

**Unified Patent Court
Central Division
(Paris Seat)**

Docket N°2014/01

Telecast BV (claimant)

v.

**Blue Cable France SA, (defendant 1)
Blue Cable Germany GmbH (defendant 2)
TV Grid Switzerland SA (defendant 3)
TV Grid Italy Spa (defendant 4)**

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2014-04-28_Amended_Statement_defence.pdf
2014-04-28_Memoire_en_defense_rectifie.pdf
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BACKGROUND INFORMATION

**Unified Patent Court
Central Division
(Paris Seat)**

Docket N° 2014/01

Telecast BV (claimant)

v.

Blue Cable France SA, (defendant 1)

Blue Cable Germany GmbH (defendant 2)

Tv Grid Switzerland SA (defendant 3)

Tv Grid Italy Spa (defendant 4)

FACTS

1. Telecast BV and European patent N° 1 003 442

Telecast BV, a Dutch company, holds European patent N° 1 003 442 (annex 1).

This patent has been filed on 10 September 1995 by United Video Programmes Inc, a US company which has been developing electronic programme guides (EPGs) for 20 years. It has been granted on 12 June 2002.

Telecast BV considers it acquired it on 24 December 2013 as well as all the patents applied under the same US priority. However, the list of patents exhibited to the assignment contract does not refer thereto (annex 2)¹.

A copy of the assignment agreement has been registered in the German and Italian national patent registers².

Telecast BV grants licenses under the Patent (and other patents covering functionalities of EPGs) to various TV providers.

European patent N° 1 003 442 (hereafter “the Patent”) relates to a “method and apparatus for accessing information about television programs”, which improve existing electronic programme guides.

2. Electronic programme guides

In the past 30 years or so, the number of television broadcasting stations has increased enormously. The broadcasters wish the consumer to know what programmes are being or are to be broadcast. Until the advent of electronic means of broadcasting, this information was disseminated principally in paper form: it took the form of list of programmes listed by broadcasting channel and by time within each channel, with various possible methods of listing the start and finish time, the channel and some notes about the programme.

One answer to the increase in the number of channels and programme and the size of the listings was to provide lists available electronically to the subscriber of the TV service so that they can be viewed on the screen. The information can be transmitted by various means but the most common is over the air by service providers. By calling up the relevant list and looking up the relevant day, time and channel, the viewer can see what programme is being broadcast at the relevant time.

¹ An issue therefore arises on whether Telecast BV is the owner of the Patent. The question is whether the Unified Patent Court can decide on this issue which affects the claimant's standing to sue.

² The assignment agreement has not been registered in France. According to the provisions of the French intellectual property code, if the patent is assigned, the assignment agreement must be registered in the national (or the European) patent register for the new owner to be admissible in asserting it.

In a typical case, the electronic programme guide is controlled by a handle selector, which controls a selecting highlight on the screen, and a programme is selected by highlighting it and pressing a selection button, at which an operation is carried out in relation to that programme, for example providing more information about it.

3. Opposition at the European patent office against European patent N° 1 003 442

The Patent was opposed at the European patent office.

The opposition division issued a preliminary opinion holding that claim 1 lacks novelty and inventive step.

United Video Programmes filed amended claims to reply to this preliminary opinion but the opposition was then withdrawn (annexes 3 and 4).³

4. The defendants

Blue Cable France provides its subscribers with a set top box which enables them to receive and record TV programmes. It broadcasts programme information and the box displays it on the television as an electronic programme guide. A feature of this EPG is that it enables the viewer to select a programme in a grid display to obtain an overlay with further information on the selected programme as shown below:



Figure 1 : screenshot of the Blue Cable electronic programme guide showing the overlay obtained upon selection of a given programme

This EPG is developed by TV Grid Switzerland⁴ and is provided to Blue Cable by TV Grid Italy⁵.

³ The defendants could take the position that the statements of the patent holder in the opposition proceeding should be taken into consideration to construe the Patent claims (i.e. file history estoppel).

Blue Cable Germany is a sister company of Blue Cable France, which has the same activity in Germany and to which TV Grid Italy also supplied the accused EPG software.

5. The litigation

Telecast BV decided to take action against Blue Cable and TV Grid companies.

Letters were written to Blue Cable France and Blue Cable Germany in June 2013 asking them to stop implementing the method according to claim 1 and manufacturing, keeping, selling and otherwise commercialising set top boxes according to claim 2 of the Patent.

No reply was received and Telecast BV decided to start patent infringement proceedings to enforce the Patent against Blue Cable France, Blue Cable Germany, TV Grid Switzerland and TV Grid Italy in the Unified Patent Court, central division, Paris seat.

4. Prior art

Following receipt of the pre-action letter Blue Cable and TV Grid patent attorneys arranged for a prior art search on the method according to claim 1 of European patent N° 1 003 442.

The results include:

- ▶ European patent application N° 0 447 968 published on 25 September 1991 (Hennig) relating to an "apparatus for providing TV program information" (annex 5).
- ▶ an article "personal home TV programming guide" written by Peter D. Hallenbeck and Jill J. Hallenbeck and published in the digest of technical papers of ICCE International Conference on Consumer Electronics, held in Chicago on 6-8 June 1990 (annex 6).

This article, though not in detail, refer to the SuperGuide developed by Peter Hellenbeck.

⁴ The Central Division of the UPC has jurisdiction over the action brought against TV Grid Switzerland, according to Article 33 (1) (b) 3rd paragraph of the Agreement. But the jurisdiction of the Central Division against the other defendants is opened to question.

⁵ It may be in the claimant's interest to get additional evidence from this company which is probably selling the accused EPG to other TV providers in Europe through an order to preserve evidence an/or an order for inspection.

The information provided by Peter Hallenbeck in the Wikipedia article on electronic programme guides (annex 7) show screen shots of the first and second versions of the SuperGuide reproduced below:



Figure 2: screen shot taken from the 1st working prototype of SuperGuide by Peter Hallenbeck, February 1986
http://en.wikipedia.org/wiki/File:SuperGuide_1_screen_16L.jpg

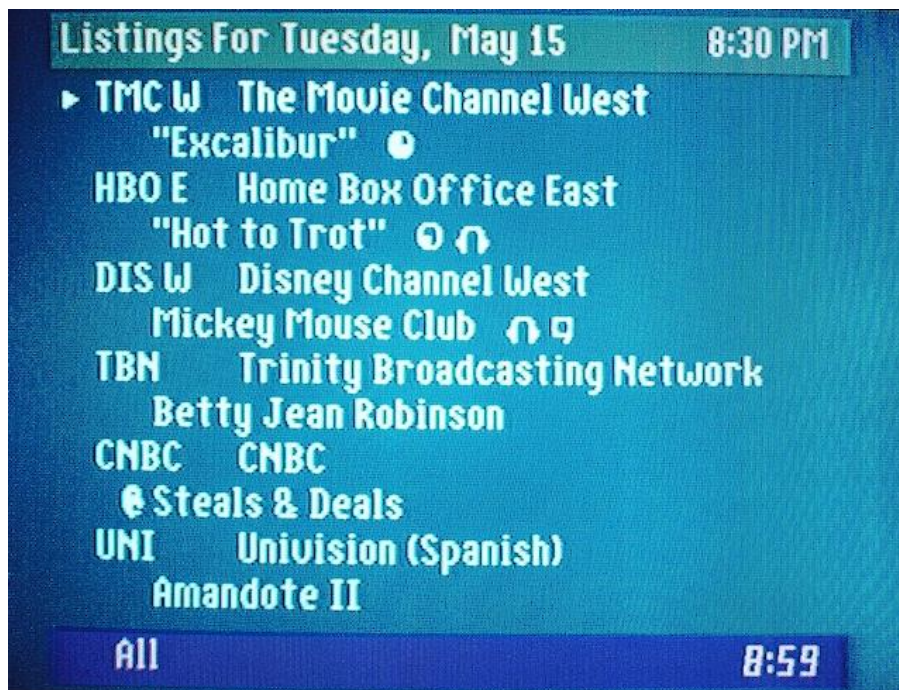


Figure 3: Screen shot of 2nd generation SuperGuide system by Peter Hallenbeck, May 1990
http://en.wikipedia.org/wiki/File:SuperGuide_2_screen_8L.jpg

Blue Cable and TV Grid attorneys-at-law contacted Peter Hallenbeck.

He told them he developed the SuperGuide to present an EPG on the screen in relation to satellite TV in the United States. Between 1985 and 1986 he designed the equipment and wrote the software for the first model of SuperGuide, in respect of which sales started in 1986. It consisted of a set top box which was connected to the television, and a hand-held unit which connected to the set top box to issue it with instructions.

SuperGuide worked as follows. EPG data was provided to the SuperGuide operating company and broadcast on a dedicated satellite channel at certain times of the day. The material was stored in the set top box in the form of a database, and that database was accessed by the box in order to put the relevant information on screen.

The first display on the SuperGuide screen was a single time/multi channel display. It displayed the programmes on all relevant channels which started at a given time, listed by that time. The channels were identified by satellite and by channel number within that satellite. The channels were listed vertically running down the screen. The hand-held controller controlled the position of a cursor, taking the form of arrows at each side of the screen, which were capable of marking each programme in turn as it moved vertically down the screen. By pressing a given button on the controller when the cursor was against any programme, the programme listing disappeared and was replaced by a screen showing some form of description of the programme (programme notes). This was not displayed in a window "superimposed" on the listing screen; it was a replacement screen.

Peter Hallenbeck also told Blue Cable and TV Grid attorneys-at-law that he could give a demonstration of the functionalities of the SuperGuide prototype and provide a DVD showing him operating it⁶.

⁶ The defendants could request that Peter Hallenbeck be examined and cross examined during the oral hearing.

ISSUES TO BE DECIDED

Preliminary objections (Rule 19)

Does Telecast have a standing to sue all defendants on the grounds of European patent N° 1 003 442 (and should this issue be considered as a preliminary objection pursuant to Rule 19)?

Does the central division have jurisdiction over Blue Cable France, Blue Cable Germany and TV Grid Italy?

Production of documents (Rules 192 to 199)

Is Telecast entitled to an order to preserve evidence and/or an order for inspection?

