required by claim 1. It argued that "rendering instructions" were different from "queue creation instructions" and that, once a stream had started being rendered at a target device other than a first user's device, document D6 provided no technical means or teaching whereby the first user's device, let alone a second user's device, was able to further control rendering of that stream at the target device.



However, the "rendering instructions" of claim 1 are "in relation to the first queue" and thus not specifically related to the stream being rendered. As explained in point 4. above, the scope of the term "rendering instructions ... in relation to the first queue" of claim 1 encompasses instructions which cause the control element to instruct the first media rendering device to start rendering files in the first queue.

5.9 Hence, the skilled person, starting from document D6, would have arrived at a method falling within the scope of claim 1 without the exercise of inventive skill.

5.10 The subject-matter of claim 1 of the main request therefore lacks inventive step (Article 56 EPC).

#### *Auxiliary request 1*

6. Claim 1 of auxiliary request 1 is identical to claim 1 of the main request. Its subject-matter therefore lacks inventive step for the same reasons (Article 56 EPC).

#### *Auxiliary requests 2 to 5*

7. *Admission into the appeal proceedings under Article 12(4) RPBA 2007*

7.1 Auxiliary requests 2 to 5 were filed (as auxiliary requests 1 to 4) with the letter of 25 March 2019, two days before the oral proceedings before the examining division and thus after the final date for making written submissions in preparation for the oral proceedings fixed under Rule 116 EPC. According to Rule 116(1) and (2) EPC, amended application documents presented after that date need not be considered,

unless admitted on the grounds that the subject of the proceedings has changed.

- 7.2 The examining division decided not to admit auxiliary requests 2 to 5 into the proceedings on the grounds that they had been filed late and did not clearly comply with the requirement of inventive step.
- 7.3 In its letter of 1 August 2022, the appellant argued that the amendments filed with the letter of 25 March 2019 had been a reaction to the examining division's communication dated 15 March 2019. Moreover, auxiliary requests 2 to 5 provided additional clarification.
- 7.4 In the communication annexed to its summons to oral proceedings, the examining division gave reasons why the subject-matter of claim 1 then on file lacked an inventive step over document D6.

With its written submissions in preparation for the oral proceedings before the examining division, the appellant filed a main request and an auxiliary request.

In its communication dated 15 March 2019 (issued as the minutes of a telephone consultation), the examining division adapted its inventive-step reasoning to the claim wording of the amended claim 1 of the newly filed main request and auxiliary request.

- 7.5 The board observes that the inventive-step reasoning set out in the examining division's communication of 15 March 2019 was still based on document D6. The appellant did not explain why, in its view, the communication had changed the subject of the

proceedings within the meaning of Rule 116 EPC, and the board does not consider that it had.

Hence, the examining division was correct to treat the amendments filed with the letter of 25 March 2019 as being late filed, and to take this into account when exercising its discretion under Rule 116 and 137(3) EPC.

7.6 Under Article 12(4) RPBA 2007, the board has the discretion to hold inadmissible requests which were not admitted in the first-instance proceedings.

7.7 Most of the amendments made in claim 1 of auxiliary requests 2 to 5 at best clarify certain aspects of the claimed method and do not substantially affect the interpretation of the claim as set out in point 3. above.

The remaining amendments add only minor obvious details (the control element is hosted on a media server; the mobile devices are connected to the control element via a "control interface"; a third mobile device creating a second queue for a second multimedia rendering device).

As for auxiliary request 4, the board does not see that the introduction of the label "control point" ("the control element (100) ... comprises a control point component" and "the control element (100) transmits control point instructions") adds anything that is not already in the claim. In particular, this term alone does not imply adherence to any specific standard (such as the UPnP AV and DLNA standards discussed in the background section of the application).

Hence, the amendments are, *prima facie*, unsuitable to overcome the objection of lack of inventive step over document D6.

7.8 The appellant did not contest that the amendments made in auxiliary requests 2 to 5 primarily served to clarify certain aspects of the claims.

7.9 For these reasons, the board decides not to admit auxiliary requests 2 to 5 into the appeal proceedings (Article 12(4) RPBA 2007).

## Order

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

The appeal is dismissed.

The Registrar:

The Chair:



S. Lichtenvort

J. Geschwind

Decision electronically authenticated