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**Datasheet for the decision
of 24 February 2025**

Case Number: T 1917/23 - 3.5.07

Application Number: 15846597.1

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H04N5/76, H04N21/6375,
G11B27/10

Language of the proceedings: EN

Title of invention:

System and method for time delayed playback

Applicant:

Viacom International Inc.

Headword:

Time-delayed playback/VIACOM

Relevant legal provisions:

EPC Art. 123(2)
RPBA 2020 Art. 12(4)

Keyword:

Amendments - main request - allowable (no)
Amendment to case - auxiliary requests 1 to 4 (not admitted)



Beschwerdekammern
Boards of Appeal
Chambres de recours

Boards of Appeal of the
European Patent Office
Richard-Reitzner-Allee 8
85540 Haar
GERMANY
Tel. +49 (0)89 2399-0

Case Number: T 1917/23 - 3.5.07

D E C I S I O N
of Technical Board of Appeal 3.5.07
of 24 February 2025

Appellant: Viacom International Inc.
(Applicant) 1515 Broadway 34th Floor
New York NY 10036 (US)

Representative: Maiwald GmbH
Elisenhof
Elisenstraße 3
80335 München (DE)

Decision under appeal: **Decision of the Examining Division of the
European Patent Office posted on 30 June 2023
refusing European patent application
No. 15846597.1 pursuant to Article 97(2) EPC**

Composition of the Board:

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

Summary of Facts and Submissions

- I. The applicant appealed against the decision of the examining division refusing European patent application No. 15846597.1, which was published as international application WO 2016/054048.
- II. The examining division decided that the main request did not comply with Article 123(2) EPC. It did not admit into the proceedings auxiliary requests 1, 2 and 3.
- III. With its statement of grounds of appeal, the appellant replaced its requests with an amended main request and new auxiliary requests 1 to 4.
- IV. In a communication accompanying the summons to oral proceedings, the board expressed the preliminary opinion that the main request did not comply with Article 123(2) EPC and that auxiliary requests 1 to 4 should not be admitted into the appeal proceedings.
- V. In response to the board's summons, the appellant informed the board that it would not attend the oral proceedings and that a decision should be made on the basis of the current status of the file. It did not comment in substance on the board's communication.
- VI. The appellant requests that the decision under appeal be set aside and that a patent be granted on the basis of the claims of the main request or, in the alternative, of one of auxiliary requests 1 to 4.
- VII. Claim 1 of the main request reads as follows (itemisation added by the board):

"A method, comprising:

- (a) receiving, from a feed source, a feed at a first time delayed playback (TDP) device of a TDP system;
- (b) recording, by the first TDP device, a first recorded feed from the feed;
- (c) broadcasting, by a feed output, the first recorded feed or the feed at a first time in parallel with the recording of the first feed by the first TDP device;
- (d) identifying, by the first TDP device, one or more errors in the first recorded feed;
- (e) identifying, by the first TDP device, a time and a duration of each error in the first recorded feed;
- (f) determining, by the TDP system, a fix for each of the errors, each of the fixes comprising content to be inserted into an output feed;
- (g) transmitting, by the first TDP device, the first recorded feed to the feed output;
- (h) broadcasting, by the feed output, the output feed including the first recorded feed at a second time later than the first time;
- (i) at the time identified for the errors in the first recorded feed and for the duration identified for the errors, transmitting, by the TDP system, each of the fixes to the feed output to switch the output feed from the first recorded feed to the fixes; and
- (j) transmitting, by the feed output the output feed including the fixes for each error at the time identified for the error and lasting for the duration identified for the error."

VIII. Claim 1 of auxiliary request 1 differs from claim 1 of the main request in that the text corresponding to items (a) to (c) has been replaced with:

"feeding, by a feed source, a feed directly to each of a feed output and a first time delayed playback (TDP) device of a TDP system;

receiving, from the feed source, the feed at the first TDP;

recording, by the first TDP device, a first recorded feed from the feed;

broadcasting, by the feed output, the first recorded feed or the feed at a first time;".

