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**Datasheet for the decision
of 18 July 2022**

Case Number: T 3274/19 - 3.5.07

Application Number: 14877407.8

Publication Number: 3090369

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Language of the proceedings: EN

Title of invention:

Methods and apparatus to collect distributed user information
for media impressions and search terms

Applicant:

The Nielsen Company (US), LLC

Headword:

Media impressions/THE NIELSEN COMPANY

Relevant legal provisions:

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

Keyword:

Inventive step - main request and auxiliary requests 2, 3, 4 and 5 (no)

Late-filed request - auxiliary requests 1, 6 and 7 (not admitted)

Decisions cited:

G 0001/19



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Case Number: T 3274/19 - 3.5.07

D E C I S I O N
of Technical Board of Appeal 3.5.07
of 18 July 2022

Appellant: The Nielsen Company (US), LLC
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Schaumburg, IL 60173 (US)

Representative: Samson & Partner Patentanwälte mbB
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Decision under appeal: **Decision of the Examining Division of the
European Patent Office posted on 2 August 2019
refusing European patent application
No. 14877407.8 pursuant to Article 97(2) EPC**

Composition of the Board:

Chair J. Geschwind
Members: R. de Man
M. Jaedicke

Summary of Facts and Submissions

I. The appellant (applicant) filed an appeal against the decision of the examining division refusing European patent application No. 14877407.8, which was published as international application WO 2015/102796.

II. The contested decision cited the following documents:

D1: US 2009/0298480 A1, 3 December 2009;

D2: WO 2010/132492 A2, 18 November 2010;

D3: US 2007/0245154 A1, 18 October 2007.

The examining division decided that the subject-matter of the independent claims 1, 7 and 12 of the main request lacked inventive step over document D1. Auxiliary request 1 did not comply with Article 84 EPC, and the subject-matter of its independent claims lacked inventive step. The subject-matter of the independent claims of auxiliary requests 1a, 2 and 3 also lacked inventive step.

III. In its statement of grounds of appeal, the appellant maintained the requests considered in the decision under appeal.

IV. In a communication accompanying a summons to oral proceedings, the board expressed the preliminary view that the subject-matter of claim 1 of the main request and of auxiliary requests 1, 1a, 2 and 3 lacked inventive step over well-known media devices for presenting digital media items, that the main request did not comply with Article 123(2) EPC, and that

auxiliary requests 1 and 1a did not comply with Article 84 EPC.

- V. With a letter submitted in preparation for the oral proceedings, the appellant filed a new main request and auxiliary requests 1 to 7, replacing its previous requests.
- VI. In a subsequent letter, the appellant informed the board 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 7.
- VIII. Claim 1 of the main request reads as follows:

"A method to monitor usage of a media device, the method comprising:

collecting, via a data collector installed on the media device, a media identifier indicative of media presented at the media device;

encrypting a user identifier that identifies the user of the media device, the encrypting of the user identifier based on a first encryption key corresponding to a first database proprietor having first user information associated with the user identifier;

encrypting a device identifier that identifies the media device, the encrypting of the device identifier based on a second encryption key corresponding to a second database proprietor having second user information associated with the device identifier;

sending, from the media device, the media identifier to a data collection server;

sending, from the media device, the encrypted user identifier to a second server associated with the first database proprietor; and

sending, from the media device, the encrypted device identifier to a third server associated with the second database proprietor."

IX. Claim 1 of auxiliary request 1 differs from claim 1 of the main request in that the text after "encrypting a device identifier ... with the device identifier;" reads as follows:

"sending, from the media device, the encrypted user identifier to a second server associated with the first database proprietor;

sending, from the media device, the encrypted device identifier to a third server associated with the second database proprietor; and

sending, from the media device, the media identifier, the encrypted user identifier and the encrypted device identifier to a data collection server to enable the data collection server to collect demographic information from the first database proprietor based on the encrypted user identifier and obtain demographic information from the second database proprietor associated with the encrypted device identifier, and enable the data collection server to associate an impression count with the demographic information provided by the first database proprietor and the second database proprietor, wherein the collecting is performed by the data collector based on an application that does not employ cookies in the media device."

