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**Datasheet for the decision
of 13 November 2024**

Case Number: T 0137/21 - 3.5.01

Application Number: 04712264.3

Publication Number: 1602044

IPC: G06F17/60, H04N7/173

Language of the proceedings: EN

Title of invention:
SIGNAL TRANSMISSION MANAGEMENT SYSTEM

Applicant:
Namvar, Kianoush

Headword:
Organisation of signals/NAMVAR

Relevant legal provisions:
EPC Art. 56
RPBA 2020 Art. 13(1), 13(2)

Keyword:

Inventive step - adding more client computers to single-client/server system (no - obvious modification) -
organisation of signals (no - not technical)
Amendment after notification of Art. 15(1) RPBA communication
- exceptional circumstances (no)
Amendment to appeal case admitted (no)



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Case Number: T 0137/21 - 3.5.01

D E C I S I O N
of Technical Board of Appeal 3.5.01
of 13 November 2024

Appellant: Namvar, Kianoush
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Decision under appeal: **Decision of the Examining Division of the
European Patent Office posted on 28 July 2020
refusing European patent application No.
04712264.3 pursuant to Article 97(2) EPC.**

Composition of the Board:

Chairman M. Höhn
Members: A. Wahrenberg
E. Mille

Summary of Facts and Submissions

- I. The case concerns the appeal against the examining division's decision to refuse the European patent application No. 04712264.3 (published as WO 2004/075087 A1) for lack of inventive step (Article 56 EPC) and lack of clarity (Article 84 EPC).
- II. In the statement setting out the grounds of appeal dated 7 December 2020, the appellant requested that the decision to refuse the application be set aside and that a patent be granted on the basis of the annexed main request, or one of the annexed first to fourth auxiliary requests. Oral proceedings were requested if the Board could not accede to the main request in the written procedure.
- III. On 3 January 2022, the Board issued a summons to oral proceedings to be held by videoconference on 13 September 2022. In the communication accompanying the summons, the Board tended to agree with the examining division's assessment that the subject-matter of claim 1 of the main request and the first to fourth auxiliary requests lacked inventive step over D1 (US 5 661 516 A), and that the independent claim defining the client computer (claim 13 of the main request and the first, third, and fourth auxiliary requests, and claim 12 of the second auxiliary request) lacked clarity (Article 84 EPC) and also novelty (Article 54(1) and (2) EPC).
- IV. On 7 September 2022, the unrepresented appellant requested postponement of the oral proceedings due to health reasons, and filed an "another auxiliary

request".

- V. The Board cancelled the date for oral proceedings.
- VI. On 23 January 2024, the Board issued a second summons to oral proceedings to be held by videoconference on 18 April 2024. In the accompanying communication, the Board was minded not to admit the newly filed auxiliary request into the appeal proceedings under Article 13(2) RPBA.
- VII. On 10 April 2024, the appellant again requested postponement of the oral proceedings due to health reasons.
- VIII. The Board postponed the oral proceedings to 13 November 2024. In a communication dated 15 April 2024, initially rejecting the request for postponement, the Board pointed out that the appeal case had been pending since 2020 and that oral proceedings had already been postponed once. During this time, the appellant could and should have appointed a representative, especially since the issues appeared to be persistent and long standing, with no resolution forthcoming.
- IX. On 15 October 2024, the Board was informed by letter that the appellant had appointed a representative.
- X. With a letter dated 17 October 2024, the appellant filed fifth to seventh auxiliary requests.
- XI. Oral proceedings took place by videoconference on 13 November 2024. During the oral proceedings, the appellant deleted claims 13 to 23 of the main request and auxiliary requests 1, 3, 4, and claims 12 to 22 of

auxiliary request 2. The appellant also withdrew the auxiliary request filed on 7 September 2022.

The appellant's final requests were, thus, that the decision under appeal be set aside and that a patent be granted on the basis of the set of claims of the amended main request, or alternatively of amended auxiliary requests 1 to 4, or of auxiliary requests 5 to 7 filed with the letter of 17 October 2024.