IX. Claim 1 of auxiliary request 2 differs from claim 1 of the main request in that:

- the text corresponding to items (a) to (c) has been replaced with:

"receiving, from a feed source, a feed at a first time delayed playback (TDP) device and a second time delayed playback (TDP) device of a TDP system;

recording, by the first TDP device, a first recorded feed from the feed;

broadcasting, by a feed output, the first recorded feed or the feed at a first time;".

- the word "and" after "from the first recorded feed to the fixes;" in item (i) has been deleted, and
- the following text has been added at the end of the claim:

"; and wherein the first TDP device experiences an error causing at least one gap in the recording of the first recorded feed, and wherein the method further comprises:

determining, by the first TDP device, the gap in the recording;

transmitting, by the first TDP device, a request to the second TDP device that records the second recorded feed as a backup playback for at least a portion of the backup playback; and

receiving, by the second TDP device, the portion of the backup playback, the portion of the backup playback corresponding to the gap."

X. Claim 1 of auxiliary request 3 differs from claim 1 of auxiliary request 2 in that:

- the text "in parallel with the recording of the first feed by the first TDP device" has been inserted after "broadcasting, by a feed output, the first recorded feed or the feed at a first time", and
- the word "and" has been re-inserted after "from the first recorded feed to the fixes;".

XI. Claim 1 of auxiliary request 4 differs from claim 1 of auxiliary request 1 in that the text after "from the first recorded feed to the fixes;" has been replaced with the following text:

"transmitting, by the feed output the output feed including the fixes for each error at the time identified for the error and lasting for the duration identified for the error; and

wherein the first TDP device experiences an error causing at least one gap in the recording of the first recorded feed, and wherein the method further comprises:

determining, by the first TDP device, the gap in the recording;

transmitting, by the first TDP device, a request to the second TDP device that records the second recorded feed as a backup playback for at least a portion of the backup playback; and

receiving, by the second TDP device, the portion of the backup playback, the portion of the backup playback corresponding to the gap."

Reasons for the Decision

1. *The application*

1.1 The application relates to the time-delayed playback (TDP) of television programs. A TDP system is a system which receives a feed and broadcasts it with a certain delay.

1.2 The application proposes a mechanism by which undesired blocks of the feed may be replaced by corrected blocks. This is achieved by providing a system comprising a TDP device, which outputs the originally recorded feed, and a "playlist source device", which outputs any corrected blocks and overrides the output of the TDP device (see paragraphs [0031] to [0034] of the description of the application as published).

Main request

2. *Admission into the appeal proceedings*

Since the main request filed with the statement of grounds of appeal differs from the main request considered in the decision under appeal only in the

correction of an obvious mistake within the meaning of Rule 139, second sentence, EPC in dependent claim 5, the board admits this request into the appeal proceedings (Article 12(4) RPBA).

3. *Added subject-matter*

3.1 The examining division concluded that the application as filed did not disclose the subject-matter of claim 1 for two reasons.

First, the application as filed did not disclose "broadcasting a feed (as received) at the feed output in parallel with recording of the first feed" in accordance with step (c) of claim 1.

Second, the application as filed did not disclose "broadcasting, by one and the same feed output of a TDP device, the feed (as received) at first time and the first recorded feed at a second time" in accordance with the combination of steps (c) and (h) of claim 1.

3.2 Step (c) specifies a step of "broadcasting, by a feed output, the first recorded feed or the feed at a first time in parallel with the recording of the first feed by the first TDP device".

Steps (d) to (j) of claim 1 relate to broadcasting the "corrected" feed. According to step (h), the feed output, i.e. the feed output introduced in step (c), broadcasts this feed "at a second time later than the first time".

3.3 In respect of step (c), the appellant relied on paragraph [0002] of the description. This paragraph states that "the TDP system may receive a feed for an

Eastern time zone at the time the feed is aired in the Eastern time zone, store the feed, and subsequently transmit the recorded feed for playback in the Pacific time zone".

