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**Datasheet for the decision
of 9 April 2025**

Case Number: T 1242/23 - 3.5.04

Application Number: 18186016.4

Publication Number: 3413571

IPC: H04N21/235

Language of the proceedings: EN

Title of invention:

AN INTERACTIVE MEDIA GUIDANCE SYSTEM HAVING MULTIPLE DEVICES

Patent Proprietor:

Adeia Guides Inc.

Opponent:

RTL Deutschland GmbH

Headword:

Relevant legal provisions:

EPC Art. 56

EPC R. 111(2), 106

RPBA 2020 Art. 12(4), 13(2)

Keyword:

Appealed decision - sufficiently reasoned (yes)

Amendment to case - complexity of amendment (no) - admitted (yes)

Inventive step - main request (no) - auxiliary requests 1, 3-5, 7 (no)

New arguments submitted after notification of communication under Article 15(1) RPBA - taken into account (no)

Objection under Rule 106 EPC - dismissed

Decisions cited:

Catchword:



Beschwerdekammern
Boards of Appeal
Chambres de recours

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Case Number: T 1242/23 - 3.5.04

D E C I S I O N
of Technical Board of Appeal 3.5.04
of 9 April 2025

Appellant: RTL Deutschland GmbH
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Decision under appeal: **Interlocutory decision of the Opposition
Division of the European Patent Office posted on
24 April 2023 concerning maintenance of the
European Patent No. 3413571 in amended form.**

Composition of the Board:

Chair B. Willems
Members: A. Seeger
B. Burm-Herregodts

Summary of Facts and Submissions

- I. The appeal is against the opposition division's interlocutory decision dated 24 April 2023 finding that European patent No. 3 413 571 (the patent) as amended according to auxiliary request 2 filed on 13 January 2023 met the requirements of the EPC (Article 101(3) (a) EPC).
- II. The mention of the grant of the patent was published in the European Patent Bulletin of 21 April 2021. The proprietor of the patent is Adeia Guides Inc. (patent proprietor).
- III. Notice of opposition to the patent was filed by RTL Deutschland GmbH (opponent). The grounds for opposition were that the subject-matter of the patent was not patentable under Article 52 EPC in combination with Article 54 EPC and under Article 52 EPC in combination with Article 56 EPC (Article 100(a) EPC).
- IV. By letter dated 14 June 2022, the patent proprietor filed a reply to the notice of opposition.
- V. In the opposition proceedings, the patent proprietor filed, *inter alia*, the following letters:
 - (a) a letter dated 13 January 2023
 - (b) a letter dated 17 February 2023
 - (c) a letter dated 13 March 2023
- VI. In the opposition proceedings, the opponent filed, *inter alia*, the following letters:
 - (d) a letter dated 9 January 2023
 - (e) a letter dated 4 March 2023
 - (f) a letter dated 13 March 2023

- VII. With its letter dated 13 January 2023, the patent proprietor filed auxiliary requests 1 to 13.
- VIII. With its letter dated 4 March 2023, the opponent filed further prior-art documents.
- IX. The prior-art documents referred to in the decision under appeal included the following:
- D4: R. Mohan et al., "Adapting Multimedia Internet Content for Universal Access", IEEE Transactions on Multimedia 1(1), March 1999, 104-14, doi: 10.1109/6046.748175
- D6: T. Riikonen et al., "Broadcast video and HTML in digital set-top box environment", W3C Workshop on "Television and the Web", June 1998, Sophia-Antipolis, France
- D8: J. Bormans et al., "MPEG-21: The 21st Century Multimedia Framework", IEEE Signal Processing Magazine 20(1), March 2003, 53-62, doi: 10.1109/MSP.2003.1184339
- D9: International standard ISO/IEC 21000-2, "Information technology - Multimedia framework (MPEG-21) - Part 2: Digital Item Declaration", second edn., October 2005
- X. The opponent (appellant) filed notice of appeal and a statement of grounds of appeal.
- XI. The patent proprietor (respondent) filed a reply to the appellant's statement of grounds of appeal together

with auxiliary requests 1 to 7 based on auxiliary requests filed during the opposition proceedings.