X. Claim 1 of auxiliary request 2 reads as follows:

"A method to monitor usage of a media device, the method comprising:

collecting, via a data collector installed on the media device, a media identifier indicative of media presented at the media device, wherein an impression corresponds to the media having been presented;

encrypting a user identifier that identifies the user of the media device, the encrypting of the user identifier based on a first encryption key corresponding to a first database proprietor having first user information associated with the user identifier;

encrypting a device identifier that identifies the media device, the encrypting of the device identifier based on a second encryption key corresponding to a second database proprietor having second user information associated with the device identifier;

sending, from the media device, the media identifier and an impression identifier to a data collection server, the impression identifier identifying the impression event;

sending, from the media device, the encrypted user identifier and the impression identifier to a second server associated with the first database proprietor; and

sending, from the media device, the encrypted device identifier and the impression identifier to a third server associated with the second database proprietor."

XI. Claim 1 of auxiliary request 3 differs from claim 1 of auxiliary request 2 in that "the impression identifier identifying the impression event" has been replaced

with "the impression identifier being associated with an impression of media on the media device".

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

"sending, from the media device, the encrypted user identifier to a second server associated with the first database proprietor, the first database proprietor possessing a first decryption key useable to decrypt the encrypted user identifier; and

 sending, from the media device, the encrypted device identifier to a third server associated with the second database proprietor, the second database proprietor possessing a second decryption key useable to decrypt the encrypted device identifier."

XIII. Claim 1 of auxiliary request 5 differs from claim 1 of the main request in that the text after "encrypting a device identifier ... with the device identifier;" reads as follows:

"encoding the encrypted user identifier and the encrypted device identifier in a single identifier;

 sending, from the media device, the media identifier to a data collection server;

 sending, from the media device, the single identifier to a second server associated with the first database proprietor, the encrypted user identifier in the single identifier to enable the first database proprietor to provide the first user information to the data collection server; and

 sending, from the media device, the single identifier to a third server associated with the second database proprietor, the encrypted device identifier in

the single identifier to enable the second database proprietor to provide the second user information to the data collection server."

XIV. Claim 1 of auxiliary request 6 reads as follows:

"A method to monitor usage of a media device, the method comprising:

collecting, via a data collector installed on the media device, a media identifier indicative of media presented at the media device,

associating an impression identifier with the media identifier for each impression of the media presented at the media device, the impression identifier to uniquely identify the impression associated with the media identifier, wherein the impression identifier does not identify the media presented at the media device;

encrypting a user identifier that identifies the user of the media device, the encrypting of the user identifier based on a first encryption key corresponding to a first database proprietor having first user information associated with the user identifier;

encrypting a device identifier that identifies the media device, the encrypting of the device identifier based on a second encryption key corresponding to a second database proprietor having second user information associated with the device identifier;

sending, from the media device, the media identifier and the impression identifier to a data collection server, the impression identifier to enable the data collection server to distinguish unique impression events associated with the media identifier to avoid duplicative impression counts associated with

at least one of the user identifier or the device identifier;

sending, from the media device, the encrypted user identifier and the impression identifier to a second server associated with the first database proprietor, wherein the impression identifier is to prevent the first database proprietor from identifying the media associated with the media identifier; and

sending, from the media device, the encrypted device identifier and the impression identifier to a third server associated with the second database proprietor, wherein the impression identifier is to prevent the second database proprietor from identifying the media associated with the media identifier."

XV. Claim 1 of auxiliary request 7 reads as follows:

"A method to monitor usage of a media device, the method comprising:

when an impression of a media occurs at the mobile device, i.e. a user has been presented a media, collecting, via a data collector installed on the media device, a media identifier indicative of the media;

collecting and encrypting, by the data collector, a user identifier that identifies the user of the media device, the encrypting of the user identifier based on a first encryption key corresponding to a first database proprietor having first user information associated with the user identifier;

collecting and encrypting, by the data collector, a device identifier that identifies the media device, the encrypting of the device identifier based on a second encryption key corresponding to a second database proprietor having second user information associated with the device identifier;

sending, by the data collector, the media identifier to a data collection server;

sending, by the data collector, the encrypted user identifier to a second server associated with the first database proprietor for sending the first user information to the data collection server; and

sending, by the data collector, the encrypted device identifier to a third server associated with the second database proprietor for sending the second user information to the data collection server."

