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**Datasheet for the decision
of 26 March 2026**

Case Number: T 1420/24 - 3.5.04

Application Number: 18164660.5

Publication Number: 3382640

IPC: G06T1/00, H04N21/8358

Language of the proceedings: EN

Title of invention:
MARKING VIDEO MEDIA CONTENT

Applicant:
Friend For Media Limited

Headword:

Relevant legal provisions:
EPC Art. 84

Keyword:
Main request and first to sixth auxiliary requests - clarity
(no)

Decisions cited:
G 0001/04, G 0001/24, T 0728/98, T 0068/85

Catchword:



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Case Number: T 1420/24 - 3.5.04

D E C I S I O N
of Technical Board of Appeal 3.5.04
of 26 March 2026

Appellant: Friend For Media Limited
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Decision under appeal: **Decision of the Examining Division of the European Patent Office posted/electronically transmitted on 6 August 2024 refusing European patent application No. 18164660.5 pursuant to Article 97(2) EPC.**

Composition of the Board:

Chair B. Burm-Herregodts
Members: B. Le Guen
F. Sanahuja

Summary of Facts and Submissions

- I. The appeal is against the examining division's decision to refuse European patent application No. 18 164 660.5, published as European patent application No. 3 382 640 A1.
- II. The prior-art documents cited in the decision under appeal included the following:
- D1: WO 2015/185944 A1
D4: US 2009/0087021 A1
- III. The decision was based on the following grounds.
- The subject-matter of claim 1 of the main request and of the first, second, third and fourth auxiliary requests then on file did not involve an inventive step (Article 56 EPC) in view of the combined disclosures of documents D1 and D4.
 - Auxiliary requests 1A and A2 then on file were not admitted into the examination proceedings because they were late filed and *prima facie* did not overcome the objection of lack of inventive step (Rules 116(2) and 137(3) EPC).
- IV. The applicant (appellant) filed notice of appeal. With the statement of grounds of appeal, the appellant filed claims of a main request and of first to sixth auxiliary requests. It submitted that the main request and first to sixth auxiliary requests corresponded, respectively, to the main request, auxiliary request 1A, the first auxiliary request, auxiliary

request A2 and the second to fourth auxiliary requests considered in the decision under appeal.

The appellant requested that the decision under appeal be set aside and that a European patent be granted on the basis of the claims of the main request filed with the statement of grounds of appeal or, alternatively, one of the first to sixth auxiliary requests filed with the statement of grounds of appeal.

V. The appellant was summoned to oral proceedings. In its communication under Article 15(1) RPBA, the board gave the following preliminary opinion, *inter alia*.

- The terms "substantially high transparency" and "substantially imperceptible" in claim 1 of the main request gave rise to objections of lack of clarity (Article 84 EPC).
- The subject-matter of claim 1 of the main request lacked an inventive step (Article 56 EPC), either starting from document D1 combined with document D4 or starting from document D4.
- The amendments to claim 1 in accordance with the first to sixth auxiliary requests did not overcome the objections under Article 84 EPC raised with respect to claim 1 of the main request.

VI. In its reply dated 26 February 2026, the appellant rebutted the board's objections.

VII. The oral proceedings before the board took place on 26 March 2026.

The appellant's final requests were those stated in its statement of grounds of appeal (see point IV. above).

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

VIII. The wording of claim 1 of the requests at issue is as follows.

Main request

"A method of marking video media-content, which comprises a plurality of frames, with a unique identifier specifying a user ID, the method comprising:

arranging a media-delivery platform (100) to have a plurality of target devices (114) connected thereto and further arranging the media-delivery platform (100) to deliver the video media-content to a specified target device of the target devices, at which the user ID is being used; and

overlaying an image (500) over at least some frames of the plurality of frames (302) as the video media-content is displayed at the specified target device (114),

wherein the image (500) encodes the unique identifier and comprises a plurality of zones (502), the zones (502) being arranged to encode the unique identifier, wherein the image has a substantially high transparency and a variation in intensity and/or chroma such that when the image (500) is overlaid on the video media content, the image is substantially imperceptible to a user, and wherein the variation in intensity and/or chroma is generated by at least one of a polynomial function, a trigonometric function, a random or pseudo random function and/or a noise function to vary a

visual property of the image within at least some of the zones (502)."

First auxiliary request

Same as claim 1 of the main request, except for the following deletion (shown by strikethrough):

"[...] wherein the image has a substantially high transparency and a variation in intensity and/or chroma such that when the image (500) is overlaid on the video media content, the image is ~~substantially~~ imperceptible to a user, and [...]"