- XII. In a letter dated 7 August 2024, the appellant submitted further arguments.
- XIII. In a letter dated 10 September 2024, the respondent requested that the oral proceedings be held via videoconference.
- XIV. The board issued a summons to oral proceedings and a communication under Article 15(1) RPBA. In this communication, the board gave the following preliminary opinion.
- (a) The reasoning on inventive step provided by the opposition division starting only from document D8, and not from document D4, was not deficient.
 - (b) The attacks of lack of inventive step starting from document D4 were to be admitted into the appeal proceedings under Article 12(4) RPBA.
 - (c) The home network itself was not part of the system defined by claim 6 of the patent as granted.
 - (d) The phrase "*means for receiving a first (second) request [...] to play the video programming*" was interpreted as specifying a device configured to receive a request for delivering programming to user equipment.
 - (e) The phrase "*means for delivering the video programming and the first (second) selection of the associated program data to the first (second) user equipment device*" meant that the video programming

and the associated programme data could be delivered by different means and thus via different channels and at different times.

- (f) The term "*video programming*" was interpreted as content that included video, for example, television programmes or web pages having video elements.
- (g) The subject-matter of claim 6 of the main request and auxiliary requests 1, 3, 4, 5 and 7 was not novel over the disclosure of the section "SYSTEM ARCHITECTURE" of document D4 (Article 54 EPC).
- (h) Documents D8 and D9 could not be read as a single disclosure.
- (i) The subject-matter of claim 6 of the main request and auxiliary requests 1, 3, 4, 5 and 7 lacked inventive step in view of the combination of documents D8 and D4 (Article 56 EPC).
- (j) The board was minded to exercise its discretion under Article 12(4) RPBA by not admitting auxiliary requests 2 and 6 into the appeal proceedings.

XV. In a communication dated 6 March 2025, the board refused the respondent's request for oral proceedings to be held via videoconference.

XVI. With its letter of reply dated 7 March 2025, the respondent filed amended claims of auxiliary requests 8 to 15 and provided further arguments.

XVII. In its reply dated 7 March 2025, the appellant agreed with the board's interpretation of claim 6 of the main

request and the board's preliminary opinion on novelty and inventive step.

XVIII. In its reply dated 18 March 2025, the appellant requested that the respondent's auxiliary requests 8 to 15 not be admitted into the appeal proceedings (Article 13(2) RPBA).

XIX. The board held oral proceedings on 9 April 2025.

During the oral proceedings, the respondent withdrew auxiliary requests 2, 6 and 8 to 15.

Furthermore, the respondent filed an objection under Rule 106 EPC which reads as follows:

"Respondent herewith raises an objection under Art 113(1) EPC in oral proceedings today. Respondent was denied the opportunity to have admitted arguments based on an interpretation of the claims of the patent in the appeal which was newly raised in the oral proceedings. Namely, in respect of the meaning of features 1.2; 1.3; and 1.4 of claim 1 as referred to in the preliminary non-binding opinion of the Board."

The respondent requested that:

- the appeal be dismissed and the patent be maintained on the basis of the claims as upheld by the opposition division in its decision dated 24 April 2023 (main request), or, alternatively
- the patent be maintained on the basis of the claims of one of auxiliary requests 1, 3, 4, 5 and 7 filed with the reply to the statement of grounds of appeal

The appellant requested that the decision under appeal be set aside and that the patent be revoked in its entirety.

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

XX. Claim 6 of the main request reads as follows:

"A system for delivering video programming to user equipment devices in a home network, the system comprising:

means for providing access to video programming, wherein the video programming has associated program data including at least one of: schedule information, program descriptions, program information, related articles, interviews, and reviews;

means for receiving a first request from a first user equipment device in the home network to play the video programming;

means for identifying, subsequent to receiving the first request, a first selection of the associated program data that is appropriate for the first user equipment device based on the capabilities of the first user equipment device;

means for delivering the video programming and the first selection of the associated program data to the first user equipment device;

means for receiving a second request from a second user equipment device in the home network to play the video programming;

means for identifying, subsequent to receiving the second request, a second selection of the associated program data that is appropriate for the second user equipment device based on the capabilities of the second user equipment device, wherein the first and

second user equipment devices have different capabilities, and wherein the first and second selections of the associated program data are different; and means for delivering the video programming and the second selection of the associated program data to the second user equipment device."