Case management (Rule 101)

Are the defendants entitled to translations pursuant to Article 51 (3) of the Agreement?

Should further evidence be permitted at trial and, if so, how much:

- ▶ production of documents; and/or
- ▶ cross examination of Peter Hallenbeck
- ▶ others?

Oral hearing

Is the patent valid?

How should claim 1 of European patent N° 1 003 442 be interpreted having regard the position taken by patent owner in the opposition?

Do Blue Cable's set top boxes and TV Grid's software implement the method according to this claim and reproduce the features of the apparatus according to claim 2 of the Patent?

If the Patent is infringement, will an injunction be granted?

LIST OF ANNEXES

1. European patent N° 1 003 442
2. Assignment agreement of 24 December 2013 between Telecast BV and United Video Programmes Inc.
3. United Video Preliminary opinion of the Opposition division of the European patent office
4. Reply of United Video Programmes to this preliminary opinion
5. European patent application N° 0 447 968 published on 25 September 1991 (Hennig) relating to an "apparatus for providing TV program information"
6. *Personal home TV programming guide*, Peter D. Hallenbeck and Jill J. Hallenbeck, Digest of technical papers of ICCE International Conference on Consumer Electronics, Chicago, 6-8 June 1990
7. *Electronic program guide*, Wikipedia, the free encyclopedia

Description**BACKGROUND OF THE INVENTION**1. Field of the Invention:

[0001] The present invention relates generally to a system and process that allows a television viewer to access on screen television program.

2. Description of the Prior Art:

[0002] Printed grid television schedule guides often include additional information besides the program title and broadcast names. Such grids are also typically provided in combination with a more detailed printed schedule that contains a synopsis of each program, whether the program is a repeat, ratings for movies, and other information. When using a television set as a display for a schedule system, the size and resolution of the television display limit the amount of text that can be displayed with the grid. Improved techniques are required for conveying the most amount of information to the user in an easily understood manner within the limitations of the television display. When a large number of channels are available for viewing, there is also a need to order the display of information most conveniently for the user.

SUMMARY OF THE INVENTION

[0003] Accordingly, it is an object of this invention to provide a television schedule system and process with a user interface that is configured to compensate for the particular nature of the television schedule information. [0004] It is another object of the invention to provide such a user interface in which supplemental schedule information is presented in overlays that obscure a minimum amount of useful other information.

[0005] The invention is set out in the claims.

[0006] The information on the television program may include program title, name of television service, channel number, date and time.

[0007] The attainment of the foregoing and related objects, advantages and features of the invention should be more readily apparent to those skilled in the art, after review of the following more detailed description of the invention, taken together with the drawings, in which:

BRIEF DESCRIPTION OF THE DRAWINGS

[008]

Figures 1-4 are diagrammatic representations of a television schedule grid incorporating the user interface.

[0009] Figures 1-3 show a television schedule grid screen 20 with a program note overlay 52. With limited text capacity on TV displays, it is preferable to display as many lines of TV listings as feasible. To handle program notes, which are text intensive, on-demand overlays 52 are used. Program note overlays 52 may include any or all of the following information:

- A program genre
- Program description
- Stars and personalities
- Year of release
- Episodic subtitles
- Run-time of program
- Elapse time of the program
- Critique (Star Ratings)
- Rating (PG, G, etc.)
- Call letter, channel markers
- Closed caption, stereo.

[0010] Program notes for a selected program are overlaid over the grid guide upon request. The program note can be toggled off/on using a SELECT command. The program note 52 overlays and hides 3 or 4 listings of a guide. To minimize concealment of the guide, an auto-rolling note is used. The program note will overlay either the top half or bottom half of the screen, as necessary to avoid masking the title of the selected listing. If the cursor 32 is in the upper half of the screen, the note will appear in the bottom half, and vice versa. If the cursor 32 is moved to the lower half of the screen, the note will automatically position itself in the upper half of the screen.

[0011] Figures 1-3 show a channel column 54 in the television schedule grid 24. Favorite stations and cable channels may be listed together to create a personalized grid guide. The channel column 54, unlike most printed TV guides, has a mix of over-the-air station names and cable services names.

[0012] The grid 24 guide lists channels by favorite combinations of station number and cable names, and not in the usual numerical order. When viewing the grid 24 guide, a Tuner Up/Down channel command will be mapped according to the channels and order listed on the screen. When not viewing the guide, the tuner sequence will revert back to the usual numerical order. When the last channel on a page is reached, the next Tuner command will change the channel to the channel listed at the beginning of the following page.

[0013] When a channel to which the tuner is tuned is displayed on the grid 24, it is highlighted, as shown at 56. A grid 24 page may be changed by either a page command or by entering a channel Up/On command as described above. If a page is turned using the page command, the current channel is now located in the previous page, and will not be seen in the new page. Therefore, the new page must suppress the highlighting of a channel, since that indicates the current channel. Note that information about the current channel will still be presented in the channel information boxes 58 at the bottom of the screen.

[0014] When is the highlighting re-enabled? Once into the new page, the first channel up/down command will cause the tuner to automatically change to the channel listed in the last or first row 30 respectively of the new page. Since the tuner channel is now located on the new page, the current channel will be highlighted again.

[0015] If the channel highlighting is not suppressed after a page is selected, by definition, the tuner must be chanced to track the highlighted channel. This is undesirable since casual paging should not cause the channel to change.

[0016] When a guide is first opened, as shown in Figure 2, both the cursor 32 and the current channel 56 are situated on the same row 30 of the grid 24. When the channel 56 is changed, it is desirable to drag the cursor 32 along with the channel in unison. In doing so, the cursor 32 will be ready for a Select command (to retrieve the program note). Cursor dragging by the channel command takes place whenever the channel 56 and cursor 32 are united on the same row. If they are not united, the cursor 32 is disengaged from the channel command. Note that dragging is not reciprocal; moving the cursor 32 does not affect channel selection.

[0017] Figure 4 shows a screen 22, showing a program list 58 for a single channel, generated by toggling a user what's On TV command, which switches between the grid 24 and the list 58. The list 58 consists of rows 60 of sequential program listings on the channel and a channel information field 62. Program notes are overlaid on the list 58 in the same manner as shown in Figure 3 for the grid 24.

[0018] Each What's On TV command alternates between the grid guide 24 and the What's Next on Channel row guide 58. While viewing the grid guide 24, the next What's On TV command will replace the grid guide 24 with a single-channel row guide 58. Figure 8 is the flow diagram for the What's On TV command.

[0019] The page relationship between the two guides 24 and 58 are tightly coupled. The single channel guide will open to the channel and schedule time that was selected by the cursor 32 on the grid 24. While viewing the single channel guide 58, the Up/Down channel command may be used to change the channel to be listed. When exiting the single channel guide 58 and returning to the grid guide 24, the grid cursor 32 will be pointed to the channel and schedule time last selected on the single channel guide 58.

Claims

1. A method for accessing information about television programs, the method comprising the steps of storing in an electronic memory of a schedule controller operably connected with a monitor screen, a plurality of television program listings, each listing including title, telecast time and channel, displaying on the monitor screen an overlay providing, from the stored listings, a title of and channel information on a selected program simultaneously with the selected program upon selection of a channel change, and displaying, responsive to a user input, a further overlay containing further information on the selected program from the stored listings.
2. Apparatus for accessing information about television programs, the apparatus comprising the means for storing in an electronic memory of a schedule controller operably connected with a monitor screen, a plurality of television program listings, each listing including title, telecast time and channel, means for displaying on the monitor screen an overlay providing, from the stored listings, a title of and channel information on a selected program simultaneously with the selected program upon selection of a channel change, and means for displaying, responsive to a user input, a further overlay containing further information on the selected program from the stored listings.

Patentansprüche

1. Verfahren für den Zugriff auf Informationen über Fernsehprogramme, wobei das Verfahren die Schritte umfaßt des Speicherns in einem elektronischen Speicher eines Zeitplan-Controllers, der wirksam mit einem Monitorbildschirm verbunden ist, einer Vielzahl von Fernsehprogramm auflistungen, wobei jede Auflistung einen Titel, eine Sendezeit und einen Kanal umfaßt, des Anzeigens auf dem Monitorbildschirm eine Overlay-Anzeige, die aus den gespeicherten Auflistungen einen Titel und eine Kanalinformation über ein ausgewähltes Programm gleichzeitig mit dem ausgewählten Ober ein ausgewähltes Programm gleichzeitig mit dem ausgewählten Programm beim Auswählen eines Kanalwechsels, und des Anzeigens in Abhängigkeit von einer Benutzereingabe eine weitere Overlay-Anzeige, die weitere Informationen über das ausgewählte Programm aus den gespeicherten Auflistungen enthält.

2. Gerät für den Zugriff auf Informationen über Fernsehprogramme, wobei das Gerät umfasst Mittel zum Speichern in einem elektronischen Speicher eines Zeitablauf-Controllers, der mit einem Monitorbildschirm verbunden ist, einer Vielzahl von Fernsehprogramm auflistungen, wobei jede Auflistung einen Titel, eine Sendezeit und einen Kanal umfasst, Mittel zum Anzeigen auf dem Monitorbildschirm von einer Overlay-Anzeige, die aus den gespeicherten Auflistungen einen Titel und eine Kanalinformation von einem ausgewählten Programm gleichzeitig mit dem ausgewählten Programm beim Auswählen eines Kanalwechsels liefert, und Mittel zum Anzeigen in Antwort eine Benutzereingabe einer weiteren Overlay-Anzeige, die weitere Informationen über das ausgewählte Programm aus den gespeicherten Auflistungen enthält.

