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**Datasheet for the decision
of 22 May 2026**

Case Number: T 0914/25 - 3.5.04

Application Number: 19912501.4

Publication Number: 3905706

IPC: H04N21/4402

Language of the proceedings: EN

Title of invention:

DEFINITION SWITCHING ALGORITHM SELECTION METHOD AND SYSTEM,
AND DEVICE AND MEDIUM

Applicant:

Shanghai Bilibili Technology Co., Ltd.

Relevant legal provisions:

RPBA 2020 Art. 13(2)
EPC Art. 123(2), 113(1)

Keyword:

New main request - amendment after summons - exceptional
circumstances (yes) - taken into account (yes)
New main request - amendments - added subject-matter (yes)
Right to be heard - non-attendance at oral proceedings



Beschwerdekammern

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Case Number: T 0914/25 - 3.5.04

D E C I S I O N
of Technical Board of Appeal 3.5.04
of 22 May 2026

Appellant:
(Applicant)

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Representative:

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Decision under appeal:

**Decision of the Examining Division of the
European Patent Office posted/electronically
transmitted on 28 February 2025 refusing
European patent application No. 19912501.4
pursuant to Article 97(2) EPC.**

Composition of the Board:

Chair F. Sanahuja
Members: A. Seeger
G. Decker

Summary of Facts and Submissions

- I. The appeal is against the examining decision's decision to refuse European patent application No. 19 912 501.4.
- II. The decision under appeal was based on the following grounds.
 - (a) Claims 1 and 6 of the main request then on file were not clear (Article 84 EPC) and the subject-matter thereof did not involve an inventive step (Article 56 EPC).
 - (b) Claims 1 and 5 of the auxiliary request then on file did not meet the requirements of Article 123(2) EPC. Moreover, the objections against the independent claims of the main request set out above applied here too.
- III. The applicant (appellant) filed notice of appeal. With its statement of grounds of appeal, it maintained its main request underlying the decision under appeal and filed claims according to a new auxiliary request.
- IV. The appellant was summoned to oral proceedings. In a communication under Article 15(1) RPBA, the board set out its preliminary opinion as follows.
 - (a) Claims 1 and 6 of the main request were not clear (Article 84 EPC).
 - (b) The subject-matter of claims 1 and 6 of the main request lacked an inventive step (Article 56 EPC).
 - (c) The board was minded to exercise its discretion under Article 12(4) and (6) RPBA by not admitting the new auxiliary request into the appeal proceedings.

V. With its reply dated 22 April 2026, the appellant filed a new main request which was to replace its previous main request. It also withdrew the new auxiliary request filed with the statement of grounds of appeal. The appellant set out its arguments in favour of the admittance of the new main request into the appeal proceedings, indicated a basis for the amendments made and submitted reasons as to why the claims of this request were clear and why the subject-matter thereof was new and inventive.

VI. By letter dated 21 May 2026, the appellant announced that it would not attend the oral proceedings.

VII. On 22 May 2026, the board held oral proceedings in the appellant's absence.

As was apparent from the file, the appellant's final requests were that the decision under appeal be set aside and that a patent be granted on the basis of the claims according to the new main request filed with its reply dated 22 April 2026.

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

VIII. Claim 1 of the new main request reads as follows:

"A computer-implemented method for selecting a resolution switching algorithm, the method comprising:

obtaining (S101) multiple association relationships, wherein each association relationship comprises a resolution switching algorithm and a historical freeze rate;

determining (S102) a historical freeze rate meeting a preset condition from the multiple association relationships, wherein the historical freeze rate meeting the preset condition comprises a historical freeze rate with a minimum value or a historical freeze rate with a value less than a preset threshold value;

selecting (S103) a target resolution switching algorithm from a set of association relationships where each historical freeze rate meeting the preset condition is located; and

sending the target resolution switching algorithm to a client, so that the client dynamically switches a resolution of a video based on the target resolution switching algorithm,

the method further comprising:

determining a playing duration of the client playing the video;

determining a number of freezes generated by switching the resolution of the video using the target resolution switching algorithm within the playing duration; and

updating the historical freeze rate corresponding to the target resolution switching algorithm according to the playing duration and the number of freezes."