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

Reasons for the Decision

1. The application relates to monitoring the usage of media items on a media device.

Main request

2. *Admission into the appeal proceedings*

The main request corresponds to the previous main request with the addition to claim 1 of "a data collector installed on the media device". This amendment overcomes an added-matter objection newly raised in the board's communication in a straightforward manner. This is an exceptional circumstance which justifies the admission into the appeal proceedings of the main request under Article 13(2) EPC.

3. *The invention as defined by claim 1*

3.1 Claim 1 is directed to a "method to monitor usage of a media device".

3.2 A "data collector" software module installed on the mobile device collects a "media identifier" corresponding to a media item that is being presented at the device.

The media device sends the media identifier to a data collection server.

3.3 A user identifier identifying the device's user is encrypted with a first encryption key which corresponds to "a first database proprietor having first user information associated with the user identifier".

The device sends the encrypted user identifier to a server associated with the first database proprietor.

3.4 A device identifier identifying the device is encrypted with a second encryption key which corresponds to a "second database proprietor having second user information associated with the device identifier".

The device sends the encrypted device identifier to a server associated with the second database proprietor.

4. *Inventive step*

4.1 At the priority date, media devices for presenting digital media items to a user were well known in the art. One such example is the mobile device discussed in paragraph [0006] of document D1. In view of the nature of the claimed invention, the board prefers to assess

inventive step starting from this more general starting point rather than from the detailed embodiments on which the examining division based its reasoning.

- 4.2 The features of claim 1 relating to the media identifier (see point 3.2 above) reflect a straightforward and thus obvious implementation of the business decision to provide an interested person with information about the media items being presented on the media device. Indeed, in order to provide this information, it would have been obvious to use a suitable "data collector" software module to collect it at the mobile device, for example in the form of a "media identifier", and provide it to a server associated with the person interested in the information.
- 4.3 Likewise, the features of claim 1 relating to the user identifier (see point 3.3 above) reflect a straightforward and thus obvious implementation of the business decision to obtain information about the device's user. Encrypting information using an encryption key had been well known in the art at the priority date and is used here for its known purpose.
- 4.4 Likewise, the features of claim 1 relating to the device identifier (see point 3.4 above) reflect a straightforward and thus obvious implementation of the business decision to obtain information about the device.
- 4.5 The board further notes that claim 1 specifies no interaction between these three sets of features. Their claimed combination, or rather juxtaposition, therefore cannot support an inventive step, either.

- 4.6 The appellant argued that the very general teaching of paragraph [0006] of document D1 could not be the "closest" prior art.

However, Article 56 EPC requires the claimed invention to be non-obvious over any piece of prior art, which includes well-known media devices for presenting digital media items to a user, one example of which is discussed in paragraph [0006] of document D1.

- 4.7 The appellant argued that there was interaction between the three sets of features described in points 3.2 to 3.4 above because the claim required all the steps of encoding and sending identifiers to be related to the determination that a medium had been presented.

However, there is nothing in the language of the claim that relates the steps of encrypting and sending the user identifier and the device identifier to the step of collecting "a media identifier indicative of media presented at the media device".

- 4.8 The appellant submitted that the claimed invention solved the problem of "how to increase panel sizes while ensuring the demographics data of the panel is accurate". It also criticised the board's reasoning for trivialising the claimed invention, and argued that the means in which a technical effect occurred did not need to be part of the claim. It was sufficient that the subject-matter of the claim as a whole produced a technical effect, whether within or outside the claimed subject-matter.

The board notes that, for the purpose of assessing inventive step, a technical effect or a solution to a technical problem can be acknowledged only if it is

achieved over substantially the whole scope of the claim (see decision G 1/19, OJ EPO 2021, A77, points 82 to 84). In the present case, none of the features of claim 1 refers to or implies panels or demographics data. The problem formulation proposed by the appellant can therefore not be taken into account.

