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**Datasheet for the decision  
of 9 May 2023**

**Case Number:** T 0419/20 - 3.5.04

**Application Number:** 12844506.1

**Publication Number:** 2739056

**IPC:** H04N13/00, H04N13/04

**Language of the proceedings:** EN

**Title of invention:**  
VIDEO PRESENTATION METHOD AND SYSTEM

**Applicant:**  
Huawei Technologies Co., Ltd.

**Headword:**

**Relevant legal provisions:**  
RPBA Art. 12(4)

**Keyword:**  
Appellant's sole request - Admittance (no)

**Decisions cited:**

**Catchword:**



**Beschwerdekammern**  
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Case Number: T 0419/20 - 3.5.04

**D E C I S I O N**  
**of Technical Board of Appeal 3.5.04**  
**of 9 May 2023**

**Appellant:** Huawei Technologies Co., Ltd.  
(Applicant) Huawei Administration Building  
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**Representative:** Thun, Clemens  
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**Decision under appeal:** **Decision of the Examining Division of the European Patent Office posted on 11 September 2019 refusing European patent application No. 12844506.1 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. 12 844 506.1.
- II. The prior-art documents cited in the decision included the following:
- D1: US 2011/069139 A1  
D2: US 2010/0315492 A2  
D3: US 2002/0030675 A1
- III. The decision was based on the grounds that claim 1 of the main request and of the first and second auxiliary requests then on file was not clear (Article 84 EPC) and that the subject-matter of claims 1 and 2 of these three requests did not involve an inventive step (Article 56 EPC) in view of the disclosures of documents D1, D2 and D3.
- IV. The applicant ("appellant") filed notice of appeal and a statement setting out the grounds of appeal. With the statement of grounds of appeal, the appellant filed amended claims 1 and 2 according to a sole request and stated that these amended claims were to replace the sets of claims then on file (see statement of grounds of appeal, page 1, first paragraph). The appellant provided arguments in support of its view that the claims were clear and that their subject-matter was new and involved an inventive step.
- V. A summons to oral proceedings was issued. In a communication under Article 15(1) RPBA 2020 (see

OJ EPO 2021, A35) the board provided the following preliminary opinion, *inter alia*.

- (a) In comparison with claim 1 of the second auxiliary request on which the decision under appeal was based, claim 1 of the sole request filed with the statement of grounds of appeal specified that (i) the step of determining three-dimensional video stream information comprising a bandwidth of a three-dimensional video stream, carried out by the negotiating module, was based on a result of the three-dimensional video capability negotiation ("**feature (i)**"), and (ii) the sequence in which the multiple viewpoint image streams were alternately displayed in a viewing area by the displaying module was a time sequence ("**feature (ii)**").
  
- (b) The appellant should have already filed the request submitted with the statement of grounds of appeal during the first-instance proceedings. Thus, the board had the discretionary power under Article 12(4) RPBA 2007 to hold that request inadmissible.
  
- (c) It was not evident that feature (i) was already implied by the wording of claim 1 of the second auxiliary request on which the decision under appeal was based, as argued by the appellant in point 1. of the statement of grounds of appeal. It was not on account of the three-dimensional video stream information being determined by the negotiating module that it necessarily had to be based on the result of the negotiation. In fact, claim 5 as filed specified that determining three-dimensional video stream information comprised receiving that information.

- (d) The addition of features (i) and (ii) resulted in fresh (more limited) subject-matter. If the board were to admit the request filed with the statement of grounds of appeal into the appeal proceedings, it would either have to examine this fresh subject-matter for the first time or remit the case to the examining division. Both options would be contrary to the principle of procedural economy.
- (e) The board did not consider the references to "the overall context of the patent application" in point 1. of the statement of grounds of appeal to amount to a (proper) indication of a basis in the application as filed for features (i) and (ii). This meant that, effectively, no basis in the application as filed had been indicated by the appellant for the amendments.
- (f) At first glance, the application as filed did not seem to disclose features (i) and (ii).
- (g) The board was therefore minded to hold inadmissible the request filed with the statement of grounds of appeal.