XXI. Claim 6 of auxiliary request 1 reads as follows (features added compared with claim 6 of the main request are underlined):

"A system for delivering video programming to user equipment devices in a home network, the system comprising:
means for providing access to video programming, wherein the video programming has associated program data including at least one of: schedule information, program descriptions, program information, related articles, interviews, and reviews;
means for receiving a first request from a first user equipment device in the home network to play the video programming;
means for identifying, subsequent to receiving the first request, a first selection of the associated program data for the video programming of the first request that is appropriate for the first user equipment device based on the capabilities of the first user equipment device;
means for delivering the video programming and the first selection of the associated program data to the first user equipment device;
means for receiving a second request from a second user equipment device in the home network to play the video programming;

means for identifying, subsequent to receiving the second request, a second selection of the associated program data for the video programming of the second request that is appropriate for the second user equipment device based on the capabilities of the second user equipment device, wherein the first and second user equipment devices have different capabilities, and wherein the first and second selections of the associated program data are different; and

means for delivering the video programming and the second selection of the associated program data to the second user equipment device."

XXII. Claim 6 of auxiliary request 3 reads as follows (features added compared with claim 6 of auxiliary request 1 are underlined):

"A system for delivering video programming to user equipment devices in a home network, the system comprising:

means for providing access to video programming, wherein the video programming has associated program data including at least one of: schedule information, program descriptions, program information, related articles, interviews, and reviews;

means for receiving a first request from a first user equipment device in the home network to play the video programming;

means for identifying, subsequent to receiving the first request, a first selection of the associated program data for the video programming of the first request that is appropriate for the first user equipment device based on the capabilities of the first user equipment device;

means for delivering the video programming and the first selection of the associated program data to the first user equipment device in response to the first request;

means for receiving a second request from a second user equipment device in the home network to play the video programming;

means for identifying, subsequent to receiving the second request, a second selection of the associated program data for the video programming of the second request that is appropriate for the second user equipment device based on the capabilities of the second user equipment device, wherein the first and second user equipment devices have different capabilities, and wherein the first and second selections of the associated program data are different; and

means for delivering the video programming and the second selection of the associated program data to the second user equipment device in response to the second request."

XXIII. Claim 1 of auxiliary request 4 reads as follows:

"A method for delivering video programming to user equipment devices in a home network comprising:
providing access to video programming, wherein the video programming has associated program data including at least one of: schedule information, program descriptions, program information, related articles, interviews, and reviews;
receiving a first request from a first user equipment device in the home network to play the video programming;
subsequent to receiving the first request, identifying a first selection of the associated program data that

is appropriate for the first user equipment device based on the capabilities of the first user equipment device;

delivering the video programming and the first selection of the associated program data to the first user equipment device;

receiving a second request from a second user equipment device in the home network to play the video programming;

subsequent to receiving the second request, identifying a second selection of the associated program data that is appropriate for the second user equipment device based on the capabilities of the second user equipment device; and

delivering the video programming and the second selection of the associated program data to the second user equipment device, wherein the first and second user equipment devices have different capabilities, and wherein the first and second selections of the associated program data are different."

XXIV. Claim 1 of auxiliary request 5 reads as follows (features added compared with claim 1 of auxiliary request 4 are underlined):

"A method for delivering video programming to user equipment devices in a home network comprising:
providing access to video programming, wherein the video programming has associated program data including at least one of: schedule information, program descriptions, program information, related articles, interviews, and reviews;
receiving a first request from a first user equipment device in the home network to play the video programming;

subsequent to receiving the first request, identifying a first selection of the associated program data for the video programming of the first request that is appropriate for the first user equipment device based on the capabilities of the first user equipment device; delivering the video programming and the first selection of the associated program data to the first user equipment device;

receiving a second request from a second user equipment device in the home network to play the video programming;

subsequent to receiving the second request, identifying a second selection of the associated program data for the video programming of the second request that is appropriate for the second user equipment device based on the capabilities of the second user equipment device; and

delivering the video programming and the second selection of the associated program data to the second user equipment device, wherein the first and second user equipment devices have different capabilities, and wherein the first and second selections of the associated program data are different."