Revendications

1. Procédé permettant d'accéder à des informations concernant des programmes de télévision, le procédé comprenant les étapes de stockage dans une mémoire électronique d'un dispositif de commande de grilles connecté en fonctionnement à un écran de contrôle d'une pluralité d'intitules de programmes de télévision, chaque intitulé comprenant le titre, l'heure de diffusion et le canal, d'affichage d'une superposition sur l'écran de contrôle fournissant, parmi les intitulés stockés, le titre ou des informations sur le canal d'un programme sélectionné simultanément au programme sélectionné lors de la sélection d'un changement de canal, et d'affichage, en réponse à une entrée de l'utilisateur, d'une autre superposition contenant d'autres informations concernant le programme sélectionné parmi les intitulés stockés.
2. Appareil permettant d'accéder à des informations concernant des programmes de télévision, l'appareil comprenant un moyen pour stocker dans une mémoire électronique d'un dispositif de commande de grilles connecté en fonctionnement à un écran de contrôle une pluralité d'intitules de programmes de télévision, chaque intitulé comprenant le titre, l'heure de diffusion et le canal, un moyen pour afficher une superposition sur l'écran de contrôle fournissant, parmi les intitulés stockés, le titre ou des informations sur le canal d'un programme sélectionné simultanément au programme sélectionné lors de la sélection d'un changement de canal, et un moyen pour afficher, en réponse à une entrée de l'utilisateur, une autre superposition contenant d'autres informations concernant le programme sélectionné parmi les intitulés stockés.

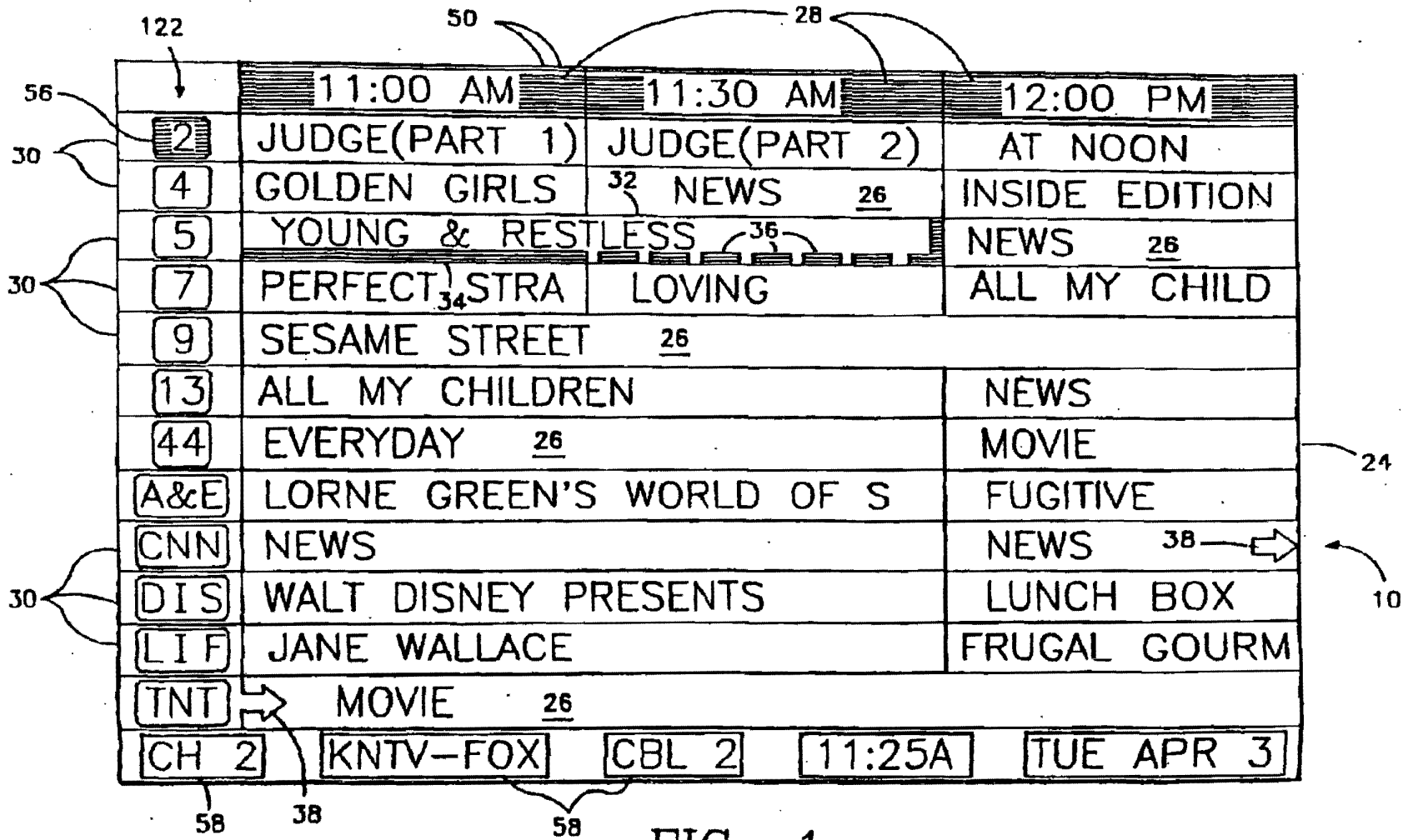


FIG.-1

EP 1 244 300 B1

	11:00 AM	11:30 AM	12:00 PM
2	JUDGE(PART 1)	JUDGE(PART 2)	AT NOON
4	GOLDEN GIRLS	NEWS	INSIDE EDITION
5	YOUNG & RESTLESS ₂₆		NEWS ₂₆
7	PERFECT STRA	LOVING	ALL MY CHILD
9	SESAME STREET ₂₆		
13	ALL MY CHILDREN		NEWS
44	EVERYDAY ₂₆		MOVIE
A&E	LORNE GREEN'S WORLD OF S		FUGITIVE
CNN	NEWS		NEWS
DIS	WALT DISNEY PRESENTS		LUNCH BOX
LIF	JANE WALLACE		FRUGAL GOURM
TNT	MOVIE ₂₆		
CH 2	KNTV-FOX	CBL 2	11:25A TUE APR 3

FIG.-2

	11:00 AM	11:30 AM	12:00 PM		
32	2 JUDGE(PART 1)	JUDGE(PART 2)	AT NOON		
	4 GOLDEN GIRLS	NEWS <u>26</u>	INSIDE EDITION		
	5 YOUNG & RESTLESS		NEWS <u>26</u>		
	7 PERFECT STRA	LOVING	ALL MY CHILD		
	9 SESAME STREET <u>26</u>				
	13 ALL MY CHILDREN		NEWS <u>26</u>		
	44 EVERYDAY <u>26</u>		MOVIE		
	A&E LORNE GREEN'S WORLD OF S		FUGITIVE		
	CNN NEWS	52	NEWS		
	DIS	DOROTHY BRINGS SOPHIA'S SISTER (NANCY WALKER) OVER FROM SICILY AS A BIRTHDAY SURPRISE			
	LIF				
	TNT				
	CH 2	KNTV-FOX	CBL 2	11:25A	TUE APR 3

FIG.-6

WHAT'S NEXT ON CHANNEL 2	
11:00 A	JUDGE (PART 1)
11:30 A	JUDGE (PART 2)
12:00 P	AT NOON
1:00 P	MOVIE: ANATOMY OF A SEDUCTION
3:00 P	ALVIN AND THE CHIPMUNKS
3:30 P	SUPER MARIO BROS. SUPER SHOW
4:00 P	CHIP'N DALES RESCUE RANGERS
4:30 P	DUCKTALES
5:00 P	SILVER SPOONS
5:30 P	THREE'S COMPANY
6:00 P	WHO'S THE BOSS
6:30 P	MAMA'S FAMILY
7:00 P	CHEERS
CH 2	KNTV-FOX
CBL 2	11:25A
TUE	APR 3

60

58

22

62

FIG.-7

18

EP 1 244 300 B1

PATENT ASSIGNMENT

THIS ASSIGNMENT is made the 24th day of December 2013

1. **United Video Programmes** Inc (the "Assignor") a company whose principal place of business is 3579 E. Foothill Blvd, Pasadena, California 91101 (USA);
and
2. **Telecast BV** (the "Assignee"), a company whose principle place of business is Schouwburgstraat 8, 2511 VA The Hague (The Netherlands)

WHEREAS

- The Assignor has agreed to assign to the Assignee the

Patents. The parties agree that:

1. Interpretation

- 1.1 In this Agreement, the following expressions shall have the following meanings:

"Affiliate" means, in relation to a body corporate, any subsidiary or holding company of the body corporate and any subsidiary of any such holding company.

"Patents" means the patents and patent applications filed under priority of US patent No 555975, whose details appear in annex 1.

2. Assignment

- 2.1 The Assignor hereby assigns to the Assignee who accepts, all its right, title and interest in the Patents including, without limitation:

- all rights to claim priority from the Patents and file patent applications in respect of the inventions disclosed by the Patents;
- all rights to any continuations, continuations in part, divisions, extensions, amendments, conversions, reissues, re-examinations, renewals or restorations of the Patents
- all rights to past damages relating to third party infringement of the Patents;
- to hold the same to the Assignee, its successors and assigns absolutely.

3. Consideration

3.1 In consideration for the assignment in clause 2, the Assignee pays to the Assignor the sum of €1 (+ VAT, if applicable), receipt of which is acknowledged by the Assignor.

4. Further Assistance

4.1. The Assignor shall do all such things as may be reasonably required by the Assignee in order:

- (A) to perfect or confirm the Assignee's ownership of the Patents;
- (B) to ensure that the Assignee is registered as the registered proprietor of the Patents with the relevant patent offices; and

to give the Assignee the full benefit of this Agreement.

4.2. The Assignee shall reimburse the Assignor for any reasonable disbursements and costs incurred by the Assignor in complying with the requirements of the Assignee under clause 4.1.

5. Law and Jurisdiction

This Agreement shall be governed by and construed in accordance with Dutch law.

In respect of any dispute or disagreement arising under or in connection with this Agreement, each of the parties shall submit to the exclusive jurisdiction of the District Court of The Hague.

IN WITNESS WHEREOF the duly authorized representatives of the parties have signed this Agreement on the date first before written.