Second auxiliary request

Same as claim 1 of the main request, except for the addition of the following wording at the end of the claim:

"; wherein the image is divided into a plurality of segments, each zone corresponding to one or more segments, and wherein the user ID is encoded by applying mathematical operations to each segment"

Third auxiliary request

Same as claim 1 of the main request, except for the addition of the following wording at the end of the claim:

"; wherein the image is overlaid over an overlay region of the frames;
wherein the image is generated by applying one or more first operations to combine an overlay pattern encoding the ID and a signal that is independent of the ID;

wherein the signal provides the variation in intensity and/or chroma;

wherein the overlay pattern is formed by dividing the overlay region into a plurality of segments, each zone corresponding to one or more segments; and

wherein the user ID is encoded by applying a selected one of two or more second mathematical operations to each segment, the selection of second mathematical operation for each segment based on the unique user ID"

Fourth auxiliary request

Same as claim 1 of the main request, except for the addition of the following wording at the end of the claim:

", and wherein the variation of the visual property comprises a texture across the at least some of the zones (502)"

Fifth auxiliary request

Same as claim 1 of the main request, except for the addition of the following wording at the end of the claim:

", and wherein a lengthscale of the variation of the visual property is small compared to the size of each zone (502)"

Sixth auxiliary request

Same as claim 1 of the main request, except for the addition of the following wording at the end of the claim:

", and wherein the image is arranged to cover at least 20% of each frame (302) to which it is applied"

Reasons for the Decision

1. The appeal is admissible.

The application

2. The application relates to systems and methods for marking video content with a user ID. A media-delivery platform delivers video content to a specified target device associated with the user ID, and an image (marker) encoding the user ID is overlaid on at least some frames of the video content as it is displayed.
3. To create the image (marker), a two-dimensional signal is arranged across an overlay region of the frames of the video media content. An overlay pattern comprising a segmentation of the overlay region into segments is generated on the basis of the user ID, and operations associated with the segments are applied to the signal.
4. A separate monitoring system monitors and processes video content to extract overlay patterns and decode user IDs. This makes it possible to trace the source of illicit copies of video content.

Main request and second to sixth auxiliary requests - clarity (Article 84 EPC)

5. Article 84 EPC stipulates that the claims must be clear.

6. Claim 1 of the main request and of the second to sixth auxiliary requests specifies that *"the image has a substantially high transparency and a variation in intensity and/or chroma such that when the image (500) is overlaid on the video media content, the image is substantially imperceptible to a user"*.
7. The appellant disagrees with how the examining division interpreted the terms "substantially high transparency" and "substantially imperceptible" in its assessment of whether the claimed subject-matter involved an inventive step (see page 5, fourth and sixth full paragraphs of the statement of grounds of appeal).
8. The board notes that it follows from the requirement of legal certainty that a claim cannot be considered clear within the meaning of Article 84 EPC if it comprises an unclear technical feature for which no unequivocal generally accepted meaning exists in the relevant art (see T 728/98 (OJ EPO 2001, 319), points 3.1 and 3.3 of the Reasons ("substantially pure"); see also Case Law of the Boards of Appeal of the European Patent Office, 11th edition, 2025 ("Case Law"), II.A.3.2).
9. In the case in hand, there is no evidence on file of any generally applicable (quantitative) definition for the terms "substantially high transparency" and "substantially imperceptible". However, the appellant is of the view that these terms would be clear to the skilled person when read in context. The appellant's arguments (mostly put forward at the oral proceedings before the board) can be summarised as follows.
 - 9.1 The terms "substantially high transparency" and "substantially imperceptible" were clear from the wording of the claim alone.

The terms "semi-opaque", "low transparency" and "high transparency" were terms of the art. They were used consistently in the application at issue, in document D1 (another of the appellant's patent applications) and in patent application GB2534752 referred to on page 1 of the description of the application at issue. The skilled person would have understood that the claim as a whole required the transparency and the variation in intensity and/or chroma of the image to be set such that that image became substantially imperceptible. The term "substantially" in front of "high transparency" helped the skilled person understand that the transparency did not have to correspond exactly to high transparency.

The term "imperceptible" was well understood in the art. According to the Oxford English Dictionary, it meant "so slight or gradual or subtle so as not to be perceived". "To perceive" was "to become aware or conscious of". Claim 1 of document D4 used the term "not apparent to a human observer". Paragraph [0099] of D4 identified the properties of the human visual system. Thus, the skilled person would already have fully understood the concept of perceptibility at D4's priority date. Furthermore, the skilled person would have understood that the term "substantially" in front of "imperceptible" indicated a certain tolerance.