XXV. Claim 1 of auxiliary request 7 reads as follows (features added compared with claim 1 of auxiliary request 5 are underlined):

"A method for delivering video programming to user equipment devices in a home network comprising: providing access to video programming, wherein the video programming has associated program data including at least one of: schedule information, program descriptions, program information, related articles, interviews, and reviews;

receiving a first request from a first user equipment device in the home network to play the video programming;

subsequent to receiving the first request, identifying a first selection of the associated program data for the video programming of the first request that is appropriate for the first user equipment device based on the capabilities of the first user equipment device;

delivering the video programming and the first selection of the associated program data to the first user equipment device in response to the first request;

receiving a second request from a second user equipment device in the home network to play the video programming;

subsequent to receiving the second request, identifying a second selection of the associated program data for the video programming of the second request that is appropriate for the second user equipment device based on the capabilities of the second user equipment device; and

delivering the video programming and the second selection of the associated program data to the second user equipment device in response to the second request, wherein the first and second user equipment devices have different capabilities, and wherein the first and second selections of the associated program data are different."

XXVI. In the following, the features of claim 6 of the respondent's main request are referenced as follows:

M6.0 A system for delivering video programming to user equipment devices in a home network, the system comprising:

- M6.1 means for providing access to video programming, wherein the video programming has associated program data including at least one of: schedule information, program descriptions, program information, related articles, interviews, and reviews
- M6.2 means for receiving a first request from a first user equipment device in the home network to play the video programming
- M6.3 means for identifying, subsequent to receiving the first request, a first selection of the associated program data that is appropriate for the first user equipment device based on the capabilities of the first user equipment device
- M6.4 means for delivering the video programming and the first selection of the associated program data to the first user equipment device
- M6.5 means for receiving a second request from a second user equipment device in the home network to play the video programming
- M6.6 means for identifying, subsequent to receiving the second request, a second selection of the associated program data that is appropriate for the second user equipment device based on the capabilities of the second user equipment device, wherein the first and second user equipment devices have different capabilities, and wherein the first and second selections of the associated program data are different

M6.7 means for delivering the video programming and the second selection of the associated program data to the second user equipment device

Reasons for the Decision

1. The appeal is admissible.
2. Main request - lack of reasoning (Rule 111(2) EPC)
 - 2.1 Under Rule 111(2) EPC, decisions of the European Patent Office which are open to appeal must be reasoned.
 - 2.2 The appellant argued that the opposition division's decision did not provide reasons as to why the claimed subject-matter involved an inventive step in view of the disclosure of document D4 combined with either the common general knowledge of the person skilled in the art or the disclosure of document D6.

The appellant submitted that it had provided arguments in this regard in its letter dated 4 March 2023 on page 3, last paragraph to page 5, third paragraph. The appellant argued that point 119 of the minutes of the oral proceedings confirmed that it had maintained its arguments provided in the written proceedings.

Therefore, the appellant took the view that the decision was insufficiently reasoned (see statement of grounds of appeal, page 11, last three paragraphs).

- 2.3 The respondent submitted that, contrary to the appellant's assertions, no attack against the subject-matter of the main request (auxiliary request 2 during the opposition proceedings) had been raised based on

document D4 combined with the common general knowledge of the person skilled in the art (see reply to the appeal, page 7, penultimate paragraph).

Furthermore, the appellant was wrong in suggesting that the opposition division had ignored document D6 (see reply to the appeal, page 3, first paragraph).

2.4 The board notes that the appellant provided arguments as to why the subject-matter of the patent did not involve an inventive step in view of the disclosure of document D4 combined with the "AutoStart" feature of videos on a website (see the appellant's letter dated 4 March 2023, page 3, penultimate paragraph to page 6, first paragraph). According to the appellant, this feature was generally known (see the appellant's letter dated 4 March 2023, page 3, last line) and disclosed by document D6 (see the appellant's letter dated 4 March 2023, page 4, last paragraph).

However, in relation to the main request (the auxiliary request 2 during the opposition proceedings), the appellant submitted that things were indeed different. Here, the insertion of the temporal adverbial "subsequent" in features M1.3 and M1.6 created a temporal sequence between the steps according to features M1.2 and M.3 as well as M1.5 and M1.6 (see the appellant's letter dated 4 March 2023, page 9, penultimate full paragraph).

The appellant then introduced document D8 and argued in the remainder of its letter on the basis of document D8 alone or in combination with document D4 (see the appellant's letter dated 4 March 2023, page 10 and following).

Therefore, the board is of the opinion that it was not apparent to the opposition division that the appellant maintained its line of attack (D4 + common general knowledge or D4 + D6) against the patent as granted also for the then second auxiliary request.