EXECUTED by United Video Programmes
Mr Franck Brown

EXECUTED by Telecast BV
Mr Paul van der Horn

Annex 1
(List of assigned patents and patent application)

- US 555975
- WO 92/01804
- EP 0 682 845
- EP 1 454 623
- EP 1 456 571
- EP 1 532 321
- AT 589 753
- AU 789 956
- AU 5 990 596
- BR 9 544 899
- CA 2 499 751
- CN 1 195 447
- CN 1 213 856
- ES 2 021 756
- ES 2 856 423
- HK 1 334 412
- JP 068945
- JP 069001
- KR 0104895
- KR 0106541



- 1 The main issues to be discussed during the oral proceedings will be whether the subject-matter of the patent extends beyond the content of the earlier application as filed (Article 100(c) EPC), whether the subject-matter of the granted claims and the claims of the first and second auxiliary request is novel (Article 54 EPC) and involves an inventive step (Article 56 EPC) having regard to the documents cited by the Opponents, and whether the amendments made in the second auxiliary request introduce subject-matter which extends beyond the content of the application as filed (Articles 123(2) EPC).

- 2 Having considered the submissions made by the Parties so far, the Opposition Division has come to the provisional conclusion that the subject-matter of the patent does not extend beyond the content of the earlier application as filed, that the subject-matter of claims 1-10 lacks novelty and an inventive step and that the amendments made in the second auxiliary request introduce subject-matter which extends beyond the content of the (earlier) application as filed. The Opposition Division follows the argumentation of the Opponents O1-O3 in their notices of opposition with regard to lack of novelty and inventive step of all requests and added subject-matter of the second auxiliary request. In particular document A3 appears to disclose the subject-matter of claims 1 and 6 of the main and the first auxiliary request.

- 3 The parties are reminded of the provisions of Rule 71a EPC. Following from this Rule any submissions made prior to the oral proceedings should reach the European Patent Office at latest **one month** before the date of the oral proceedings. At the discretion of the Opposition Division any late-filed submissions may be disregarded.

FAX TRANSMISSION Page 1 of 18

European Patent Office
Erhardtstrasse 27
D-80298 München
Germany.

Our Ref: PM33788/PH/BC
Your Ref:

10 August 2007

Dear Sirs,

European Patent EP-B-1003442
(Application No. 0235777.4)
In the name of United Video Programmes Inc.

These submissions are made in advance of the Oral Proceedings set for 22 November 2007. As the Opposition Division will be aware, the two opponents and the single intervener have all withdrawn their opposition to the grant of this patent. These submissions are intended to enable these proceedings to be continued in writing by presenting amendments and brief arguments in response to the comments accompanying the Summons pursuant to Article 71(1) EPC dated 9 February 2007.

We are submitting a new Main Request which is the previous Auxiliary Request #1. We are also submitting a new Auxiliary Request #1 in which claims 1 and 2 of the new Main Request have been amended to recite the further feature of the means by which the 'supplemental overlay' is invoked.

Although Oral Proceedings are still requested, were the Board to find either of these two requests allowable, such proceedings would not then be necessary.

Main Request

The Opposition Division's provisional conclusions on the novelty/inventive step of these claims has been very carefully considered. The focus of these matters is document A3, according to the

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Opposition Division. We note that you also provisionally follow the opponents' arguments on novelty, so it is as well for us also to deal with A6 for the sake of good order in these submissions.

Novelty

Claim 1 of the Main Request recites that the 'overlay' is a 'supplemental overlay' and that this overlay contains 'supplemental information'. You will recall that the basis of the invention is to provide a method/apparatus for effectively splitting the provision of program guide information into manageable parts (see patentee's letter of 18 July 2006 under 'Main Request'). Thus, claim 1 recites the one overlay of program title and channel which appears on the screen 'simultaneously with the selected program upon selection of a channel change'. The other, supplemental, overlay is user-selected in addition to that one overlay.

The use of the phrase 'supplemental overlay' is intended to make clear that the overlay in question is not merely a repeat of the one overlay (i.e. a further showing of the same thing), but is separate and distinct from it.

We believe it is clear that the prior art A3 and A6 does not provide the technical contribution that is actually disclosed in the patent in suit. By specifically reciting the supplemental nature of the subsequent overlay we have emphasised the difference between the invention and this prior art.

There was a divergence amongst the opponents as to what is relevant to the novelty of the claimed invention. Opponent I says A3. Opponent II says A6. Opponent III is merely repetitious of the other opponents' submissions. This reflects the strain of holding the arguments against the patentability of the patent in suit together.

(...)

Auxiliary Request #1

By way of amendment to include further technical features, claims 1 and 2 are amended to recite that the supplemental overlay contains a program note that is selected by the step of actuating a key on the remote control, and that the information in the program note is that which is pertinent to the current broadcast on the selected channel. The recited 'select key' is, of course, any key which performs the function of invoking the recited supplemental overlay.

Claims 1 and 2 of Auxiliary Request #1 provide further novel technical features thereby establishing further distance between the present invention and the cited prior art.

As mentioned above, our request for Oral Proceedings is maintained by way of precaution, but we trust the Opposition Division will recognise the convincing case that is made by way of these submissions and agree that these proceedings are most efficiently continued in writing.

Yours faithfully,

A handwritten signature in black ink, appearing to be 'P. H.', written in a cursive style.

P. H
Authorised Representative

10.8.2007.

EP-B-1003442

MAIN REQUEST**Claims**

5

1. A method for accessing information about television programs, the method comprising the steps of storing in an electronic memory of a schedule controller operably connected with a monitor screen, a plurality of television program listings, each listing including title, telecast time and channel, displaying on the monitor screen an overlay providing, from the stored listings, a title of and channel information on a selected program simultaneously with the selected program upon selection of a channel change, and displaying, responsive to a user input, a ~~furthersupplemental~~ furthersupplemental overlay containing ~~furthersupplemental~~ furthersupplemental information on the selected program from the stored listings.

10
15

5 2. Apparatus for accessing information about television programs, the
apparatus comprising the means for storing in an electronic memory of a
schedule controller operably connected with a monitor screen, a plurality of
television program listings, each listing including title, telecast time and
channel, means for displaying on the monitor screen an overlay providing,
10 from the stored listings, a title of and channel information on a selected
program simultaneously with the selected program upon selection of a channel
change, and means for displaying, responsive to a user input, a
| ~~further~~supplemental overlay containing ~~further~~supplemental information on the
selected program from the selected listings.

10.8.2007.

EP-B-1003442

FIRST AUXILIARY REQUEST**Claims**

5

1. A method for accessing information about television programs, the method comprising the steps of storing in an electronic memory of a schedule controller operably connected with a monitor screen, a plurality of television program listings, each listing including title, telecast time and channel, displaying on the monitor screen an overlay providing, from the stored listings, a title of and channel information on a selected program simultaneously with the selected program upon selection of a channel change, and displaying, responsive to a user input, a ~~further~~supplemental overlay containing ~~further~~supplemental information on the selected program from the stored listings such supplemental information in said supplemental overlay containing a program note selected by way of a select key on a user-actuated remote control device, the program note containing information pertinent to a program currently being broadcast on the selected channel.

10

15

2. Apparatus for accessing information about television programs, the
10 apparatus comprising the means for storing in an electronic memory of a
schedule controller operably connected with a monitor screen, a plurality of
television program listings, each listing including title, telecast time and
channel, means for displaying on the monitor screen an overlay providing,
from the stored listings, a title of and channel information on a selected
15 program simultaneously with the selected program upon selection of a channel
change, and means for displaying, responsive to a user input, a
further supplemental overlay containing further supplemental information on the
selected program from the selected listings such supplemental information in
said supplemental overlay containing a program note selectable by way of a
20 select key on a user-actuated remote control device, the program note
containing information pertinent to a program being broadcast on the selected
channel.



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Publication number: **0 447 968 A2**

⑫

EUROPEAN PATENT APPLICATION

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⑸ Int. Cl.⁵: **H04N 7/087**

⑵ Date of filing: **14.03.91**

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⑴ Applicant: **RCA LICENSING CORPORATION**
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⑹ Designated Contracting States:
AT DE ES FR GB IT NL SE

⑶ Representative: **Einsel, Robert, Dipl.-Ing.**
Deutsche Thomson-Brandt GmbH Patent-
und Lizenzabteilung Göttinger Chaussee 76
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⑸ **Apparatus for providing TV program information.**

⑸ A known system derives information from the VPS- and Teletext signals and displays the title of the current program and the network name on screen for a few seconds, each time a new channel is selected. The VPS- and Teletext signals contain more program-related information than mentioned above. The present invention concerns deriving (400, 410, 420, 430, 440, 450, 460, 470) the end-time and/or the remaining duration of the current program as well as the starting-time of the next program for display (480) on-screen.

EP 0 447 968 A2

FIELD OF THE INVENTION

The present invention relates to the field of television receivers incorporating teletext decoders.

BACKGROUND OF THE INVENTION

The VPS- and Teletext signals contain useful program-related information which can be displayed to the TV viewer. European Patent Application EP 89106255.6 describes the required hardware and software extensions to realize suitable signal processing to find this information and display the title of the current program and the name of the broadcasting station. A TV set, equipped with a teletext decoder, need only be supplemented with a VPS-decoder and some additional software in the teletext controller to provide these useful features.

In the meantime the realization of this information display became increasingly attractive as new teletext-dataslicers with built-in VPS-decoders became available. Thus, such a system can be implemented into TV receivers without any additional hardware expenses, when using this new dataslicer (such as an SDA 5645) for the teletext-decoder.

In addition to the title of the current program and the name of the broadcasting station, some supplementary program-related information is contained in the VPS- and Teletext signals. Currently available decoders cannot retrieve this supplementary program-related information.

SUMMARY OF THE INVENTION

The present invention describes how to obtain, from the supplementary information, the end-time and/or the remaining duration of the current program as well as the starting-time of the next program, and how to display this information on-screen. It is herein recognized that the system described in EP 89106255.6 may be modified in software to realize these useful supplementary features.

BRIEF DESCRIPTION OF THE DRAWING

FIGURES 1a, 1b, and 1c, show examples of teletext program schedule pages as known from the prior art.

FIGURE 2 is a block diagram of system hardware suitable for practicing the invention.

FIGURES 3a, 3b, and 3c show examples of distributions over several pages of a television program schedule for a single day.

FIGURE 4 is a flowchart showing the relevant portion of the control program for the microcomputer of FIGURE 2.

FIGURES 5a, and 5b show examples of program-related information displays.