- 4.9 The appellant argued that it was not well known to use different keys for encrypting different data sets.

However, it is the whole point of key-based encryption schemes that different keys can be used, in particular for sending different sets of data to different entities.

- 4.10 The appellant further argued that transmitting information over three separate communication channels increased the security of information.

The board cannot agree that a mere juxtaposition of three separate encrypted communication channels, without any interaction, increases "security of information".

- 4.11 The appellant argued that a media device, a medium, and the presentation of a medium by a media device were all technical and that the claimed invention transmitted electrical, and thus technical, signals.

However, this argument has no bearing on the board's inventive-step reasoning as set out in points 4.1 to 4.5 above.

- 4.12 Likewise, the appellant's arguments referring to decision T 1658/15 and various passages of documents D1

and D2 have no bearing on the board's inventive-step reasoning and therefore need no further discussion.

4.13 Hence, the subject-matter of claim 1 lacks an inventive step (Article 56 EPC).

Auxiliary request 1

5. Auxiliary request 1 is based on the main request and replaces the step "sending, from the media device, the media identifier to a data collection server" with the following features:

(a) sending, from the media device, the media identifier, the encrypted user identifier and the encrypted device identifier to a data collection server to

(i) enable the data collection server to collect demographic information from the first database proprietor based on the encrypted user identifier and obtain demographic information from the second database proprietor associated with the encrypted device identifier, and

(ii) enable the data collection server to associate an impression count with the demographic information provided by the first database proprietor and the second database proprietor,

(b) wherein the collecting is performed by the data collector based on an application that does not employ cookies in the media device.

6. *Admission into the appeal proceedings*

6.1 Any amendment to a party's appeal case made after the notification of a summons to oral proceedings is, in

principle, not to be taken into account unless there are exceptional circumstances, which have been justified with cogent reasons by the party concerned (Article 13(2) RPBA 2020).

The appellant explained that auxiliary request 1 addressed the board's inventive-step reasoning by specifying an interaction between the three steps of sending information.

The board fails to see, however, in what way the added feature (b) contributes to specifying an interaction between the three steps of sending, and the appellant did not address the relevance of this feature for the assessment of inventive step. It is therefore not apparent to the board what exceptional circumstance could justify the admission of this amendment.

6.2 Moreover, feature (b), which introduces a negative feature ("an application that does not employ cookies"), is at least *prima facie* unclear. It is not apparent from claim 1 what these cookies would have been employed for; nor can it be understood from the claim which features make their use redundant.

6.3 According to Article 13(1), second paragraph, RPBA 2020 in conjunction with Article 12(4), second paragraph, RPBA 2020, a party is to indicate the basis for the amendments in the application as filed.

The appellant merely submitted that the amendments according to auxiliary request 1 "can be found in at least paragraphs 71-73, and 95-100", without giving any further explanations. This unspecific reference to nine paragraphs, covering about four pages of text, leaves it to the board to investigate exactly where in the

application as filed the individual features added to claim 1 are supposed to be disclosed.

Moreover, the cited paragraphs do not refer to the presence or absence of any "cookies". The appellant appears to have taken feature (b) from dependent claim 6 of the main request, which, however, does not correspond to any of the originally filed claims. It is also not immediately apparent to the board that this feature in its claimed context can be directly and unambiguously derived from paragraphs [0027] and [0029] to [0032] of the original description, which are the only paragraphs mentioning cookies.

6.4 Hence, auxiliary request 1 also raises new issues under Articles 84 and 123(2) EPC, which means that its admission would be detrimental to procedural efficiency (Article 13(1), fourth paragraph, RPBA 2020).

6.5 For these reasons the board does not admit auxiliary request 1 into the appeal proceedings.

Auxiliary requests 2 to 5

7. Admission into the appeal proceedings

7.1 Auxiliary requests 2 to 5 correspond to previous auxiliary requests 1, 1a, 2 and 3 with the same amendments as made in the main request (see point 2. above).