- 2.5 The appellant submitted that its letter dated 4 March 2023 had a general section (section 1 on pages 2 to 6) and a section dealing with the requests, i.e. the main and the auxiliary requests pending at that time (section 2 on pages 6 to 25). At least the arguments set out in the general section should have been considered by the opposition division for the then second auxiliary request.

The board is not convinced by this argument for the following reasons.

Section 1 of the appellant's letter dated 4 March 2023 sets out that document D4 might disclose more than the claimed subject-matter. However, this meant that specific examples of document D4 disclosed the claimed subject-matter.

In the section dealing with the requests, the appellant argued against the main request during the opposition proceedings starting solely from document D4. In the section dealing with the requests, the appellant argued against the second auxiliary request during the opposition proceedings starting solely from document D8.

It was therefore not apparent to the opposition division that section 1 of the appellant's letter dated 4 March 2023 was to be understood as a general section relating to all requests.

- 2.6 In view of the above, the board finds that the reasoning on inventive step provided by the opposition division starting only from document D8, and not from document D4, is not deficient.

- 3. Admittance of the attacks starting from document D4 into the appeal proceedings (Article 12(4) RPBA)
 - 3.1 Under Article 12(4) RPBA, the board has discretion to admit amendments of a party's appeal case. The board is to exercise its discretion in view of, inter alia, the complexity of the amendment, the suitability of the amendment to address the issues which led to the decision under appeal and the need for procedural economy.
 - 3.2 Since the attacks of lack of inventive step starting from document D4 (D4 + common general knowledge and D4 + D6) were already raised against the claims of the patent as granted, the board is of the opinion that pursuing these attacks against the current main request is neither complex nor against the need for procedural economy. In fact, the respondent already addressed these attacks in its reply to the appeal (see reply to the appeal, sections 4 and 5).
 - 3.3 Therefore, the board admits the attacks of lack of inventive step starting from document D4 into the appeal proceedings under Article 12(4) RPBA.

- 4. Main request - interpretation of claim 6
 - 4.1 Home network

Claim 6 specifies a system for delivering video programming to user equipment devices in a home network.

Claim 6 further specifies means for receiving a first/second request from a first/second user equipment device in the home network.

Claim 6 does not specify that the means comprised in the system (namely, the means for providing access to video programming, the means for receiving requests from a first/second user equipment, and the means for delivering the video programming and the associated programme data) are connected by/to a home network.

Therefore, the board agrees with the opposition division that features M6.0, M6.2 and M6.5 do not limit the system of claim 6 further than the system being suitable for use with equipment devices in a home network. The home network itself is not part of the claimed system (see the opposition division's decision, points 3.3.1, 3.3.1.1 and 3.3.1.2).

The parties had no comments in this respect.

4.2 Means for providing access to video programming

Claim 6 specifies "*means for providing access to video programming*".

The board interprets this feature as including an electronic programme guide allowing a user to select video programming and a server or any device which may deliver video programming once selected by a user (see paragraph [0292] of the published patent: "*At step 1302, a user may access video programming using an*

interactive media guidance application implemented on a user equipment device in the home network. Access to the video programming may be provided by a server or user equipment device on which the video programming is stored").

The parties had no comments in this respect.

4.3 Means for receiving a request to play video programming

4.3.1 Claim 6 specifies:

(a) *"means for receiving a first request from a first user equipment device in the home network to play the video programming"*

(b) *"means for receiving a second request from a second user equipment device in the home network to play the video programming"*

4.3.2 The respondent submitted that these phrases specified a request for playing a particular video (which, however, may have different resolutions).

4.3.3 The appellant submitted that there may be other elements besides the video.

4.3.4 The board interprets these features as a server or other device being configured to receive a request from a user equipment device to deliver the video programming to the user equipment which is subsequently played on the user equipment (see Figures 9b and 9f and paragraph [0294]: *"At step 1304, the server or user equipment device on which the video programming is stored receives a request from a user equipment device in the home network to play the video programming"* and paragraph [0299] of the published patent: *"At step 1308, the server or user equipment device on which the*

video programming is stored delivers the video programming to the user equipment device ... For example, screens 910 and 950 (FIG. 9b and 9f) show delivering video programming").