DETAILED DESCRIPTION OF THE EMBODIMENT

The required program related information is obtained from the VPT-pages in teletext. (VPT Videorecorder Programming by Teletext). VPT-pages are TV-program schedule pages where all the data required for VCR programming are inserted and explicitly characterized by specific data formats. These data correspond to the VPS-data, transmitted on line 16.

It is therefore possible for a microcomputer to find the VPT-page containing the information related to the current program, by correlating the actual VPS-code with the incoming TXT-pages. The required procedures and the solution of the problem caused by the time constraints of the data transfer bus (IIC-bus) were presented in the above-mentioned European patent application EP 89106255.6.

The display of on-air time information is based on these VPT-pages. The well-defined assignments of the VPT-data allow one to derive the required information for display from these pages as soon as they are found.

The display of program-time information is based on the following definitions. The given explanations of the used terms are important for better understanding of the descriptions.

On the VPT program pages each announced program has explicitly assigned to it the following data with their own characteristic format:

On-air time:

The on-air time is represented in single-time format (xx.xx) or in double-time format (xx.xx.yy.yy). The later format defines both starting and end time.

Title of the program:

The title uses one or more teletext rows.

VPS-time:

The VPS-time format differs from the single-time format, in that it has no dot character between the hours and minutes (xxxx).

The most important difference between the VPS-time and the starting time is that the former is not changed in case of changes in the program schedule, while the latter matches the scheduled real on-air time.

Assignment of starting-time and end-time:

On-air time in single time format:

The end-time of a program is given by the starting-time of the following program on the VPT page. Otherwise, when there is no following program on that page, an additional time information, in single time format without a title must be present for this purpose, as shown in FIGURE 1a.

A starting-time with a VPS time 2500 is used to characterize a transmission pause. It also represents therefore the end-time of the previous program.

On-air time in double time format:

The end-time is explicitly contained in the double-time format, as shown in FIGURE 1b.

Assignment of on-air time and title:

The arrangement of on-air time (starting-time) and the corresponding title is fixed; first the on-air time and then the corresponding title. The end of a title is marked by the following starting time.

Assignment of on-air time and VPS-time:

The arrangement of the VPS -times must correspond to the sequence of the announced programs (represented by their starting-times) on the VPT-page. (This also allows the block representation as shown in FIGURE 1c).

The system configuration shown in Fig. 2 is the same as in EP 89106255.6, with the exception of the video processor (data-slicer) SAA 5231. This is replaced by the video processor SDA 5645, which incorporates a VPS decoder, thus eliminating the separate VPS decoder previously used.

When the TV set is turned on or a new channel is selected, the microcomputer acts as described in EP 89106255.6. It first has to read the VPS code of the current program from the VPS-decoder. Then the teletext page that includes the actual TV program schedule (VPT page) has to be found in the incoming Teletext datastream. For this reason the same procedure has to be used as described in EP 89106255.6. When the corresponding page is found, the microcomputer also determines which row contains the starting-time and the first line of the title of the

current program. Next the end-time has to be found: This is trivial if the double-time format is used. Otherwise the microcomputer has to search for the starting-time of the following program, the starting-time of a transmission pause, or the next time format without a title should there be no following program on that page. A similar algorithm as used in EP 89106255.6 is employed to determine the number of lines of the title of the current program.

To display the remaining duration of the current program in addition to (or instead of) the end-time, the rolling time of the header is read and subtracted from the end-time.

Finally, the starting-time of the next program has to be found:

If the end-time of the current program was not obtained from the starting-time of the following program, the microcomputer has to search for this starting-time. Some complications occur if the following program is not listed on the same page. This case has to be considered as the TV program

schedule of one day is usually distributed over several pages.

Three different ways of distributing the TV program schedule on different pages exist:

- 5 Case 1: on rolling pages with the same page number as shown in FIGURE 3a
- Case 2: on different pages with subsequent page numbers as shown in FIGURE 3b
- 10 Case 3: on different pages with subsequent page numbers where each page can be a rolling page as shown in FIGURE 3c.

The present invention will be described with reference to the flowchart of FIGURE 4. It is not trivial to find the starting-time of the following program on other pages, as the VPS -code of this program is not known. Therefore, it is impossible to find that page by using the procedure used to find the page with the current program. But the microcomputer can read the page number of the page with the current program. The following program has to be either on a rolling page with the same page number n or on a page with a page number $n+1$, which can also have rolling pages. The microcomputer can therefore make a page request with page number n and another with page number $n+1$ (step 400).

The microcomputer then has to wait for the next appearance of page n (step 410). If, in step 420, a determination is made that the next appearance of page n has the same content as its predecessor, the microcomputer concludes that there are no rolling pages under that page number and therefore the starting time of the following program is on a page with page number $n+1$ (checking the contents for correspondence is simply done by applying the search algorithm used to find the title of the current program to the next page n . If the search algorithm again finds the actual current program, it must be the same page and there are no rolling pages on that page number). In that case, the routine advances to step 440.

If there are rolling pages, the microcomputer simply selects the first starting-time with a valid VPS-time from the next page n . At step 430 a check is made to see if this is an earlier time than the starting-time of the current program, the following program has to be searched on page $n+1$. If so, the routine advances to step 440. Otherwise, the selected time is the starting-time of the next program, and the routine advances to step 480.

If the starting-time has to be searched on page $n+1$, the microcomputer also has to select the first starting-time with a valid VPS time. Should there be a difference between the end-time of the current program and the selected time (step 450), the microcomputer checks if there are rolling pages

(step 460) and then selects the earliest time to display as starting-time of the next program (step 470).

FIGURES 5a and 5b show examples of program-related information displays displayed on a screen 510, 510' of a television receiver 500, 500'. Current time of day is displayed (530, 530') as is station designation (520, 520')

The display (540, 540'), indicating the remaining duration, has to be updated during the time the microcomputer waits for the next appearance of pages, and if desired, the title of the following program can also be displayed.

When the microcomputer has found and displayed the starting time of the following program, it has to check if any changes occur on the program schedule pages. In this case the displayed information has to be updated. Normally this information is just displayed for a few seconds but updating is done in the background. Thus the information can be displayed on request immediately.

Thus has been described a program time display which is a useful feature for informing the TV viewer about the end of the current program. It is particularly helpful when changes or delays in the program schedule occur.

Its realization requires only modification of the software needed for displaying station name and program title as known from EP 89106255.6. The procedure for finding the relevant program pages in the incoming Teletext data stream is identical.

Claims

1. In a television signal processing system wherein the television signals include image representative information and a plurality of accompanying segments of supplementary information including program identification information, and a listing of program title information, program starting times, and program source information, the supplementary information being encoded during vertical blanking intervals of the broadcast signal with at least the program identification information being disposed within vertical blanking intervals of related image-representative information and further being included within said listing, signal processing apparatus comprising:

tuning means for selectively receiving television signals transmitted by individual program sources, the received signals including image-representative information and accompanying segments of supplementary information;

first signal decoder means for decoding said listing and said included program identification information;

memory means for storing and retrieving at least said program title information and included starting time information for the current program and starting time information for the next program decoded by said first signal decoder means;

a first controller means coupled to said first decoder means for selectively transferring said segments of supplementary information among said memory means, said first decoder means and said first controller means;

second signal decoder means for decoding said program identification information disposed within blanking intervals of related image-representative information;

said first controller means, upon initial reception of signals from an individual program source by said tuning means, sequentially causing said second signal decoder means to decode said program identification information accompanying related image-representative information, thereafter causing said first signal decoder means to identify the same program identification information within said listing and to store at least program title information of said listing in said memory means, said first controller means thereafter transferring said program title information from said memory means for display thereof along with related image-representative information; and characterized in that

said program identification information may appear on a page of data n of m pages of data, and may continue onto one of a second page also designated n (p401 am, P401 pm, P401 night) and a further page designated n+1 (P301, P302, P303), said second signal decoder means searches said pages (400, 410, 420, 430, 440, 450, 460, 470) and decodes said program information to retrieve one of

- a) the starting time and ending time of the current program; and
- b) the starting time of the current program and the starting time of a subsequent program;

said first signal decoder thereafter deriving and displaying (480) one of said ending time of the current program and the time remaining in the current program.

2. Signal processing apparatus according to Claim 1 characterized in that said second page also designated n (p401 am, P401 pm, P401 night) is a rolling page.

3. Signal processing apparatus according to Claims 1 or 2 characterized in that said listing

comprises teletext information and said first signal decoder means comprises a teletext decoder system.

4. Signal processing apparatus according to Claim 3 characterized in that said second signal decoder means comprises a VPV or VPT decoder system. 5

5. Signal processing apparatus according to Claim 3 characterized in that said first controller means provides first control signals to said first signal decoder means, upon initial reception of a running program, to cause said first signal decoder means to search teletext transmissions for program identification information matching corresponding information provided by said second signal decoder means. 10 15

6. Signal processing apparatus according to Claim 5 characterized in that said second signal decoder means comprises a VPV or VPT decoder system. 20

7. Signal processing apparatus according to Claim 5 characterized in that said first controller means transfers (480) program source information, program starting time information and one of program ending time and time remaining in said current program (540) , from said memory means for display along with said program title information. 25 30

8. A method of processing television signals wherein the television signals include image-representative information and a plurality of segments of accompanying supplementary information including program identification information having a time component, and a listing including program title information and program source information, the supplementary information being encoded during vertical blanking intervals of the television signal with at least the program identification information being disposed within vertical blanking intervals of related image-representative information and further being included within the listing, the method comprising: 35 40 45

tuning a television signal processor for selectively receiving signals transmitted by an individual program source, the received signals including said image-representative information and accompanying segments of supplementary information; 50

decoding said listing and said included program identification information; 55

storing said decoded listing and included program identification information for subse-

quent retrieval;

decoding said program identification information disposed within blanking intervals of related image-representative information;

comparing said last-named program identification information with said included program identification information to identify matching information; and

displaying at least program title information accompanying said included identification information upon identifying matching program identification information; and characterized by the additional steps of:

searching for information on rolling pages and subsequent pages to derive ending time information for the current program by,

reading again (400, 410) a page of data bearing the same designation as the previously-read page of data of said listing;

determining (420) if said read-again page of data is the same as said previously-read page or a rolling page;

reading (440) a subsequent page of data if said read-again page of data is the same as said previously-read page of data;

determining an ending time from one of an explicit ending time and the starting time of a subsequent program (450, 460, 470). 5

