Datasheet for the decision of 13 May 2009

Case Number: T 1169/05 - 3.5.04
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Language of the proceedings: EN
Title of invention: Method for channel scanning by theme
Patentee: Gemstar Development Corporation
Opponent: IGR GmbH & Co. KG
Headword: -
Relevant legal provisions: -
Relevant legal provisions (EPC 1973): EPC Art. 56
Keyword: "Inventive step - yes"
Decisions cited: -
Catchword: -
Case Number: T 1169/05 - 3.5.04

DEcision
of the Technical Board of Appeal 3.5.04
of 13 May 2009

Appellant: Gemstar Development Corporation
(Patent Proprietor)
Suite 870,
135 N. Los Robles Avenue
Pasadena, CA 91101 (US)

Representative: Hale, Peter
Kilburn & Strode LLP
20 Red Lion Street
London WC1R 4PJ (GB)

Respondent: IGR GmbH & Co. KG
(Opponent)
Bahnstraße 62
D-40210 Düsseldorf (DE)

Representative: Eichstädt, Alfred
Maryniok & Partner
Kuhbergstraße 23
D-96317 Kronach (DE)


Composition of the Board:
Chairman: F. Edlinger
Members: A. Teale
          C. Vallet
Summary of Facts and Submissions

I. This is an appeal by the proprietor against the decision by the opposition division revoking European patent 0 801 865.

II. The patent was opposed on the ground of opposition under Article 100(a) EPC 1973 (inventive step). During the course of opposition proceedings sets of amended claims were filed with letters dated 2 September 2004 and 11 February 2005.

III. Granted claim 1 reads as follows, the board having added labels (V1) to (V9) corresponding to the labelling of the features introduced in the opponent's letter dated 8 April 2004:

"A method for surfing a spectrum of television channels comprising the steps of:

(V1) storing in a memory (104) a first group of channels and time periods of the day when individual channels of the first group are enabled for viewing;

(V2) retrieving from said memory (104) channels in the first group of channels which are currently enabled based on a current time period of the day;

(V3) tuning a television receiver to a given channel;

(V4) displaying on a television screen a foreground field (222) and a background field (224);
(V5) inserting the program being telecast on the given channel in one of the fields (222, 224);

(V6) sequentially inserting (244) programs telecast on the retrieved channels in the other field (224, 222);

(V7) generating (248) a channel sequencing command signal, whereby a program is inserted in the other field each time the channel sequencing command signal is generated;

(V8) generating (246, 250) a full screen command signal by pressing a key; and

(V9) displaying (254) on the screen (224) in full screen format the program being telecast on the other channel when the full screen command signal is generated; [sic]".

Claims 2 to 15 are dependent on claim 1.

IV. According to the reasons for the appealed decision, the subject-matter of granted claim 1 differed from the closest prior art document

D5: US 5 251 034 A

in that the step of "storing in a memory a first group of channels and time periods of the day when individual channels of the first group are enabled for viewing" (feature V1), was only partially known from D5. Starting from D5 and faced with the problem of scanning through an ever increasing number of channels, the skilled person would have introduced some process of
preselection, for instance by grouping the channels by theme, as was already known from EPG systems such as the ones disclosed in D1 or D2, thus arriving at the subject-matter of granted claim 1, these documents being

D1: DE 42 01 031 C2 and

Hence the subject-matter of granted claim 1 did not involve an inventive step, Article 56 EPC 1973, in view of the combination of D5 with either D1 or D2.

Regarding D5, the reasons for the decision stated essentially that feature V2 of granted claim 1 was known from D5. It was self-evident that all viewable channels (A to D) had been stored in the preset memory when running the auto-tuning function of the TV set and, since the retrieval of the channels from the memory depended on the channel that was currently viewed when the scan key was pressed (see figures 3A to 3C: if B was currently viewed, only A, C and D were retrieved for being sequentially displayed in the PIP window), some kind of "enabling" depending on the "current time period of the day" did literally take place. Feature V9 of granted claim 1 was also known from D5; it appeared to be a fair understanding of D5 that the channel viewed last in the PIP window would appear in full screen format when the scan key was pressed for the second time. The word "redisplay" was used in D5 only in connection with the embodiment relating to entering the PIP function from the VCR mode (see column 3, line 15), the remaining text only mentioning the displaying of a specific channel (see line 10 of the
abstract and column 1, lines 58 to 60) and the purpose of selecting a TV channel (see column 1, lines 16 and 19).