- 4.4 Means for delivering the video programming and the selection of the associated programme data to a user equipment device
 - 4.4.1 Claim 6 specifies:
 - (a) *"means for delivering the video programming and the first selection of the associated program data to the first user equipment device"*
 - (b) *"means for delivering the video programming and the second selection of the associated program data to the second user equipment device"*
 - 4.4.2 The respondent submitted that the associated programme data could only be selected once the video programming was identified.
 - 4.4.3 The appellant submitted that a relationship between the video programming and its associated programme data had to be present. However, this relationship could be established before the request to play video programming was received.
 - 4.4.4 The board interprets the features quoted under point 4.4.1 above to mean that a relationship between the video programming and its associated programme data is present. This relationship can be established before the request to play video programming is received or on the fly, i.e. after the request to play video programming is received.

The board further interprets these features in that the video programming and the associated programme data could be delivered by different means and thus via different channels and at different times (see paragraph [0299] of the published patent: "*In another example, the server or user equipment device on which the video programming is stored may deliver the video programming to the user equipment device. The interactive media guidance application implemented on the user equipment device may retrieve the selection of the associated program data*").

4.5 Video programming

In the features of claim 6, the term "*video programming*" is used several times. The board interprets this term as content that includes video, for example, television programmes or web pages having video elements (see paragraph [0009]: "*a user may select video programming (e.g. a television program)*" and paragraph [0074] of the published patent: "*Video content, such as television programming or web pages*").

The parties had no comments in this respect.

5. Main request - inventive step (Article 56 EPC)

5.1 Document D4 may be considered the closest prior art for the assessment of inventive step of the subject-matter of claim 6.

5.2 Section II. "SYSTEM ARCHITECTURE" of document D4 includes Figure 1 showing the architecture of a system for internet content adaptation.

Figure 1 shows that content is analysed and that different versions of the content are generated in different resolutions and modalities. These different resolutions and modalities of the content are stored in an InfoPyramid. All this is done offline during content creation, i.e. before a request from a client is received. According to sub-section II.D, first paragraph, last sentence: "*Fig. 1 shows a simplified InfoPyramid for a video*". Figure 2 of document D4 shows an InfoPyramid for a video item in more detail, including video, audio, images and text in different resolutions. For example, text may be provided in the form of closed captions, a summary or just a title.

Figure 1 shows that a request from a client is received and a response is created in return. Since sub-section II.B of the section "SYSTEM ARCHITECTURE" discloses that a web document is composed of a number of component items, one of which may be a video clip, document D4 discloses a system for delivering video programming. Furthermore, receiving a request from a client (see Figure 1 and the paragraph below Figure 1: "*When the Web server receives a request*") implies that the user may select multimedia content including a video clip which is stored in the content source shown in Figure 1. Hence, Figure 1 and its description disclose means for providing access to video programming as well as means for receiving a first request from a user equipment device to obtain (i.e. deliver) the multimedia content including the video clip. The response in Figure 1 discloses means for delivering the multimedia content including the video clip to the user equipment device. Moreover, sub-section II.A of the section "SYSTEM ARCHITECTURE" discloses multiple user equipment devices that may be part of a home network. Finally, the section "SYSTEM

ARCHITECTURE" discloses that the video clip comes with associated metadata. According to Figure 2, this can be text in the form of closed captions, a summary or a title. This information constitutes programme information or a programme description. According to the section "SYSTEM ARCHITECTURE", a customisation module then selects from the InfoPyramid the resolution or modality that best meets the client capabilities. Therefore, document D4 discloses that subsequent to receiving a client request for providing content, programme data that is appropriate for that client is selected from the data stored in the InfoPyramid based on the capabilities of that client (see Figure 1 showing the elements "Request", "Client Capabilities", "Customization/Selection", "InfoPyramid" and "Response" and Figure 2 showing the "InfoPyramid" for a video item).

Section II. "SYSTEM ARCHITECTURE" of document D4 discloses that a video and associated programme data are delivered to a user equipment device (see, for example, Figure 5, left column). However, document D4 does not disclose that the video starts to play automatically once it is delivered to the user equipment device. Hence, document D4 discloses means for receiving a first/second request for a first/second user equipment device in the home network to obtain the video programming rather than means for receiving a first/second request for a first/second user equipment device in the home network to play the video programming. Otherwise, document D4 discloses all the features of claim 6.