XII. Claim 1 of the main request reads:

A system for transmitting signals (S) to a plurality of subscriber receivers (110), wherein each signal (S) represents a type of information belonging to a particular contents category, comprising:

a plurality of client computers (151, 152, 153) of different operators, each having an interface towards a central management server (100) and being adapted to produce administrative instructions (l_{adm1} , l_{adm2} , l_{adm3}) for organizing a sub-set of the signals (S) to be transmitted via the central management server (100), and a central management server (100) adapted to receive the administrative instructions (l_{adm1} , l_{adm2} , l_{adm3}) pertaining to the transmission of the signals (S) to the subscriber receivers (110), and in response to the administrative instructions (l_{adm1} , l_{adm2} , l_{adm3}) to organize signals (S_{1a} , S_{1b} , S_{2a} , S_{2b} , S_1 , S_2 , S_3 , S_4 , C , T_D) from at least one signal source (120, 141, 142, 143, 144, 151 a-b, 152a-b, 153c) before transmission thereof to the subscriber receivers (110).

XIII. The first auxiliary request adds the following to claim 1 of the main request:

"via a plurality of channels" after "via the central

management server (100)";

Two instances of "of the sub-set" in the "central management server" feature, which reads (with additions underlined) "a central management server (100) adapted to receive the administrative instructions (I_{adm1} , I_{adm2} , I_{adm3}) pertaining to the transmission of the sub-set of the signals (S) to the subscriber receivers (110), and in response to the administrative instructions (I_{adm1} , I_{adm2} , I_{adm3}) to organize the sub-set (S_{1a} , S_{1b} , S_{2a} , S_{2b} , S_1 , S_2 , S_3 , S_4 , C, T_D) of the signals..."; and

the following additional feature at the end of the claim: "wherein the plurality of client computers of the different operators share transmission resources of the plurality of channels".

XIV. The second auxiliary request adds the following feature at the end of claim 1 of the first auxiliary request:

", and further comprising a central transmission unit (160) adapted to receive the sub-set of the signals (S) from the central management server (100) and, in accordance with an organization scheme (200) produced by the central management server (100), transmit the sub-set of the signals (S) to the subscriber receiver (110) via a signal distribution system (165, 170, 185)".

XV. The third auxiliary request replaces the last feature of claim 1 of the first auxiliary request by the following: "wherein the plurality of client computers of the different operators share transmission resources of the plurality of channels and when a resource of a time slot is occupied in one channel a different

resource of that time slot is used for that signal".

XVI. The fourth auxiliary request replaces the last feature in claim 1 of the first auxiliary request by: "wherein the plurality of client computers of the different operators share transmission resources of the plurality of channels and when a same sub-segment of the sub-set of the signals (S) is organized in two or more parallel time slots, the central management server manages the sub-segment and controls the transmission via one resource".

XVII. Claim 1 of the fifth auxiliary request differs from the main request by:

- adding "and at least one of a plurality of channels" after "via the central management server (100)" in claim 1 of the main request;
- deleting ~~"from at least one signal source (120, 141, 142, 143, 144, 151a-b, 152a-b, 153c";~~
- adding "based on administrative instructions (l_{adm1}, l_{adm2}, l_{adm3})" after the deleted feature; and
- adding the following feature at the end of the claim:

"the organizing of the signals (S_{1a}, S_{1b}, S_{2a}, S_{2b}, S₁, S₂, S₃, S₄, C, T_D) being further based on an organization scheme (200) specifying, for each signal (S_{1a}, S_{1b}, S_{2a}, S_{2b}, S₁, S₂, S₃, S₄, C, T_D) to be transmitted, a transmission resource (TV1-5, CNN, Fill1-4), a time instance, and a contents category, the contents category determining for at least one segment of the signal (S_{1a}, S_{1b}, S_{2a}, S_{2b}, S₁, S₂, S₃, S₄, C, T_D) which of two or more sub-segments that will be presented in which subscriber receiver (110)".

XVIII. The sixth auxiliary request adds the following feature before the "central management server (100) adapted to...." in claim 1 of the main request: "a compiler adapted to produce a preliminary organization of the signals (S) before transmission of said administrative instructions (I_{adm1}, I_{adm2}, I_{adm3}) to the central management server (100); and".

XIX. The seventh auxiliary request, adds the following features to claim 1 of the sixth auxiliary request, after the "compiler" feature:

"- a graphical user interface (300) adapted to enable user manipulations of the preliminary organization of the signals (S), the administrative instructions (I_{adm1}, I_{adm2}, I_{adm3}) being based on said user manipulations, and

"- processing means adapted to, based on any user manipulations, produce the administrative instructions (I_{adm1}, I_{adm2}, I_{adm3}) for the transmission to the central management server (100)".