VI. By letter dated 4 April 2023, the appellant requested that the board "set aside the decision of the Examining Division" and "grant a patent on the basis of the set of claims pending before [it]" (see page 5, "Concluding Remarks"). The appellant provided arguments in support of its view that the request "pending before the board" should be admitted into the appeal proceedings. It also indicated a basis in the application as filed for features (i) and (ii) (page 6, lines 4 to 7, page 5, lines 3 to 8, and claim 1) as well as further arguments

to support its opinion that the claims were clear and that their subject-matter involved an inventive step.

VII. By letter dated 28 April 2023, the appellant informed the "Examining Division" that neither the appellant nor the representative would be attending the oral proceedings scheduled for 9 May 2023. The appellant further requested that a written decision on the basis of the documents on file be issued.

VIII. The oral proceedings before the board were held on 9 May 2023, as scheduled.

During the oral proceedings, the board noted that it followed from the file that the appellant's final request was that the decision under appeal be set aside and that a European patent be granted on the basis of the set of claims filed with the statement of grounds of appeal.

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

IX. Claim 1 of the appellant's sole request reads as follows (features added to claim 1 of the second auxiliary request on which the decision under appeal was based are underlined):

"A video presence method performed by a video presence system comprising a negotiating module, a receiving module, a determining module and a displaying module, the method comprising:

- performing, by the negotiating module, three-dimensional video capability negotiation with a remote end, and determining, by the negotiating module, three-

dimensional video stream information based on a result of the three-dimensional video capability negotiation, wherein the three-dimensional video stream information comprises a bandwidth of a three-dimensional video stream (step 100);

- receiving, by the receiving module, a multi-viewpoint three-dimensional video signal from the remote end according to the determined three-dimensional video stream information (step 101);
- determining, by the determining module, multiple viewpoint image streams in the multi-viewpoint three-dimensional video signal (step 102); and
- alternately displaying, by the displaying module, the multiple viewpoint image streams in a time sequence in a viewing area, wherein a distance between two neighboring viewpoints in the multiple viewpoint image streams displayed in the viewing area is a pupillary distance (step 103)."

X. The appellant's arguments in support of its view that its sole request should be admitted into the appeal proceedings can be summarised as follows.

- (a) Features (i) and (ii) had been added to claim 1 at the earliest possible point in time, namely with the statement of grounds of appeal. Thus, the appellant had respected the "front loaded" system of the boards of appeal (see appellant's letter dated 4 April 2023, page 4, first bullet point).
- (b) Feature (i) had been added merely to improve the readability of the wording of claim 1, not to render the claimed subject-matter inventive (see



appellant's letter dated 4 April 2023, page 2, first full paragraph). Feature (ii) had been added to overcome the clarity objection raised in point 15.3 of the decision under appeal (see appellant's letter dated 4 April 2023, page 3, first full paragraph).

- (c) Feature (i) was already implied by the wording of claim 1 of the second auxiliary request on which the impugned decision was based "together with the overall context of the patent application" (see point 1. of the statement of grounds of appeal).
- (d) The appellant did not understand why the reception of the three-dimensional video stream information - as claimed in originally filed claim 5 - excluded the case in which this reception "resembled" the result of a negotiation, since a result of the negotiation could simply be that, in the end, the three-dimensional video stream information was received (see appellant's letter dated 4 April 2023, sentence bridging pages 1 and 2).
- (e) Feature (ii) "should be clear due to the overall context of the patent application, in line with the opinion of the Examining Division" (see point 1. of the statement of grounds of appeal).
- (f) Features (i) and (ii) did not contribute to the appellant's inventive-step argumentation, and hence only the formal requirements according to Articles 84 and 123(2) EPC were to be discussed. For those formal requirements, the board had already given an opinion with respect to features (i) and (ii). Thus, discussing these features would not be detrimental to procedural economy.