3.3.1 The board notes that "subsequently" means "afterwards", not "in parallel". In this respect, the appellant essentially argued that the expression "in parallel" in step (c) did not rule out a slight delay between recording and broadcasting. However, "in parallel" certainly encompasses, as one possibility, the absence of such a delay. The term "subsequently" in paragraph [0002] of the description, on the other hand, rules out the absence of such a delay.

3.3.2 Moreover, paragraph [0002] is not intended to describe the invention but merely explains the general functionality of a TDP system. The board sees no justification for combining a sentence taken from this paragraph with the other features of claim 1. In fact, claim steps (g) to (j), in particular step (h), already specify subsequently ("at a second time later than the first time") transmitting the recorded feed for playback.

3.3.3 Paragraph [0002] therefore does not provide a basis for claim step (c).

3.4 The appellant further relied on the last sentence of paragraph [0016]. This paragraph reads as follows:

"The feed source 105 may be any broadcasting device that transmits a program for the east coast feed. For example, the feed source 105 may be operated by a nationwide network that pre-records original programming. Typically, a broadcaster operates the feed

source 105 and transmits the feed to providers (e.g., cable operators, satellite operators, etc.) that then retransmit the feed to their customers (e.g., viewers). In this example, the transmission to the providers is shown as the feed output 145. The feed output 145 may be, for example, a satellite transmitter that transmits the feed, a device that transmits the feed via cables, etc. In this example, the feed output 145 receives the content to be transmitted from the TDP device 110 or the secondary TDP device 125 via a delay/playlist switcher (hereinafter 'delay switcher') 120, 135, respectively. However, it should be noted that the feed source 105 could directly feed the feed output 145 and the TDP arrangement could be set up in parallel (e.g., the output of the feed source 105 could be split to directly feed each of the feed output 145, TDP device 110 and secondary TDP device 125)."

- 3.4.1 Although the last sentence of paragraph [0016] arguably discloses simultaneously recording the feed by a TDP device and providing "the feed" to the feed output 145, it does not disclose simultaneously providing "the first recorded feed" to the feed output, i.e. the first alternative of feature (c).
- 3.4.2 Moreover, it is apparent from paragraph [0016] as a whole that the feed output 145 does not broadcast the feed, as required by steps (c) and (h), but instead transmits it to providers such as cable and satellite operators, which subsequently broadcast the feed to their customers.
- 3.4.3 Paragraph [0016] therefore does not provide a basis for steps (c) and (h).

3.5 Since, moreover, the board is not aware of any other potential basis in the application as filed for these claim features, it concludes that the subject-matter of claim 1 of the main request extends beyond the content of the application as filed. The main request therefore does not comply with Article 123(2) EPC.

Auxiliary requests 1 to 4

4. *Admission into the appeal proceedings*

4.1 The auxiliary requests 1 to 4 were filed for the first time with the grounds of appeal. Their admission into the appeal proceedings is therefore at the board's discretion (Article 12(4), first and second sentences, RPBA).

4.2 Contrary to Article 12(4), third and fourth sentences, RPBA, the appellant has provided neither reasons for submitting these requests at this stage of the appeal proceedings nor reasons why the amendments made overcome the grounds for the refusal, i.e. the examining division's objections under Article 123(2) EPC.

4.3 Moreover, the amendments made in the auxiliary requests are, at least *prima facie*, unsuitable to overcome the added-matter objections raised in the decision under appeal and upheld in point 3. above, in particular for the reason given in point 3.4.2 above.

4.4 Hence, the board decides not to admit the auxiliary requests 1 to 4 into the appeal proceedings (Article 12(4) RPBA).

5. Since the sole request admitted into the appeal proceedings is not allowable, the appeal is to be dismissed.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chair:



S. Lichtenvort

J. Geschwind

Decision electronically authenticated