Reasons for the Decision

1. Main request

1.1 The invention in claim 1 of the main request concerns the transmission of signals (S) to a plurality of subscriber receivers (110). Claim 1 does not define the type of signals, but the description mentions TV-signals or streaming transmissions (page 1, lines 9 to 11 of the published application). Each signal represents a type of information belonging to a particular contents category, for example "sports", "news", "advertisement", etc. (page 10, lines 9 to 13).

The signals come from at least one signal source (120, 141, 142, 143, 144, 151a-b, 152a-b, 153c) and are transmitted via a central management server (100), which "organizes" them in response to administrative instructions ($I_{adm1}, I_{adm2}, I_{adm3}$) received from a plurality client computers (151, 152, 153) of "different operators". Each client computer has an interface towards the central management server and provides administrative instructions for "organizing" a sub-set of the signals to be transmitted via the central management server.

- 1.2 The examining division considered that the claimed invention lacked inventive step (Article 56 EPC) over D1.
- 1.3 D1 discloses a system comprising a server (10) for transmitting television signals to subscribers, and a client computer (CMMS) for selecting the commercials to be inserted into the television signals and the subscribers who are to receive the commercials. In other words, the CMMS provides administrative instructions to the server (10), which organises the signals accordingly.
- 1.4 It is common ground that claim 1 differs from D1 in that there are a plurality of client computers of different operators, each providing administrative instructions to the server.
- 1.5 The examining division found that it would have been obvious to add a further client computer to allow access to the server from different places or to allow different "operators" to schedule advertisements (a non-technical requirement). The examining division also

argued that it did not make any difference for the organisation of signals whether the instructions were received from one or more client computers.

- 1.6 The appellant argued that the claimed system allowed a given amount of transmission resources to be shared among a number of operators. Thus, the resources were efficiently used, which was a technical effect that contributed to inventive step.

The appellant furthermore argued that the multi-client architecture in claim 1 was not merely an extension of a single-client model. It required advanced management of distributed data processing, task synchronisation, and real-time communication. Such a setup addressed unique challenges, such as preventing system overloads and facilitating tailored content delivery, which were not trivial.

D1 did not suggest a transition to a multi-client approach, likely due to the fact that such a shift was not evident in this context. It was important to consider the early priority year of 2003 - a time when multi-client systems were far from being considered obvious design choices.

- 1.7 The Board does not find the appellant's arguments convincing.

The claim does not define how transmission resources are shared between a different operators. It merely specifies that the plurality of client computers each provides administrative instructions for organising a sub-set of a set of signals. The organisation of signals is not defined in the claim. Nevertheless, looking at the description, this relates to the

scheduling of content such as advertisements, e.g. which advertisement is shown in which television channel at which time (see page 3, lines 32 to 35). The Board agrees with the examining division that, at the level of generality of claim 1, such an organisation is not technical, irrespective of how many operators are involved.

Moreover, the claim does not define the multi-client architecture other than that each client computer interfaces the server. The claim does not define the management of distributed data processing, task synchronisation, and real-time communication. Therefore, inventive step cannot be derived based on those features which are not present in the claim.

1.8 The Board rather agrees with the examining division that it would have been obvious to the skilled person to connect more client computers to the server in D1. Indeed, the very purpose of a client-server system is to allow a plurality of clients to access the resources of the server. The Board disagrees with the appellant that this was not obvious at the priority date. Multi-client, e.g. Internet based, systems were well known and ubiquitous at that time.

1.9 Therefore, the Board judges that the subject-matter of claim 1 of the main request lacks inventive step (Article 56 EPC).

2. *First auxiliary request*

2.1 Claim 1 of the first auxiliary request adds that the sub-set of signals are transmitted via a plurality of channels, that the server receives administrative instructions pertaining to the transmission of the sub-

set of signals, and that it is this sub-set of signals that is organised by the central management server. Claim 1 also specifies that the plurality of client computers of the different operators share the transmission resources of the plurality of channels.

2.2 The appellant argues that D1 does not disclose that different operators handle resources of different TV channels. Thus, this is a novel feature that provides a more efficient use of the resources, as well as a more flexible transmission enabling transmissions when certain resources are occupied.