9.2 The feature identified in point 6. above bore similarities to examples that were found not to give rise to a clarity objection. One example concerned a seat back positioned substantially horizontally/vertically, which was considered to clearly mean "horizontal/vertical enough to achieve the effect sought". Part F, Chapter IV, section 4.10 of the

Guidelines for Examination in the European Patent Office ("Guidelines"), applying the findings of T 68/85, also mentioned the following example: *"the invention may relate to an ashtray in which a smouldering cigarette end will be automatically extinguished by reason of the shape and relative dimensions of the ashtray. The latter may vary considerably in a manner difficult to define whilst still providing the desired effect. So long as the claim specifies the construction and shape of the ashtray as clearly as possible, it may define the relative dimensions by reference to the result to be achieved"*. The application at issue directly "correlated" to the smokeless ashtray. The combination of high transparency and variation in intensity and/or chroma "correlated" to the construction and shape of the ashtray, and the effect of being substantially imperceptible directly "correlated" to the effect of automatic extinguishing. The skilled person would have understood that the transparency had to be high enough to achieve the effect of a "substantially imperceptible" image.

9.3 Following G 1/24 (OJ EPO 2025, A60), the description was to be referred to when interpreting "substantially imperceptible" and "substantially high transparency".

Regarding "substantially high transparency", page 10, lines 14 to 16 of the description specified that "high transparency" meant "low opacity". Page 11, lines 10 to 15 of the description taught that the transparency of the overlay was high to minimise its perceptibility. This passage also gave specific examples of transparencies. Claim 10 as originally filed mentioned a transparency of at least 0.95. Page 14, lines 32 and 33 of the description taught that the transparency

of the marker was set such that the video media content underneath it could be seen.

Regarding "substantially imperceptible", the passage on page 1, lines 31 and 32, as well as items (i) and (iv) on page 6 of the description taught that the marking was designed to identify "pirates" without degrading the viewing experience. Page 10, lines 13 and 14 and lines 23 and 24 taught that the image was imperceptible to the user, even if the video was paused on a specific frame. However, according to page 14, lines 25 to 28, the marking could be detected computationally. The skilled person would have understood that in the best-case scenario the user would not be able to see the marker, and that in the second-best scenario they might perceive it as a noise. This was reflected in claim 1 by the term "substantially" in front of the term "imperceptible". Without the former, the appellant would be deprived of fair protection.

10. For the following reasons, the appellant's arguments do not convince the board that the terms "substantially high transparency" and "substantially imperceptible" are clear.

10.1 The term "substantially high" in front of "transparency" implies a restriction on the range within which the transparency can be varied. The term "substantially" in front of "imperceptible" sets a tolerance on the imperceptibility of the image (marker). Neither the restriction on the transparency of the marker nor the tolerance on its imperceptibility is clear from the wording of the claim alone. Furthermore, since claim 1 requires the transparency and the variation in intensity and/or chroma to be set so as to achieve the result, the lack of clarity

regarding the allowed levels of transparency is compounded by the lack of clarity regarding the result ("substantially imperceptible").

- 10.2 The case in hand is not comparable with the example of the ashtray given in section F-IV, 4.10 of the Guidelines or with the case on which T 68/85 is based. In those cases, the clarity of the result specified in the claim (extinguished smouldering cigarette; synergistic herbicidal effect) was not called into question.

The case in hand is also not comparable with the example of the substantially horizontal/vertical seat back provided by the appellant, which was presumably prompted by the last sentence of section F-IV, 4.7.1 of the Guidelines (version of April 2025). That sentence states that "[f]or example, 'a substantially vertical seat back' is interpreted as allowing for a certain +/- variation around 90° where the skilled person can recognise that a functionality for supporting the sitting person's back is present". In that example, the clarity of the intended functionality (supporting the sitting person's back) is not questioned either. Moreover, unlike "high transparency", the term "vertical" is an absolute term defining a clear position (90°) covered by the term "substantially vertical". In claim 1 at issue, absolute transparency is implicitly excluded since it would not result in any marking of the video content. Hence, there is no clear reference value for the range of allowed transparency levels.

- 10.3 There may be cases in which the person skilled in the art would be able to understand the meaning of relative terms in a given context. Terms such as "about",

"approximately" or "substantially" may not give rise to clarity issues if the skilled person knows how to obtain the tolerance implied by these terms, for example if the terms in question refer to the known margin of error of a measuring or a manufacturing method (see section F-IV, 4.7.1 of the Guidelines).

These exceptions do not apply to the case in hand.

The *transparency* of a pixel of an image is defined exactly by the value of its alpha channel. Since no margin of error is involved, the term "substantially (high)" in front of "transparency" does not refer to a known tolerance.

The *perceptibility* of the image (marker) in the video content depends on a number of factors such as the video content itself, the viewing conditions and the viewer themselves, none of which is specified in the claim. It is not clear which method is to be used to determine whether the marker is imperceptible after having been overlaid on the video frames. Thus, the skilled person would not have been able to establish whether imperceptibility is achieved. *A fortiori*, they would not have known how to obtain the tolerance implied by the term "substantially" in front of "imperceptible".