As to D1 and D2, the reasons for the decision stated essentially that features V1 and V2 were anticipated by EPG systems such as the ones known from D1 or D2. Indeed, a particular program suggested and stored by a conventional EPG corresponded to a channel in association with a predetermined time period (start time; end time) during which said channel was "enabled", i.e. said program was being broadcast.

V. With a statement of grounds of appeal the appellant filed a further amended claim 1 and requested that the decision be set aside and the patent maintained as granted (main request). As first and second auxiliary requests the appellant requested that the patent be maintained in amended form on the basis of the claims filed with the letters dated 2 September 2004 and 11 February 2005, respectively. As a third auxiliary request the appellant requested that the patent be maintained in amended form on the basis of the claims filed with the statement of grounds of appeal. Oral proceedings were requested if the board intended to do anything other than maintain the patent as granted.

Regarding the main request, the appellant argued essentially that none of the cited prior art documents remotely suggested enabling a channel selection for a PIP window based on time of day (feature V1). Moreover, the appealed decision was wrong in its finding that D5 disclosed feature V2, since D5 had no regard for time. Indeed, depending on the time of day, D5 would show
blank screens for channels that were not transmitting viewable content. The appellant also challenged the finding in the appealed decision that D5 disclosed feature V9, since column 3, lines 7 to 17, and figure 2B of D5 showed that the system reverted to the video tape output when the scan key was pressed for a second time. The same was true for the system in the TV mode (see column 3, lines 26 to 34). The flowchart in figure 2B merely showed channel scanning stopping when the scan key was pressed. The combination of D5 with either D1 or D2 required hindsight, since neither contemplated storing a first group of channels enabled according to the time of day. Moreover neither D5 nor D1 nor D2 disclosed sequentially inserting programs telecast on retrieved channels in a PIP window. All that D1 or D2 would add to D5 would be to sequentially tune to all channels in the program guide list, which was no more than D5 did already in showing channels B, C and D in a PIP window when channel A was being viewed.

The appellant also referred to the document (D2A) WO 94 14284 which was related to D2. D2A was directed to an EPG and unlike D2, which did not mention themes, did describe themes, referred to in the appealed decision, and yet did not show or suggest storing in a memory a first group of channels and time periods.

VI. The respondent (opponent) requested that the appeal be dismissed. The respondent also argued essentially that feature V9 of granted claim 1 was directly derivable from the mention in D5 (column 1, lines 6 to 15) of "selecting" a desired broadcasting channel, the term "selecting" implying switching to the desired channel. D5 sought to avoid the need to use a number key pad or
channel up/down keys to select a channel by the use instead of the "scan" key and a PIP window. If the scan key was operated again, then a "specific" channel was displayed on the main screen, it being obvious that the "specific" channel was that selected using the PIP function.

Moreover feature V1 in its entirety was known from D1 and D2, which both disclosed conventional EPG systems in which a preselection was made from a large number of available channels. The preselection could be made on the basis of content, time or channel; see D1, column 4, lines 14 to 25. Feature V2 was known from D1, since it disclosed the storage of channels and times for which they were enabled. This included preselected programs on channels which were currently viewable; see column 4, lines 18 to 19.

By carrying out the automatic selection of channels known from D5 in an EPG system of the sort known from either D1 or D2 the skilled person would arrive at the subject-matter of granted claim 1.

VII. In a letter dated 26 October 2006 the appellant informed the board that it had changed its name and filed a copy of the corresponding extract from the German commercial register.

VIII. In a letter dated 12 April 2007 the respondent withdrew the opposition.

IX. The board issued a summons to oral proceedings, but subsequently cancelled the oral proceedings scheduled
to take place on 30 July 2009 by a registered letter with advice of delivery dated 7 May 2009.

Reasons for the Decision

1. Admissibility of the appeal

The appeal is admissible.