2.3 The Board, however, takes the view that allowing different operators to share the transmission resources of a plurality of TV channels does not solve a technical problem at the level of generality claimed. This feature at least covers the sharing of TV advertising slots (see Figure 2), which is an administrative matter. The claim provides no technical implementation which solves a technical problem or involves technical considerations of the television system. Therefore, the Board considers that claim 1 of the first auxiliary request lacks inventive step (Article 56 EPC).

3. *Second auxiliary request*

3.1 Claim 1 of the second auxiliary request adds over the first auxiliary request a central transmission unit adapted to receive the sub-set of the signals from the central management server and, in accordance with an organisation scheme produced by the central management server, transmit the sub-set of the signals to the subscriber receivers via a signal distribution system.

- 3.2 D1 already discloses a transmitter (12) for transmitting the signals produced by the server (10).

Thus, claim 1 of the second auxiliary request does not add any novel features over the previous requests. Indeed, in the grounds of appeal concerning the second auxiliary request, the appellant refers to the arguments already provided in respect of the first auxiliary request. Therefore, the Board considers that the reasons given with respect to the main and first auxiliary requests apply also to the second auxiliary request.

4. *Third auxiliary request*

- 4.1 Claim 1 of the third auxiliary request adds to the first auxiliary request that, when a resource of a time slot is occupied in one channel, a different resource of that time slot is used for that signal.

- 4.2 As for the first auxiliary request, the Board does not consider that the scheduling of programs or advertisements in view of free time slots solves a technical problem or involves technical considerations. At this level, the general concept of a "time slot" is not technical. There is no link to the television signal, or any other part of the technical television system. For these reasons, the subject-matter of claim 1 of the third auxiliary request seems to lack an inventive step for the reasons as already given in respect of the first auxiliary request.

5. *Fourth auxiliary request*

- 5.1 Claim 1 of the fourth auxiliary request adds over the first auxiliary request that, when the same sub-segment

of the sub-set of signals is organised in two or more parallel time slots, the central management server manages the sub-segment and controls the transmission via one resource.

- 5.2 This additional feature covers the organisation of sub segments across channels such that the same sub-segment is not scheduled in more than one channel (resource) at the same time. In the Board's view, this is the same non-technical scheduling as in the previous requests. Therefore, the additional feature of the fourth auxiliary request does not appear to provide an inventive technical contribution.

6. *Fifth to seventh auxiliary requests*

- 6.1 The fifth to seventh auxiliary requests were filed after the second communication pursuant to Article 15(1) RPBA.
- 6.2 Under Article 13(2) RPBA, amendments which are filed after the notification of the communication under Article 15(1) RPBA, shall, in principle, not be taken into account unless there are exceptional circumstances, which have been justified with cogent reasons by the party concerned.
- 6.3 The appellant argued that there were exceptional circumstances in this case, which justified the admittance of the fifth to seventh auxiliary requests.

The appellant had been severely ill for an extended period, which had significantly impacted his ability to fully participate in the proceedings, including the timely preparation and submission of auxiliary requests. The appellant's illness was a matter beyond

his control, and it would therefore be unjust to penalise him for this unavoidable delay. It was also emphasised that the appellant has not acted with any intent to delay or misuse the proceedings. The filing of the additional auxiliary requests at a late stage was purely a consequence of the appellant's illness, and not a deliberate strategy to disrupt the proceedings. On the contrary, the appellant had acted diligently within the limits imposed by his health and had sought to participate fully in the appeal process as soon as his condition allowed it.

- 6.4 The appellant furthermore argued that the right to be heard under Article 113(1) EPC was a cornerstone of fair proceedings. The appellant's illness has already compromised his ability to present his case fully and in a timely manner. Denying the admissibility of these auxiliary requests would further limit the appellant's ability to defend his case, particularly since the delay was caused by exceptional circumstances. Ensuring that the appellant had the opportunity to present all relevant submissions was essential to maintaining the fairness of the proceedings.

The appellant argued, in addition, that the interest of justice favoured the admittance of the late filed auxiliary requests. The amended requests had been prepared to address issues raised in earlier communications and to assist the Board in focusing on the substantive matters of the case. Denying the appellant the opportunity to have these requests considered would shift the focus away from the core issues of patentability and could result in a decision that did not fully account for the appellant's responses to objections. The appellant argued that, in the interests of fairness and achieving a just outcome,

the Board should consider the auxiliary requests on their merits.