P402	402	CH-TEXT	15.02.90	14:25:03
SRG	TV-DRS	Donnerstag	15. Februar	1990
24101 150290 CF				
08.30	0830	Schulfernsehen: Geographie		
09.20	0920	Reise durch unseren Körper		
09.50	2500	Ende / Pause		
12.55	1255	Nachrichten		
13.00	1300	Ein Heim für Tiere		
13.55	1355	Zeitspiegel: Herrscher des goldenen Dreiecks		
14.45	1445	MTW		
15.40				

a)
SINGLE TIME FORMAT

P302	302	ARD / ZDF	15.2.90	14.50.17
ZDF	Nachmittagsprogramm		15. Februar	1990
10101 150290 3A				
13.45 - 14.15	1345	Reisebilder aus der DDR		
14.15 - 15.15	1415	Die grossen Pianisten Vladimir Horowitz		
16.00 - 16.05	1600	Heute		
17.00 - 17.45	1700	Rene Kollo Ich lad gern mir Gäste ein		
17.45 - 18.00	1745	Tele-illustrierte anschl. Länderspiegel		
18.00 - 18.05	1800	Heute		

b)
DOUBLE TIME FORMAT

P501	501	CH-TXT	15.02.90	14:55:35
SRG	TV-RSR	Donnerstag	15. Februar	1990
24107 150290 81 1000 1015 1400				
1600 1700 1800 1930				
10.00		Frühnachrichten		
10.15 - 12.15		Frühfilm		
14.00		Mittagsnachrichten		
14.15		Mittagsfilm		
16.00		Programmvorschau		
17.00 - 17.15		Abendnachrichten		
18.00 - 18.45		Serie		
19.30 - 20.00		Tagesschau		

concealed VPT data

c)
BOTH TIME FORMATS WITH
BLOCK REPRESENTATION
OF CONCEALED VPT-DATA

FIG.1

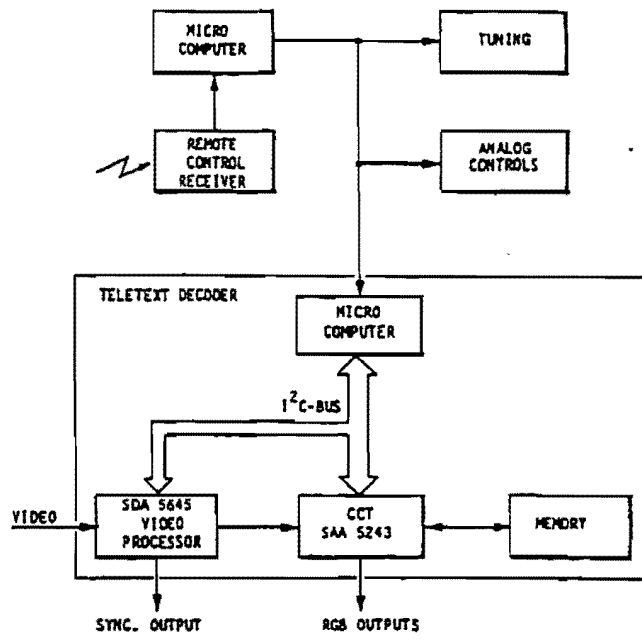
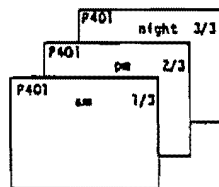
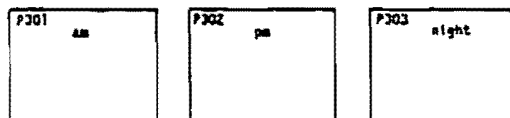