7.2 Auxiliary requests 2 and 3 include a further amendment ("wherein an impression corresponds to the media having been presented") which represents a reasonable reaction to the board's clarity objection regarding the term "impression event".

7.3 The board therefore considers that there are exceptional circumstances justifying the admission into the appeal proceedings of auxiliary requests 2 to 5.

Auxiliary request 2

8. Claim 1 of auxiliary request 2 adds to claim 1 of the main request essentially that the various identifiers are sent together with an "impression identifier" identifying the "impression event" of a media item being presented at the media device.

9. *Inventive step*

9.1 Since the "impression identifier" in the context of claim 1 is not used for any specific technical purpose, the features added to claim 1 reflect the obvious implementation of the business decision to provide information about the "impression event" to the various information recipients.

9.2 The appellant's argument that the claim requires all the steps of encoding and sending identifiers to be related to the determination that a medium has been presented (see point 4.7 above) is now valid, since the impression identifier relates to the determination that a medium has been presented. However, this still does not amount to an interaction between the three steps which results in a technical effect going beyond the sum of their individual effects.

9.3 Hence, the subject-matter of claim 1 of the auxiliary request 2 lacks inventive step (Article 56 EPC).

Auxiliary request 3

10. Claim 1 of auxiliary request 3 differs from claim 1 of auxiliary request 2 in that the impression identifier is "associated with an impression of media on the media device" instead of "identifying the impression event".
- 10.1 Since an identifier which identifies an impression event is thereby "associated with" the impression event, claim 1 of auxiliary request 3 is broader than claim 1 of auxiliary request 2. Hence, the subject-matter of claim 1 of auxiliary request 3 also lacks inventive step (Article 56 EPC).

Auxiliary request 4

11. Claim 1 of auxiliary request 4 adds to claim 1 of the main request that the first and second database proprietors possess first and second decryption keys corresponding to the first and second encryption keys.
12. Since it is obvious that the recipients of encrypted information require corresponding decryption keys to be able to decrypt the information, the added features do not to overcome the lack of inventive step (Article 56 EPC).

Auxiliary request 5

13. Claim 1 of auxiliary request 5 adds to claim 1 of the main request that the encrypted user identifier and the encrypted device identifier are encoded in a single identifier. This single identifier is sent to both the first database proprietor (who is able to decrypt the encrypted user identifier) and the second database

proprietor (who is able to decrypt the encrypted device identifier).

The claim further specifies that the encrypted user identifier in the single identifier is "to enable the first database proprietor to provide the first user information to the data collection server" and that the encrypted device identifier in the single identifier is "to enable the second database proprietor to provide the second user information to the data collection server".

14. *Inventive step*

14.1 The size of the single identifier will necessarily be at least the size of the encrypted user identifier and the encrypted device identifier (for example, the encoding could take the form of concatenating the two encrypted identifiers). It is not apparent to the board what technical effect is achieved by sending, to each of the first and second database proprietors, extra information that they do not need and cannot use.

14.2 As for the features specifying that the user identifier and the device identifier are "to enable" the first and second database proprietors to provide the first and second user information to the data collection server, the board notes that, in general, the receipt of any identifier necessarily "enables" the recipient to provide information associated with that identifier to another party.

Hence, these features do not further limit the claimed subject-matter.

14.3 It follows that the subject-matter of claim 1 of auxiliary request 5 lacks inventive step (Article 56 EPC).

Auxiliary request 6

15. Claim 1 of auxiliary request 6 is based on claim 1 of auxiliary request 2 and, in particular, adds the following features:
- (a) associating an impression identifier with the media identifier for each impression of the media presented at the media device, the impression identifier to uniquely identify the impression associated with the media identifier, wherein the impression identifier does not identify the media presented at the media device;
 - (b) the impression identifier to enable the data collection server to distinguish unique impression events associated with the media identifier to avoid duplicative impression counts associated with at least one of the user identifier or the device identifier;
 - (c) wherein the impression identifier is to prevent the first database proprietor from identifying the media associated with the media identifier;
 - (d) wherein the impression identifier is to prevent the second database proprietor from identifying the media associated with the media identifier.