Reasons for the Decision

1. The appeal is admissible.

2. New main request - taking into account
(Article 13(2) RPBA)
- 2.1 Under Article 13(2) RPBA, any amendment to a party's appeal case 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.
- 2.2 The new main request was filed by the appellant after notification of the board's communication under Article 15(1) RPBA. Hence, the new main request is an amendment within the meaning of Article 13(2) RPBA.
- 2.3 With its letter dated 22 April 2026, the appellant requested that the new main request be admitted. It submitted that the filing of the new main request was a *bona fide* attempt to overcome the clarity objections raised for the first time by the board in its communication under Article 15(1) RPBA and to address new considerations made in the same communication regarding inventive step.
- 2.4 The board takes the view that the new clarity objections and the additional aspects of the inventive-step objection in the board's communication under Article 15(1) RPBA constitute exceptional circumstances within the meaning of Article 13(2) RPBA.
- 2.5 Therefore, the board has decided to exercise its discretion under Article 13(2) RPBA by taking the new main request into account.

3. New main request - added subject-matter
(Article 123(2) EPC)

3.1 Claim 1 of the new main request was amended by, *inter alia*, the addition of the following feature: "*sending the target resolution switching algorithm to a client, so that the client dynamically switches a resolution of a video based on the target resolution switching algorithm*".

3.2 As a basis for this amendment, the appellant referred to page 5, lines 8 to 15, of the application as filed, which reads as follows: "*A selection scheme of the resolution switching algorithm provided by the embodiment of the application can be applied to a server, and when a client, such as a web terminal, plays a video, the server may be requested to provide a resolution switching algorithm which is better and can dynamically switch the resolution of the video, then the server can select the target resolution switching algorithm by executing the scheme provided by the embodiment of the present application, and return the target resolution switching algorithm to the client, so that the client can dynamically switch the resolution of the video based on the target resolution switching algorithm*".

3.3 According to this passage, a server returns a target resolution switching algorithm to a client in reply to a corresponding request of the client.

However, claim 1 of the new main request specifies neither a server nor a request from a client to the server.

The unsolicited transmission of a target resolution switching algorithm to the client from a generic entity, as encompassed by claim 1, does not have a basis in the application as filed, contrary to the requirements of Article 123(2) EPC.

3.4 Therefore, the new main request is not allowable.

3.5 The objection under Article 123(2) EPC was raised during the oral proceedings. The appellant did not comment on this objection as it did not attend the oral proceedings.

3.6 Concerning the appellant's right to be heard according to Article 113(1) EPC, the board notes the following. An appellant has to expect that any amendments it makes have to be examined at the oral proceedings as to their conformity with the requirements of the EPC, in particular the issue of added subject-matter. Oral proceedings under Article 116(1) EPC were held on 22 May 2026, to which the appellant had been duly summoned. This provided the appellant with an opportunity to be heard under Article 113(1) EPC on all issues, including the issue of added subject-matter with respect to any new requests. However, the appellant stated in its letter dated 21 May 2026 that it would "*not attend the Oral Proceedings*". It was thus the appellant's own decision to forfeit its right to be heard according to Article 113(1) EPC in respect of the new objection of added subject-matter by not being represented at the oral proceedings (see Case Law of the Boards of Appeal of the European Patent Office, 11th edition, 2025, III.B.2.8.2 and III.B.2.8.3 a)). In such a case, the board is not obliged to delay its decision (see Article 15(3) RPBA).

4. Since the new main request is not allowable, the appeal must be dismissed.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chair:



K. Boelicke

F. Sanahuja

Decision electronically authenticated