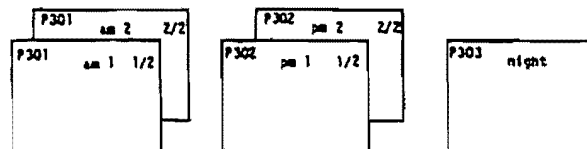
FIG.2



a) ROLLING PAGES



b) DIFFERENT PAGES WITH SUBSEQUENT PAGENUMBERS



c) DIFFERENT PAGES WITH SUBSEQUENT PAGENUMBERS, WHERE EACH PAGE CAN BE A ROLLING PAGE

FIG.3

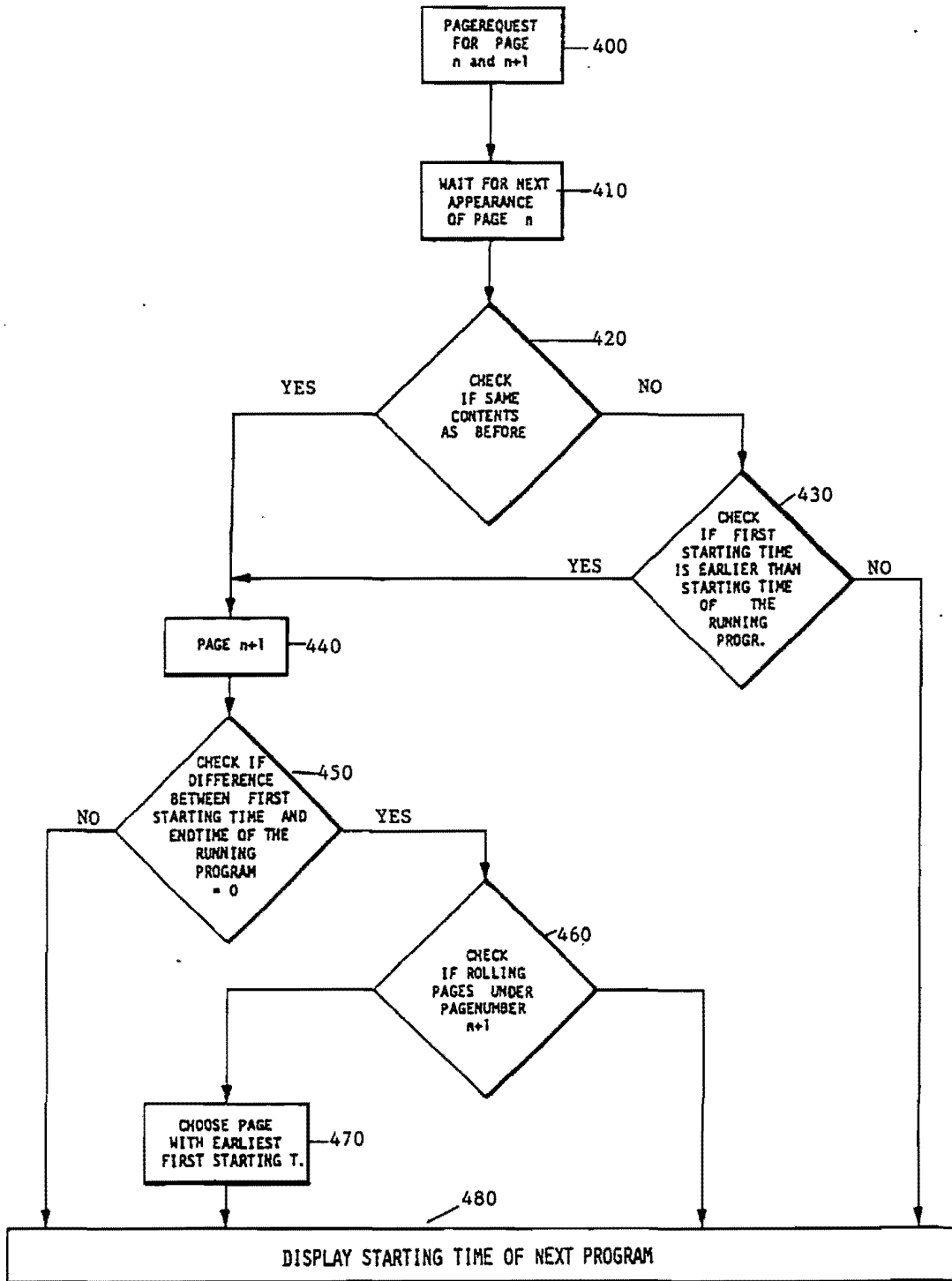


FIG. 4

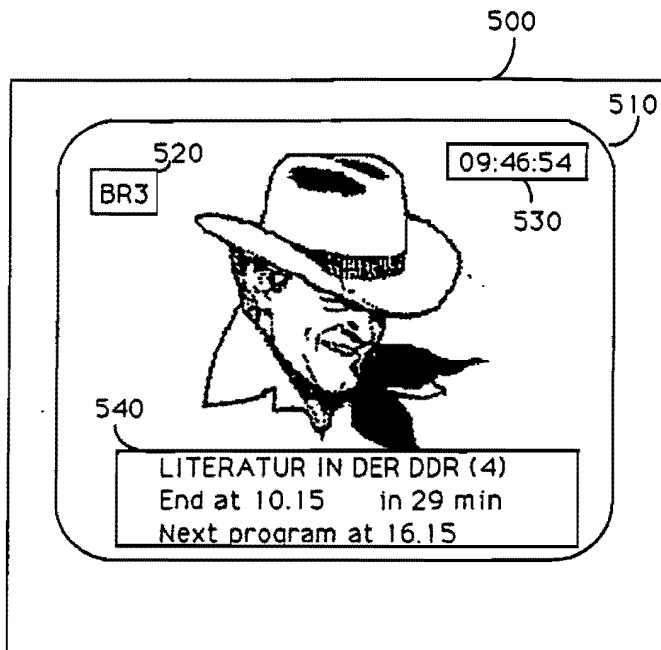


Fig. 5a

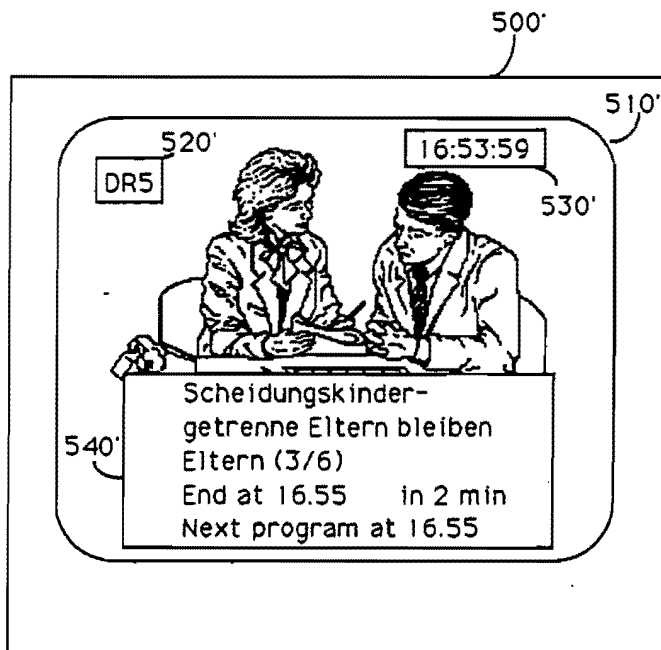
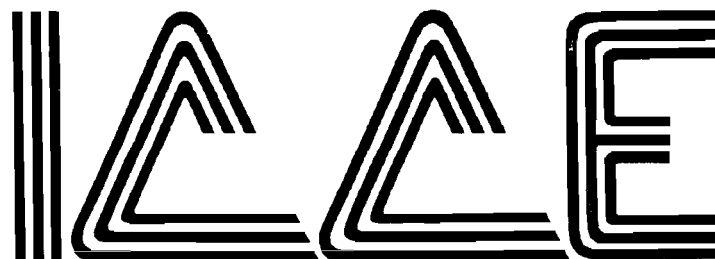


Fig. 5b

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FAM-20.3

PERSONAL HOME TV PROGRAMMING GUIDE

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A description is given of

Abstract

The SuperGuide system is a low-cost, home-oriented, interactive, electronic, on-screen programming guide. When integrated with the TV tuner, remote control, and other devices, an exciting new component and capability emerges.

Introduction

The increase in the numbers and types of television programming available is a small part of today's information explosion. Television has grown from three networks and PBS to over 100 services. In addition to video overchoice, "tier-ing" and marketing have muddied the waters by allowing customers to subscribe to bits, pieces, and packages of programming. When deciding what to view, customary paper programming guides must show all possibilities. The viewer must wade through all of this information, selecting from descriptions of shows in packages to which he has subscribed. Then, by memory or little pieces of paper which are often lost in the dimly lit confines of the video viewing emporium, the viewer must translate the service (e.g., CBS network programming) to a channel and set the TV to that channel. For home satellite viewing, the act of tuning a service is complicated enough to keep many subscribers from fully realizing the potential of their system. The new SuperGuide system is an interactive programming guide which can receive a broadcast database of programming for only those services to which a viewer subscribes and present only that information on the TV screen. The presentation is controlled by the user's hand-held remote control unit. When the viewer selects the show, the Guide, connected to the TV, tunes in the show. In the case of direct to-home satellite information, the satellite and transponder (channel) for a service are used to make all tuning automatic. Additionally, shows are bundled together by *type* so the viewer may choose to have the Guide customized on-the-fly for only one *type* (e.g., movies or sports) of programming. Perhaps the best way to describe the system is to state that people do not watch *Channel 5* or *CBS* but, in fact, watch *I Love Lucy* or *Wall Street Week*. The goal of the Guide is to let the

customer select the show. Matters concerning subscriptions, tuning, and networks are secondary to the content (or lack of it) of what is watched.

Background

The original SuperGuide system was developed in 1985. The hardware consisted of a simple discrete chip circuit board with a black and white bitmap display generator, 256 Kbytes of dynamic RAM, a radio frequency modem, some peripherals, and a power supply. The data for the Guide was transmitted on a satellite audio subcarrier using a narrow audio channel format. The signal was a Frequency Shift Key (FSK) modulated signal with a total bandwidth of 130 KHz. The signal was a simple asynchronous serial format, the same which has been used for years to communicate with computer terminals. The low cost of microprocessor serial port chips made this a good choice.

The transmission rate was a surprisingly low 4800 bits per second. If the quality of a home satellite system was as good as a commercial system, the system could have run four times faster. The quality of the systems, however, dictated the lower speed so the customers could load the listings into their unit with few or no errors. Even at this low rate, about two percent of the systems could not receive the information well enough to use it and about 20 percent of the systems load the information with some errors in the data.

All the uplink site equipment was custom-built due to our inability to locate equipment which could do FSK modulation at this low rate. This allowed us to design an inexpensive receiver for the data and adjust the manner in which the data was formatted and transmitted to match and work with the receiver.

The bitmap display was chosen because it was the only way to print characters on the screen using proportional spacing, which not only reduces the "computery" look of the screen but also increases the printable number of characters per line. The graphic ability of the bitmap display also allows for the drawing of various lines and custom symbols (e.g., stereo headphones) borrowed from printed guides. This reinforces the programming guide concept in the TV viewer's mind. The bitmap size was 256 across by 190 down. This was enough for a 16-line display with a 5 x 7 font. It was later discovered that this font was too small for bleary-

eyed end-of-the-day use. A test of a 7 x 9 font was so well accepted that it is the only font used in the new system.

The 256 Kbytes of memory has both the bitmap display (8 Kbytes), variables and stack space for the program (8 Kbytes), and the storage for the listings and service information (240 Kbytes). The original Guide loaded the listing for all the services available, much as the paper guides print the listings for all available services. The listings are stored in the local box to allow for immediate response to any actions taken by the viewer. This local storage makes the system very different from a teletext system and allows for many original features. A mechanism for selecting and showing only a viewer's favorite services allows the Guide to show only the programming to which the viewer subscribes. The same mechanism allows the listings to be searched for various subsets of programming, such as sports or movies, and presents one of those subsets on the TV screen. A small 100-word dictionary helped compress the listings about ten percent. The 256 Kbytes of memory could hold about four days of programming with 120 services.

The New SuperGuide System

Design of the new system began in 1988. Keeping in mind the perils of any "second system," we set out to correct the "undocumented features" in the first system and incorporate many of the little things we learned about people interactions with the original SuperGuide system. Many of the lessons learned apply to any interactive consumer device, such as VCR on-screen event programming and future IEEE Home Bus controllers. The hardware changes focus on the quality of the display, the data modem, and a secure encryption system. A gate array and a standard cell chip allow an increase in performance and a decrease in price.

The biggest change in the display is the addition of color and a 512 x 200 pixel display. The fonts are 7 x 9, stored on a 15 x 12 matrix. To keep the luminance bandwidth below 3 MHz, there is the restriction that three pixels in a row must be either *on* or *off*. This allows for extremely "smooth" characters due to the partial overlap of pixels. Color was added to attract customers. The new display format holds 14 lines of text on a screen, with 30 to 40 characters per line when in proportional space mode. Multiple fonts are supported. The data modem is a synchronous bitstream, with an on-board digital clock extractor. A 40-bit Error Correction Code was added so that burst errors of up to 17 bits could be corrected. This corrects for not only regular FM satellite transmission noise but also for the dreaded local "vacuum cleaner" noise. When a person in the house turns on a heavy appliance, sometimes even a light switch, a spike of noise couples through the receiver system and can cause an error.

The great DRAM crunch of '88 made us determined to significantly increase how much information we could store in a given amount of memory. We decided to switch to an active download system. The original system loaded all listings like an electronic mailbox with a paper guide placed inside of it. The new SuperGuide system examines each show and de-

termines if it should be kept. It dynamically builds the single database of listings. A 4000-word dictionary compresses the text in the listings by 50 percent. The combined result of these two changes is one half the memory can store twice as many days of programming for a typical viewer. The DRAM requirements reduced eight 256K x 1 chips to a single 256K x 4.

The technical challenges of the system are immense. The hardware, which costs less than \$40, has about as much power as the first Macintosh system. The broadcast database, the equivalent of a weekly programming guide, must be electronically "laid up," formatted, and transmitted at least twice a day. The subscription price has to be less than a paper guide. The system must be secure or subscription revenue will be lost. Five years from now the system should cost about \$10 to add to a TV or cable converter box.

Finally, the biggest challenge of all was to make SuperGuide *easy* enough to use so people *could* use it, yet *functional* enough so people *will* use it. Hierarchical menus are used throughout the Guide. Operation of all the menus, as well as the Guide itself, requires six buttons on the handheld: cursor keys *up* and *down*, *page forward* and *page back* keys, a *select* key and a *return* key. The biggest problem we've seen in most human interfaces is inconsistency. By forcing a consistency of use of these buttons, the education time for a viewer is about one minute. People are educated by showing them how to use the programming Guide first. Motivation: owners want to watch TV. Other functions (e.g., setup and article viewing) operate in the exact same manner, so by the time the owners have learned to use the Guide, they have the knowledge to use all the other features of the unit. It is similar to the problem of someone who only sets up his VCR for recording once a week. The procedure is done so infrequently that it is a challenge each time. If the procedure were done daily, the viewer would remember how to do it. Along those same lines, SuperGuide takes a show you want to record and passes the information to a standard event timer in a VCR or satellite receiver. Due to a lack of devices which can accept this information (i.e., Start time, Stop time, and Channel) from an external source, this is a feature waiting for the right hardware. When the VCRs which have bus interfacing exist, SuperGuide will be ready to make recording on your VCR truly as simple as finding the show you want to record and pressing a single button.

Conclusion

The new SuperGuide system will fit in well with tomorrow's world and will help people manage some of the information they deal with each day. Who knows, it might even save a few trees!

Electronic program guide

From Wikipedia, the free encyclopedia

Electronic program guides (EPGs) and **interactive program guides** provide users of television, radio, and other media applications with continuously updated menus displaying broadcast programming or scheduling information for current and upcoming programming. Some guides also feature backward scrolling to promote their catch up content.

Non-interactive electronic program guides (sometimes known as "navigation software") are typically available for television and radio, and consist of a digitally displayed, non-interactive menu of program scheduling information shown by a cable or satellite television provider to its viewers on a dedicated channel. EPGs are broadcast by specialized video character generation (CG) equipment housed within each such provider's central television distribution facility. By tuning into an EPG channel, a menu is displayed that lists current and upcoming television programs on all available channels.