5.3 The appellant submitted that document D4 also disclosed playing the video programming. The appellant referred to a passage in sub-section II.A of the section "SYSTEM

ARCHITECTURE" reading: *"the system considers the following client device characteristics [...] Payload defined as the total amount of bits that can be delivered to the client for the static parts of a Web document. For streaming media this includes only the initial buffer space required before the media starts playing, not the size of the media itself. The payload is defined as product of the network bandwidth and the time the client is ready to wait"*. The appellant argued that considering the initial buffer space required for streaming media as a client device characteristic only made sense if the streaming video actually started playing once it was received.

The board is not convinced by this argument for the following reasons. The quoted passage discloses that only those streaming media are considered suitable for a client device for which that device can download the portion of the media required for it to start playing the media within a time a user is prepared to wait. However, this does not mean that the playback of the streaming media has to start automatically. The playback of the streaming media may be started based on a user input at any time after receipt of a web document containing that streaming media.

- 5.4 The respondent argued that the "Request" shown in Figure 1 of document D4 was for a document or a "story" (see section VI of document D4). In response, the system shown in Figure 1 compiled a web page which might or might not contain a video depending on the device capabilities (see Figure 5 of D4). Hence, document D4 did not disclose *"means for receiving a first/second request from a first/second user equipment in the home network to play the video programming"*

because it was not certain that there was a video to be played.

Document D4 implied that the video was played once a user had clicked on a streaming video as shown in Figure 5, left column. However, this playback operation would happen after the "story", i.e. the web page, containing associated programme data had been compiled.

The board is not convinced by this argument because document D4 discloses as examples web pages or "stories" based on TV news programmes (see section VI, second paragraph: "*For content, TV new programs are captured and parsed into stories. The raw content for each news story is the video and the closed captioned text*"). A request for such a TV news programme story thus constitutes a request to obtain the video programming that is part of that story.

- 5.5 The board agrees with the appellant that an "autoplay" option for videos embedded in an HTML page was common general knowledge of the person skilled in the art before the priority date of the patent. This common general knowledge is exemplified in document D6, Table 2, second row: "AutoStart". This was not contested by the respondent.
- 5.6 Thus, it would have been obvious to modify the multimedia news system of document D4 to automatically play the videos embedded in the HTML pages (see Figure 5, left column). This solved the problem of allowing easier access to HTML pages with embedded videos. This would have led the person skilled in the art directly to the claimed system because a request to obtain a TV news story would be equivalent to a request to play video programming.

5.7 Therefore, the board finds that the subject-matter of claim 6 does not involve an inventive step within the meaning of Article 56 EPC.

6. Auxiliary request 1 - inventive step (Article 56 EPC)

6.1 This auxiliary request was previously submitted as auxiliary request 4 during the first-instance proceedings. The appellant has not contested that this auxiliary request is part of the respondent's appeal case.

6.2 Claim 6 of this request differs from claim 6 of the main request in that the former further specifies the following features:

"means for identifying, subsequent to receiving the first request, a first selection of the associated program data for the video programming of the first request"

"means for identifying, subsequent to receiving the second request, a second selection of the associated program data for the video programming of the second request"

6.3 These further features are mere clarifications which do not change the assessment of inventive step of the claimed subject-matter in comparison with the subject-matter of claim 6 of the main request.

6.4 This is also the view of the parties (see the appellant's letter dated 7 August 2024, page 28 and reply to the appeal, section 6).

6.5 Therefore, the board finds that the subject-matter of claim 6 of auxiliary request 1 does not involve an inventive step within the meaning of Article 56 EPC for the same reasons as those set out under point 5. above for claim 6 of the main request.

7. Auxiliary request 3 - inventive step (Article 56 EPC)

7.1 This auxiliary request was previously submitted as auxiliary request 6 during the first-instance proceedings. The appellant has not contested that this auxiliary request is part of the respondent's appeal case.

7.2 Claim 6 of this request differs from claim 6 of auxiliary request 1 in that the former further specifies the following features:

"means for delivering the video programming and the first selection of the associated program data to the first user equipment device in response to the first request"

"means for delivering the video programming and the second selection of the associated program data to the second user equipment device in response to the second request"

7.3 These further features are mere clarifications which do not change the assessment of inventive step of the claimed subject-matter in comparison with the subject-matter of claim 6 of auxiliary request 1.

7.4 This is also the view of the parties (see the appellant's letter dated 7 August 2024, page 28 and reply to the appeal, section 8).

7.5 Therefore, the board finds that the subject-matter of claim 6 of auxiliary request 3 does not involve an inventive step within the meaning of Article 56 EPC for the same reasons as those set out under point 6. above for claim 6 of auxiliary request 1.