10.4 For the following reasons, the appellant's arguments relying on G 1/24 are not persuasive either.

10.4.1 In G 1/04 (OJ EPO 2006, 334), the Enlarged Board of Appeal ruled that Article 84 EPC required "*that an independent claim ... should explicitly specify all of the essential features needed to define the invention, and that **the meaning of these features should be clear***"

for the person skilled in the art from the wording of the claim alone" (see point 6.2 of the Reasons; emphasis added by the board). G 1/24 does not question these principles. On the contrary, by validating the approach emphasised in paragraphs 87, 109 and the last sentence of paragraph 135 of the comments of the President of the EPO (see point 20 of the Reasons), G 1/24 reaffirms that it is in the interest of legal certainty that the meaning of the claims be clear from the wording of the claims alone.

Against this backdrop, the board is of the view that if the description gives terms a special meaning that the person skilled in the relevant art cannot derive from the wording of a claim alone, Article 84 EPC in principle requires the claim to be amended to reflect that special meaning.

- 10.4.2 In any case, consulting the description of the application at issue does not clarify the meaning of "substantially high transparency" and "substantially imperceptible". The description does not provide any definition of these terms or specify any method for testing whether the marker is imperceptible after having been overlaid on the video frames.

The passage on page 11, lines 10 to 15 of the description mentions that the transparency is "*at least 0,90 (90%)*", but it does not state that this range is to be understood as a definition for "substantially high transparency". Moreover, the board sees no reason why a transparency lower than 90% could not result in a "substantially imperceptible" marker if the marker has the right variation in intensity and/or colour. This would depend, *inter alia*, on the video media content on which it is overlaid and on the meaning of

"substantially imperceptible". Therefore, the specific transparency values specified in the description are to be understood as mere embodiments.

In fact, the passages of the description cited by the appellant cast doubt on the meaning to be given to the term "imperceptible" in the context of this application. The passage on page 10, lines 23 and 24 of the description specifies that *"even if the video media content is paused on a specific frame 302 which is marked with an overlay 500a-c, a user is **not able to see** the overlaid image 500a-c"* (emphasis added by the board), which supports the normal meaning that would be ascribed to the term "imperceptible". However, the passage on page 1, lines 31 and 32 and items (i) and (iv) on page 6 of the description indicate that the focus is on not degrading the viewing experience. Not being able to see the marker is fundamentally different from not being disturbed by it. Since a viewer normally does not have any knowledge of the non-marked video content, a well-designed marker, even if clearly perceptible, may not degrade the viewing experience. Therefore, the concept of imperceptibility of the marker is ill-defined in the application at issue.

10.4.3 For completeness, the board notes that for the reasons given in points 10.1 to 10.3 above, the terms "substantially high transparency" and "substantially imperceptible" would also be unclear if the term "imperceptible" were ascribed the meaning of "not degrading the viewing experience".

11. It is undisputed that an applicant is entitled to seek fair protection for its invention. However, what an applicant considers to be "fair" may clash with the public interest in legal certainty. As stated in

decision T 68/85, cited by the appellant, "*the applicant cannot simply define a feature in a claim as [it] wishes; [it] must choose the form that is objectively more precise [...] On the other hand, the effort to define a feature in functional terms must stop short where it jeopardises the clarity of a claim as required by Article 84 EPC*" (see points 8.4.2 and 8.4.3 of the Reasons; see also paragraph 87 of the comments made by the President of the EPO in the context of referral G 1/24 and emphasised in point 20 of the Reasons of the Enlarged Board's decision). In the case in hand, the board finds that the appellant's endeavour to obtain a broad scope of protection leads to an unclear claim.

12. In view of the above, the board concludes that claim 1 of the main request and claim 1 of the second to sixth auxiliary requests does not fulfil the requirement of clarity set out in Article 84 EPC.

First auxiliary request - clarity

13. Claim 1 of the first auxiliary request differs from claim 1 of the main request in that the term "substantially" in front of "imperceptible" has been deleted.
14. The term "imperceptible" itself gives rise to a clarity objection for the reasons given above in points 10.3 (last paragraph), 10.4.1, 10.4.2 (last paragraph) and 10.4.3. Additionally, the term "substantially high transparency" still present in claim 1 of the first auxiliary request lacks clarity for all the reasons given with respect to claim 1 of the main request (not all of which hinge on the clarity of "(substantially) imperceptible"; see points 10.1 and 10.2 above).

15. Thus, the board concludes that claim 1 of the first auxiliary request does not fulfil the requirements of Article 84 EPC either.

Conclusion

16. Since none of the requests at issue is allowable, the appeal must be dismissed.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chair:



K. Boelicke

B. Burm-Herregodts

Decision electronically authenticated