16. *Admission into the appeal proceedings*

16.1 In respect of the features added to claim 1 of auxiliary request 6, the appellant merely submitted that they were neither taught nor suggested by documents D1 and D2 and that "[a]ccordingly, the alleged D1/D2 combination does not teach or suggest all

aspects of claim 1. As such, claim 1 possesses an inventive step over the alleged D1/D2 combination".

However, the inventive-step reasoning set out in the board's communication did not rely on a combination of documents D1 and D2 (nor did the contested decision). Instead, the board essentially relied on the reasoning given in points 4.1 to 4.5 above, to which the appellant's argument does not respond.

Hence, the appellant's submissions in respect of auxiliary request 6 do not include reasons why the amendments overcome the objections raised (Article 13(1), second paragraph, RPBA 2020 in conjunction with Article 12(4), second paragraph, RPBA 2020).

- 16.2 Moreover, the features added to claim 1 give some information about the intended use of the impression identifier, namely that it is "to enable" the data collection server to avoid double counting of impression counts and "to prevent" the first and second database proprietors from identifying the media associated with the media identifier, but the claim does not impose any corresponding limitations on the data collection server and on the servers of the first and second database proprietors. Hence, the claimed method is not limited to embodiments in which double counting is avoided or identifying the media is prevented (and this is even clearer for the media device of the corresponding independent claim 7). In addition, the use of an "impression identifier" for solving the business problem of avoiding double counting in any event does not appear to amount to a technical solution to a technical problem.

It follows that the appellant's submissions in respect of auxiliary request 6 fail to demonstrate that the request, *prima facie*, overcomes the inventive-step objection raised by the board (Article 13(1), fourth paragraph, RPBA 2020).

- 16.3 For these reasons, the board decides not to admit auxiliary request 6 into the appeal proceedings.

Auxiliary request 7

17. Claim 1 of auxiliary request 7 essentially adds to claim 1 of the main request that the steps of the method are performed "when an impression of a media occurs at the mobile device, i.e. a user has been presented a media".

It also adds that the user identifier and device identifier being encrypted are first "collected", and that the three identifiers are sent "by the data collector".

Finally, it specifies that the encrypted user identifier and device identifier are for sending the first and second user information to the data collection server.

18. *Admission into the appeal proceedings*

- 18.1 The appellant argued that claim 1 of auxiliary request 7 specified the distributed communication scheme shown in Figure 16 and referred to Figure 16 and paragraph [0094] as a basis for the features "for sending the first user information to the data collection server" and "for sending the second user information to the data collection server".

Paragraph [0094], which describes Figure 16, indeed discloses that database proprietors 104a and 104b provide user information 102a and 102b to the audience measurement entity (AME) 108. However, paragraph [0096] makes clear that the user information 102a and 102b is provided to the AME 108 "in association with the impression identifier 1602" to allow the AME 108 to match the user information with a media identifier. The impression identifier is therefore essential to this embodiment.

Since claim 1 of auxiliary request 7 does not mention any impression identifiers, auxiliary request 7 at least *prima facie* does not comply with Article 123(2) EPC and thus gives rise to a new objection (Article 13(1), fourth paragraph, RPBA 2020).

- 18.2 The board further notes that auxiliary requests 1, 6 and 7, which were filed in response to the board's communication and which all appear to be intended to address the board's inventive-step objection, go into different directions (see points 5., 15. and 17. above). While the board accepts that strict conversion of auxiliary requests cannot always be required, for example if an appellant is confronted with a number of preliminary objections which may or may not be finally upheld, in the present case the board sees no justification for repeatedly restarting the attempt to overcome the inventive-step objection. The board therefore considers the amendments made in auxiliary request 7 to be detrimental to procedural economy (Article 13(1), fourth paragraph, RPBA 2020).
- 18.3 For these reasons, the board does not admit auxiliary request 7 into the appeal proceedings.

19. Since none of the requests admitted into the appeal proceedings is allowable, the appeal is to be dismissed.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chair:



S. Lichtenvort

J. Geschwind

Decision electronically authenticated