8. Auxiliary request 4 - inventive step (Article 56 EPC)

8.1 Claim 1 of auxiliary request 4 contains the same features as independent system claim 6 of the main request, but expressed as method steps. In auxiliary request 4, the system claims were deleted.

8.2 The respondent submitted that during the oral proceedings, it had understood for the first time the board's interpretation of the term "*video programming*" as programming containing video, i.e. programming containing video and further media data elements or, in other words, multimedia programming.

The respondent argued that based on this interpretation, it was clear that the "*associated program data*" specified in claim 1 was not part of that multimedia programming but was merely associated with it.

In contrast, in a system according to document D4, all programme data contained in the InfoPyramid was pre-compiled and was thus part of the "story" or the multimedia programming requested by the client device. Hence, none of the programme data contained in the InfoPyramid of document D4 could be "*associated program data*" as specified in claim 1. This established a further difference compared with the differences identified for claim 6 of the main request. The effect

of these further distinguishing features was to improve the flexibility of delivery of information to the user. The corresponding objective technical problem was how to improve the flexibility of the delivery of information to the user.

8.3 The appellant requested that the orally formulated line of reasoning and the arguments provided by the respondent not be taken into account since they were new and complex. They should have been submitted in writing or at the latest at the discussion of the main request during the oral proceedings. The appellant submitted that it was not in a position to adequately react to these new arguments during the oral proceedings. Admitting these new arguments and discussing them during the oral proceedings would infringe its right to be heard.

8.4 Under Article 13(2) RPBA, any amendment to a party's appeal case made after notification of a communication under Article 15(1) RPBA 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.

8.5 The respondent's new line of argument submitted during the oral proceedings, which may lead to new distinguishing features and to a re-formulation of the objective technical problem, is an amendment to the respondent's appeal case after notification of the board's communication under Article 15(1) RPBA.

This amendment would require a complex discussion as it would have to be established which programme data is "associated" with the video programming but is not part of it.

The board finds that its interpretation of the term "video programming" during the oral proceedings is the same as the one set out under point 5.5 of its communication under Article 15(1) RPBA. There it was stated that "*[i]n the features of claim 6 the term 'video programming' is used several times. The board interprets this term as content that includes video, for example television programs or web pages having video elements*".

The fact that the respondent allegedly for the first time understood this interpretation during the oral proceedings is not a cogent reason that justified the presence of an exceptional circumstance.

Under Article 13(2) RPBA, the board therefore does not take into account the arguments put forward by the respondent as set out under point 8.2 above.

- 8.6 The respondent then filed an objection under Rule 106 EPC. In this objection, the respondent complained that its right to be heard was infringed because its arguments had not been admitted. The respondent submitted that these arguments were based on an interpretation of the claims of the patent in the appeal which was newly raised in the oral proceedings.

The respondent confirmed at the oral proceedings that it had been heard on the question of whether its arguments were to be taken into account under Article 13(2) RPBA.

- 8.7 The board dismissed the respondent's objection under Rule 106 EPC for the following reason. Not taking into account new arguments of a party under Article 13(2)

RPBA is not a violation of the right to be heard as long as the party is heard on whether the new arguments should be taken into account.

- 8.8 The respondent had no further arguments in favour of inventive step of the subject-matter of claim 1 beyond those already submitted for claim 6 of the main request.
- 8.9 The board notes that the features of claim 1 correspond to those of independent system claim 6 of the main request but are expressed as method steps.
- 8.10 Therefore, the board finds that the subject-matter of claim 1 does not involve an inventive step within the meaning of Article 56 EPC for the same reasons as those set out under point 5. for claim 6 of the main request.
9. Auxiliary requests 5 and 7 - inventive step (Article 56 EPC)
- 9.1 The features of claim 1 of auxiliary requests 5 and 7 respectively correspond to those of independent system claim 6 of auxiliary requests 1 and 3, but are expressed as method steps.
- 9.2 Therefore, the board finds that the subject-matter of claim 1 of auxiliary requests 5 and 7 does not involve an inventive step within the meaning of Article 56 EPC for the same reasons as those set out under points 6. and 7. for claim 6 of auxiliary requests 1 and 3, respectively.

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.
2. The patent is revoked.

The Registrar:

The Chair:



K. Boelicke

B. Willems

Decision electronically authenticated