Therefore, this request was to be admitted into the appeal proceedings because a "quick decision" of the board was possible regarding features (i) and (ii) (see appellant's letter dated 4 April 2023, page 4, first bullet point).

### **Reasons for the Decision**

1. The appeal is admissible.

#### **A. Appellant's non-attendance at the oral proceedings**

2. Although the duly summoned appellant did not attend the oral proceedings, this did not prevent the board from continuing the oral proceedings (Rule 115(2) EPC). In accordance with Article 15(3) RPBA 2020 (which is applicable in accordance with Article 25(1) RPBA 2020), the board relied on the appellant's written submissions for its decision. The board was in a position to announce a decision at the conclusion of the oral proceedings. Indeed, the case was ready for decision (Article 15(5) and (6) RPBA 2020, which applies in accordance with Article 25(1) RPBA 2020), and the voluntary absence of the appellant was not a reason for delaying the decision (Article 15(3) RPBA 2020).

#### **B. Appellant's sole request, admittance (Article 12(4) RPBA 2007)**

3. The appellant's sole request is identical to the one filed with the statement of grounds of appeal. The claims of that request did not form the basis of the decision under appeal.

4. The statement of grounds of appeal was filed on 20 December 2019, i.e. before the date on which the RPBA 2020 entered into force (1 January 2020; see Article 24(1) RPBA 2020). In accordance with Article 25(2) RPBA 2020, therefore, Article 12(4) to (6) RPBA 2020 does not apply to the question of whether to admit the appellant's sole request into the appeal proceedings. Instead, Article 12(4) RPBA 2007 applies.

5. According to Article 12(4) RPBA 2007, the board has the power to hold inadmissible requests which could have been presented in the first-instance proceedings.

Since, in fact, almost every claim request could have been presented before the department of first instance, the question in this context is whether the situation was such that the filing of this request should already have taken place at that stage (see Case Law of the Boards of Appeal of the European Patent Office, 10th edition, 2022, V.A.5.11.1 and V.A.5.11.4 a)).

6. The board does not accept the appellant's submission that features (i) and (ii) were added to claim 1 at the earliest possible point in time (see point X.(a) above). All the reasons given in the decision under appeal correspond to comments that had been communicated to the appellant in a communication from the examining division dated 9 July 2019, which was sent ahead of the oral proceedings scheduled for 3 September 2019. The clarity objection raised in point 15.3 of the decision under appeal corresponds to the one raised in point 3.3 of the examining division's communication dated 9 July 2019. Therefore, if the appellant thought that its claims could have been misread by the examining division (see point X.(b) above, first sentence) or that adding feature (ii)

would overcome the clarity objection raised in point 3.3 of the examining division's communication dated 9 July 2019 (see point X.(b) above, second sentence), it should have sought a decision of the examining division on the request in hand. Instead, it requested the issuance of a written decision on the basis of the documents on file (see letter dated 23 August 2019), which led to the cancellation of the oral proceedings.

7. In view of points 5. and 6. above, the board finds that it has the discretionary power under Article 12(4) RPBA 2007 to hold inadmissible the request filed with the statement of grounds of appeal.
  
8. The board disagrees with the appellant's submission that **feature (i)** was already implied by the wording of claim 1 of the second auxiliary request on which the decision under appeal was based (see point X.(c) above). Claim 1 of the second auxiliary request on which the decision under appeal was based specifies "determining, by the negotiation module, three-dimensional video stream information". It is not on account of three-dimensional video stream information (comprising a bandwidth of a three-dimensional video stream) being determined by the negotiating module that it must necessarily be based on the result of the negotiation. This is exemplified by claim 5 as originally filed, which specifies that determining three-dimensional video stream information comprises (merely) receiving that information.