2. The meaning of the expression in granted claim 1 "enabled"

Feature V1 of granted claim 1 refers to storing "channels and time periods of the day" when certain television channels are "enabled for viewing". Feature V2 refers to retrieving channels which are "currently enabled" based on a current time period of the day, and feature V6 refers to inserting "the retrieved channels in the other field" (foreground or background; see features V4 and V5). Therefore, in the context of claim 1 as a whole, television channels being "enabled for viewing" means that they are included in the cycle of retrieved channels shown in the other field (for instance a PIP window) on the television when the channels are sequentially inserted by generation of a channel sequencing command signal (feature V7), a particular channel only being included in the cycle if the current time of day falls within user-defined time periods stored together with the channels of the first group in the memory.

According to the appealed decision, a channel is essentially "enabled" if a program is being currently
broadcast on it; see reasons, page 4, paragraphs 4 and 5.

This interpretation does not take due account of the meaning of the term when set in the proper context of what is stored in the memory and what is retrieved from the memory. As set out above, the invention is concerned with a selection of channels dependent on (user-defined) periods of the day. This is fully supported by the patent description. According to paragraph [0017], the invention provides a method for surfing a spectrum of television channels which simplifies the finding and displaying of a desired channel. As explained in paragraphs [0024] to [0030] and illustrated in figure 2, the remote controller has a plurality of "theme" keys, including a key for the theme "News". The user stores channels under each theme key, paragraph [0030] describing the storing of the "NBC" channel under the "News" theme in the theme memory together with "times for which the channel is enabled". In the case set out in paragraph [0030], three time ranges are defined by the user which are used to enable the NBC channel only at these times. At other times the NBC channel is skipped over. The reason for this is given in paragraph [0029], namely that the user knows that during the defined time ranges the NBC channel shows news. According to paragraph [0034], the user can view channels under a particular theme by pressing the theme key, causing the remote controller to transmit signals to the television causing it to cycle through the channels stored under that theme key in a PIP window, allowing the user to select a channel. As paragraph [0035] explains, "This system enables the user to eliminate channels that are not of interest
when deciding upon a program to watch." Hence the board disagrees with the interpretation of the term "enabled" as set out in the appealed decision.

3. Document D5

D5 concerns a system which allows a television viewer to watch a cassette tape from a VCR (in "VCR mode") or a TV channel from a tuner (in "TV mode") and to simultaneously search alternative TV channels using a PIP window superimposed on the main screen of the monitor, the objective being to "facilitate the channel selection"; see column 1, lines 42 to 50. The selection is facilitated by providing an automatic sequential display in a PIP window when a scan key is pressed until it is stopped in response to another press of the scan key; see claims 1 and 2. This approach avoids the inconvenience of using a ten-key pad or channel up/down keys to select TV channels.

Taking the VCR mode first (see column 2, line 57, to column 3, line 17, and figures 2A and 2B), when the scan key is pressed (see figure 2A, step 106) the video signal from the VCR is displayed on the main screen of the monitor and preprogrammed TV broadcasting channels A, B and C, etc. are continuously displayed in turn for a predetermined time in a PIP window superimposed on the main screen. Pressing the scan key again stops the display of the PIP window and the VCR signal is redisplayed on the monitor (see figure 2B, step 109, and column 3, lines 12 to 17).

Turning to the TV mode (see column 3, lines 18 to 51, and figures 2A and 2B) in which the user is viewing TV
channel A, when the scan key is pressed (see figure 2A, step 113) the main screen of the monitor shows TV channel A and a superimposed PIP window displays TV channels B and C, etc. continuously in turn for a predetermined time. Pressing the scan key again (see figure 2B; step 116) stops the channel search; see column 3, lines 31 to 34.

The reasons for the appealed decision (page 4, 3rd and 4th paragraphs) state (relating to feature V2 of granted claim 1) essentially that it is self-evident in D5 that the preprogrammed TV channels (A, B, C, etc.) are stored when running an auto-tuning function of the TV set. It is also argued that, since, when watching channel A in the TV mode, only the remaining channels are displayed in the PIP window, "Some kind of 'enabling' depending on the 'current time period of the day' does literally take place". The board does not regard either assertion as sustainable. The fact that the currently viewed channel is not shown in the PIP window does not imply an enabling of the channels displayed in the PIP window in dependence upon the current time period of the day, nor does this follow from the implementation of an auto-tuning function in D5. In the board's view an enabling of channels depending on the current time period of the day is not directly and unambiguously derivable from D5. Rather, the board shares the appellant's view that D5 has no regard for time concerning the retrieved channels of the first group.