- 6.5 The Board does not consider the appellant's long term illness to be "exceptional circumstances" within the meaning of Article 13(2) EPC. While the Board agrees that the illness was outside of the appellant's control, it did not prevented him from appointing a professional representative. The chronic nature of the illness is, in the Board's view, a reason for appointing a representative, and the appellant had ample time to do so. Indeed, the health issues existed already during the proceedings before the examining division, before filing the appeal.

To ensure that the appellant had an opportunity to argue his case orally, which is an important part of the right to be heard, the Board postponed the oral proceedings, twice. Each time, the new date was set so that there was enough time to appoint a representative. Yet, the appellant appointed a representative only one month before the oral proceedings were to take place, and it was only then that the new representative filed the fifth to seventh auxiliary requests.

- 6.6 Several decisions (see Case Law of the Boards of Appeal, V.A.4.5.1) have held that a Board of Appeal has the discretion to admit amendments at a late stage of the proceedings (sometimes called "the third level of conversion") even if no exceptional circumstances exist. The Board may consider the more general criteria set out in Article 13(1) RPBA, namely the current state of the proceedings, the suitability of the amendment to resolve the issues which were raised by the Board, whether the amendment is detrimental to procedural economy, and, in the case of an amendment to a patent

application or patent, whether the party has demonstrated that any such amendment, *prima facie*, overcomes the issues raised by the Board and does not give rise to new objections.

- 6.7 The appellant argued that the complexity of the additional auxiliary requests was low. These requests were based on amendments that further clarified the technical character of the claims based on the claim set of the main request that had already been submitted. They did not introduce entirely new issues but rather sought to address the points raised during the appeal proceedings in a manner that was consistent with the previous submissions, especially concerning technical character of the recited features. In the appellant's view, the requests did not impose an undue burden on the Board, and they could be handled within the scope of the scheduled oral proceedings without disrupting the procedural schedule.

The appellant also argued that since the proceedings in this case were *ex parte*, no other party was adversely affected by the amendments being admitted. The Board should exercise its discretion with this in mind.

- 6.8 The Board does not agree with the appellant that the complexity of the amendments is so low that the requests could be dealt with by the Board without delay. Also, the Board does not agree that no new issues are introduced.

- 6.9 Claim 1 of the fifth auxiliary request specifies the "organization scheme" on which the organization of signals is based. This feature comes from previous dependent claim 3, and seems to merely confirm the Boards assessment (see point 1.7 above) that the

organisation of signals concerns what type of content to be transmitted in what channel at what time. Although this amendment does not seem to be overly complex, it does not resolve the issue of lack of technical effect. Furthermore, the introduction of this feature in combination with the feature that the signals are transmitted via at least one of a plurality of channels, gives rise to a clarity problem (Article 84 EPC), namely what is the difference between a "channel" and a "transmission resource". The reference signs after "transmission resource" indeed suggest that this refers to a television channel, leading to doubts as to the meaning of the term "channel" in claim 1. Furthermore, the deletion of the "from at least one signal source" does not address any of the objections raised against the claim.

Thus, even when considering the principles in Article 13(1) EPC, the Board does not admit the fifth auxiliary request.

- 6.10 Claim 1 of the sixth auxiliary request adds the feature "a compiler adapted to produce a preliminary organization of the signals before transmission of said administrative instructions to the central management server (100)".

This is a feature taken from the description which has never been considered before, whether in examination or appeal proceedings. The Board cannot even be sure that this subject-matter has been searched. Indeed, this feature is entirely different from the features of the previous auxiliary requests which focused on the scheduling of content into channels and time slots. Therefore, the Board considers that the amendment introduces new issues which cannot be dealt with by the

Board in oral proceedings. This is a reason for not admitting the sixth auxiliary request.

6.11 Claim 1 of the seventh auxiliary request builds onto claim 1 of the sixth auxiliary request and, hence, comprises the same compiler feature. Thus, the Board does not admit the seventh auxiliary request, for the same reasons as given for the sixth auxiliary request.

7. Since there is no allowable request, the appeal must be dismissed.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:



T. Buschek

M. Höhn

Decision electronically authenticated