In the board's view, the appellant's argument in point X.(d) above is not convincing, because it relates to what claim 5 as originally filed does or does not exclude, but not to whether claim 1 of the second

auxiliary request on which the decision under appeal was based already implied feature (i). Even if claim 5 as originally filed does not exclude the case in which the reception of the three-dimensional video stream information "resembles" the result of a negotiation, the appellant's argument is beside the point. What matters is that on the basis of its wording, claim 1 of the second auxiliary request on which the decision under appeal was based cannot be regarded as implying that the three-dimensional video stream information is (automatically or always) based on a result of the three-dimensional video capability negotiation.

9. Thus, the board finds that the addition of feature (i) to claim 1 added subject-matter which had not formed the basis of the decision under appeal ("fresh subject-matter").
  
10. The appellant does not contend that **feature (ii)** was already implied by the wording of a claim which had formed the basis of the decision under appeal. Instead, the appellant submitted that this feature "should be clear due to the overall context of the patent application, in line with the opinion of the Examining Division" (see point X.(e) above). However, in point 15.3 of the decision under appeal (and point 3.3 of its communication dated 9 July 2019), the examining division stated that "[f]rom the description it [was] understood that [alternatively displaying ... in sequence] refer[red] to a **spatial** sequence ..." (emphasis added by the board), not to a **time** sequence. Therefore, it is immediately apparent that the addition of feature (ii) to claim 1 is **not** "in line with the examining division's opinion", contrary to the appellant's statement. By not filing the request in hand until the appeal proceedings, the appellant

effectively prevented the examining division from giving a reasoned decision on whether the addition of feature (ii) to claim 1 met the requirements of Article 123(2) EPC.

11. In view of points 9. and 10. above, the board finds that the addition of features (i) and (ii) to claim 1 results in fresh and more limited subject-matter. If the board were to admit the request in hand into the appeal proceedings, it would either have to examine this fresh subject-matter for the first time or remit the case to the examining division. Both options would be contrary to the principle of procedural economy.
12. The appellant's arguments reproduced in point X.(f) above are not persuasive, for the following reasons.
  - 12.1 In its communication pursuant to Article 15(1) RPBA 2020, the board indicated why - at first glance - features (i) and (ii) did not seem to be disclosed in the application as filed (see point V.(f) above). Such a *prima facie* assessment is not to be equated to a close examination that ensues when a request is admitted. In its reply dated 4 April 2023, and for the first time in the appeal proceedings, the appellant indicated a basis for features (i) and (ii) in the application as filed (see points V.(e) and VI. above). If the board were to admit the appellant's sole request into the appeal proceedings, it would have to examine this late-provided basis for the first time or remit the case to the examining division.
  - 12.2 Contrary to the appellant's allegation, the board did not give an opinion on whether features (i) and (ii) met the requirements of Article 84 EPC.

- 12.3 The issue of whether the appellant relied on features (i) and (ii) in its inventive-step argumentation is not relevant. Since these features limit the claimed subject-matter, the board would either have to examine for the first time whether they are disclosed in the "closest prior art" and - as the case may be - whether they would have been obvious to the person skilled in the art, or remit the case to the examining division. The board or the examining division may not necessarily share the appellant's view on whether or not features (i) and (ii) contribute to novelty or inventive step.
- 12.4 Any balanced and reasoned decision on substantive issues would require the board to diligently scrutinise all facts and arguments underlying the case, in order to comply with the board's duty under Article 113(1), Rule 111(2) EPC. This is at odds with what the appellant refers to as a "quick decision" by the board on the aspects mentioned in points 12.1 to 12.3 above. Therefore, the board maintains its view that admitting the appellant's sole request would be detrimental to procedural economy.
13. In view of the above, the board holds the appellant's sole request inadmissible. By replacing the requests on which the decision under appeal was based with the request in hand, the appellant has mistaken the function of the boards of appeal. The appeal proceedings do not constitute a continuation of the first-instance proceedings. Their primary object is to review the decision under appeal in a judicial manner (see G 10/93, OJ EPO 1995, 172, point 4. of the Reasons, and Article 12(2) RPBA 2020).

**C. Conclusion**

Since the sole request on file is not admitted into the appeal proceedings, 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