Before the opposition was withdrawn the respondent relied on the argument (relating to feature V9 of granted claim 1) set out in the appealed decision
(reasons, page 4, 2nd paragraph) that references in D5 to selecting channels (see, for example, column 1, lines 7 to 15) and, in the TV mode, displaying a "specific" channel if the scan key was pressed again (see column 1, lines 51 to 60) meant that the channel last shown in the TV mode in the PIP window would be selected and thus subsequently displayed on the main screen of the monitor when the scan key was pressed again. In the board's view, this interpretation is not consistent with the fact that in figure 2B no action follows the second pressing of the scan key. The channel search performed by the PIP function is merely stopped, the board understanding this to mean that the PIP window is closed. Hence the board finds that it is not directly and unambiguously derivable from D5 that the channel last shown in the TV mode in the PIP window when the scan key was pressed again would be selected and thus subsequently displayed on the main screen of the monitor.

Hence the subject-matter of granted claim 1 differs from the disclosure of D5 in the following features:

(V1) storing in a memory a first group of channels and time periods of the day when individual channels of the first group are enabled for viewing;
(V2) retrieving from said memory channels in the first group of channels which are currently enabled based on a current time period of the day and
(V9) displaying on the screen in full screen format the program being telecast on the other channel when the full screen command signal is generated.
The board has chosen not to follow the splitting of feature V1 used in the appealed decision, as this would lead to a somewhat artificial understanding of claim 1. The data stored in the memory relates not only to a first group of channels (which is known from D5) but also to time periods of the day when individual channels of the first group are enabled for viewing (which is not known from D5).

4. Documents D1 and D2

D1 concerns a system having an EPG for reducing the time spent searching for a radio or television program of interest. To this end the user enters information on his/her interests which the system compares with coded information broadcast with the programs; see column 3, lines 55 to 60. The system automatically presents preselections of programs in groups based, for instance, on content, time and channel, see column 4, lines 14 to 25.

D2 relates to a set top terminal for cable television having an EPG which provides an on-screen menu tree (see figures 9a and 14) for the user to select programs including "major menus" covering different categories of programs, for instance "Sports".

It is stated in the appealed decision (page 4, 5th paragraph) that features V1 and V2 of granted claim 1 are known from D1 and D2, the same arguments being made by the respondent before withdrawing the opposition.

The board does not accept these arguments, since neither D1 nor D2 discloses the retrieving of channels
which are enabled based on stored time periods of the day and the current time period of the day. In particular, D1 essentially concerns the selection of programs rather than the selection of channels, there being no suggestion that programs meeting the user interest criteria would only be included in a preselection at certain broadcast times.

5. **Main request: inventive step, Article 56 EPC 1973**

D5 forms the closest prior art, the subject-matter of claim 1 differing from the disclosure of D5 in features V1, V2 and V9, as set out in section 3 above.

The difference features have the effect that, depending on stored time periods of the day, only channels which the user decides to assign to a group of channels for sequential display (for instance those the user knows currently have content relevant to a particular theme) are sequentially displayed for selection by a key in a foreground or background field (for instance shown in a PIP window when the corresponding theme key is pressed on the remote control).

The objective technical problem is seen as that derivable from paragraph [0017] of the patent description, namely to provide a method for surfing a spectrum of television channels which simplifies the finding and displaying of a desired channel.

None of the difference features is known from, or suggested by, D1, D2 (or D2A, cited by the appellant), so that the subject-matter of granted claim 1 would not
have been obvious to a person skilled in the art, even if D5 had been combined with any one of these documents.

The board concludes that the subject-matter of granted claim 1 involves an inventive step, Article 56 EPC 1973.

6. The first, second and third auxiliary requests

Since the ground for opposition under Article 100(a) EPC 1973 does not prejudice the maintenance of the European patent, the appellant's main request is allowable, and the appellant's first, second and third auxiliary requests need not be considered further. In these circumstances oral proceedings were not necessary and were therefore cancelled.

Order

For these reasons it is decided that:

1. The decision is set aside.
2. The patent is maintained unamended.

The Registrar: The Chairman:

P. Cremona F. Edlinger