AT&T U-verse's IPTV-based EPG

A more modern form of the EPG, associated with both television and radio broadcasting, is the interactive [electronic] program guide (IPG, though often referred to as EPG).^[1] An IPG allows television viewers and radio listeners to navigate scheduling information menus interactively, selecting and discovering programming by time, title, station or genre using an input device such as a keypad, computer keyboard or television remote control. Its interactive menus are generated entirely within local receiving or display equipment using raw scheduling data sent by individual broadcast stations or centralized scheduling information providers. A typical IPG provides information covering the next seven or 14 days.

Data to populate an interactive EPG may be distributed over the Internet, either for a charge or free of charge, and implemented on equipment connected directly or through a computer to the Internet.^[2]

Television-based IPGs in conjunction with Programme Delivery Control (PDC) technology can also facilitate the selection of programs for recording with digital video recorders (DVRs), also known as personal video recorders (PVRs).

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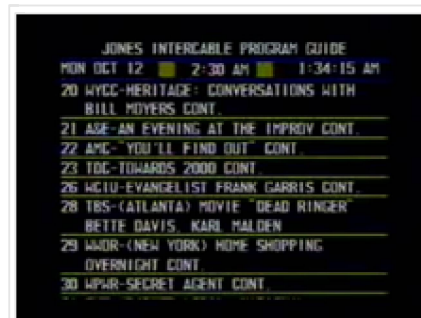
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History

Key events

North America

In 1981, United Video Satellite Group launched the first North American EPG service, a cable channel known simply as The Electronic Program Guide. It allowed cable systems in the United States and Canada to provide on-screen listings to their subscribers 24 hours a day on a dedicated cable channel. Raw listings data for the service was supplied via satellite to participating cable systems, each of which installed a computer within its headend facility to present that data to subscribers in a format customized to the system's unique channel lineup. The EPG Channel would later be renamed Prevue Guide and go on to serve as the de facto EPG service for North American cable systems throughout the remainder of the 1980s, all of the 1990s, and – as TV Guide Network or TV Guide Channel – for the first decade of the 21st century.



The EPG Channel, an electronic program guide (EPG) from 1987.



SuperGuide from 1986

In 1986 at a trade show in Nashville,^[3] STV/Onsat, a paper programming guide company, introduced SuperGuide, an interactive electronic programming guide for home satellite dish viewers. The system was the focus of a 1987 article in *STV Magazine*.^[4] The original system had a black and white display, and would locally store programming information for around one week in time. A remote control was used to interact with the unit. When the user found a show they wanted to watch, they turned off the guide and then the user tuned the satellite receiver to the correct service. The system was developed by Chris Schultheiss of STV/OnSat and engineer Peter Hallenbeck. The guide information was distributed by satellite using the home owner's dish as the receiver. The

information was stored locally so that the user could use the guide without having to be on a particular satellite or service.

In March 1990, a second generation SuperGuide system was introduced that was integrated into the Uniden 4800 receiver.^[5] This version had a color display and the hardware was based on a custom chip. Up to two weeks of programming information was available. When the user found the show of interest, they pressed a button on the remote and the receiver tuned to the show they wanted to watch. This unit also had single button recording. It controlled VCRs via an infrared output (see US 5293357

([http://worldwide.espacenet.com/textdoc?](http://worldwide.espacenet.com/textdoc?DB=EPODOC&IDX=US5293357)

[DB=EPODOC&IDX=US5293357](http://worldwide.espacenet.com/textdoc?DB=EPODOC&IDX=US5293357)). Available in North America, it was the first commercially available unit for home use that had a locally stored guide integrated with the receiver for single button viewing and taping. A presentation on the system was given at the 1990 IEEE consumer electronics symposium in Chicago.^[6]



2nd generation SuperGuide screen, 1990.

In June 1988, US 4751578 (<http://worldwide.espacenet.com/textdoc?DB=EPODOC&IDX=US4751578>) was awarded to Eli Reiter, Michael H. Zemerling, and Frank Shannon. This patent concerned the implementation of a searchable electronic program guide – an interactive program guide (IPG).

In 1996, Prevue Networks introduced the first IPG service in the United States, Prevue Interactive, designed for the General Instruments DCT 1000 series of set-top digital cable boxes. Prevue Interactive would later become TV Guide Interactive, and then i-Guide.

Western Europe

In Western Europe, 59 million television households were equipped with EPGs at the end of 2008, a penetration of 36 percent of all television households. But the situation varies from country to country, depending on the status of digitization and the role of pay television and IPTV in each market. With Sky as an early mover and the BBC iPlayer and Virgin Media as ambitious followers, the UK is to date the most developed and innovative EPG market, with 96 percent of viewers frequently using the EPG in 2010.^[7] Scandinavia also is a highly innovative EPG market. Even in Italy, the EPG penetration is relatively high with 38 percent. In France, IPTV is the main driver of EPG developments. In contrast to many other European countries, Germany lags behind, due to a relatively slow digitization process and the minor role of pay television in that country.^[8]

Current applications

Interactive program guides (IPGs, also called EPGs) are nearly ubiquitous in most broadcast media today. EPGs can be made available through television (on set-top boxes), mobile phones, and on the web. Online TV Guides are becoming more ubiquitous, with over 7 million Google searches for "TV Guide" each month.^[9]

For television, IPG support is built into almost all modern receivers for digital cable, digital satellite, and over-the-air digital broadcasting. They are also commonly featured in digital video recorders such as TiVo and MythTV. Higher-end receivers for digital broadcast radio and digital satellite radio commonly feature built-in IPGs as well.



i-Guide, a TV Guide IPG for North American digital cable boxes from 2007

Demand for non-interactive electronic television program guides – television channels displaying listings for currently airing and upcoming programming – has been nearly eliminated by the widespread availability of interactive program guides for television. Television-based IPGs provide the same information as EPGs, but faster and often in much more detail. When television IPGs are supported by PVRs they enable viewers to plan viewing and recording by selecting broadcasts directly from the EPG, rather than programming timers.

The aspect of an IPG most noticed by users is its graphical user interface (GUI), typically a grid or table listing channel names and program titles and times: web and television-based IPG interfaces allow the user to highlight any given listing and call up additional information about it supplied by the EPG provider. Programs on offer from subchannels may also be listed.

Typical IPGs also allow users the option of searching by genre, as well as immediate one-touch access to, or recording of, a selected program. Reminders and parental control functions are also often included. The IPGs within some DirecTV IRDs can control a VCRs using an attached infrared emitter that emulates its remote control.

The latest development in IPGs is personalization through a recommendation engine or semantics. Semantics are used to permit interest-based suggestions to one or several viewers on what to watch or record based on past patterns. One such IPG, iFanzzy, allows users to customize its appearance.

Standards for delivery of scheduling information to television-based IPGs vary from application to application, and by country. Older television IPGs like Guide Plus+ relied on analog technology (such as the vertical blanking interval of analog television video signals) to distribute listings data to IPG-enabled consumer receiving equipment. In Europe, the European Telecommunications Standards Institute (ETSI) published standard ETS 300 707 to standardize the delivery of IPG data over digital television broadcast signals. Listings data for IPGs integrated into digital terrestrial television and radio receivers of the present day is typically sent within each station's MPEG transport stream, or alongside it in a special data stream. The ATSC standard for digital terrestrial television, for instance, uses tables sent in each station's PSIP. These tables are meant to contain program start times and titles along with additional program descriptive metadata. Current time signals are also included for on-screen display purposes, and they are also used to set timers on recording devices.

Devices embedded within modern digital cable and satellite television receivers, on the other hand, customarily rely upon third-party listings metadata aggregators to provide them with their on-screen listings data. Such companies include Tribune TV Data, Gemstar-TV Guide (now Rovi), FYI Television, Inc. in the United States and Europe, TV Media in the United States and Canada, Broadcasting Dataservices in Europe and Dayscript in Latin America, and Whats On India Media Pvt. Ltd in India, Sri Lanka, Indonesia, the Middle East and Asia.

A growing trend is for manufacturers such as Elgato and Topfield and software developers such as Microsoft in their Windows Media Center to use an Internet connection to acquire data for their built-in IPGs. This enables greater interactivity with the IPG such as media downloads, series recording and programming of the recordings for the IPG remotely; for example, IceTV in Australia enables TiVo-like services to competing DVR/PVR manufacturers and software companies.

In developing IPG software, manufacturers must include functions to address the growing volumes of increasingly complex data associated with programming. This data includes program descriptions, schedules, ratings, user configuration information such as favorite channel lists, and multimedia content. To meet this need, some set-top box software designs incorporate a "database layer" that utilizes either proprietary functions or a commercial off-the-shelf embedded database system for sorting, storing and retrieving programming data.^{[10][11]}

Most technical details are invisible to users, who simply have a program guide on their equipment which "just works".

See also

- Digital video recorders
- NexTVView
- Teletext
- TV Genius
- Video on demand

References

- [^] A typical PVR website which makes no references to "IPG", using instead "EPG" throughout for the interactive electronic programme guide, as can be confirmed with a site search (<http://www.topyy.org.uk/>)
- [^] An example of a computer program to export Internet-derived data from an EPG (DigiGuide) to set timers on a PVR (Topfield) (<http://website.lineone.net/~rwein/topyy/topyy.htm>)
- [^] 1986 STTI exhibitor list, p. 33
- [^] *STV Magazine*. May 1987 p. 14
- [^] *Onsat Magazine*. June 10–16, 1990
- [^] 1990 Transactions on IEEE consumer electronics society meeting notes/synopses, p. 310

7. ^ "Looking for TV Genius? | Red Bee Media" (<http://www.tvgenius.net/blog/2010/10/25/epgs-viewers-find/>). Tvgenius.net. Retrieved 2012-10-23.
8. ^ EPG Forecast, Western Europe (2008–2014) (http://www.international-television.org/tv_market_data/epg-penetration-forecast-europe_2008-2014.html)
9. ^ "Looking for TV Genius? | Red Bee Media" (<http://www.tvgenius.net/resources/white-papers/online-tv-guide-optimisation/>). Tvgenius.net. Retrieved 2012-10-23.
10. ^ Gorine, Andrei. "Programming Guide Manages Networked Digital TV" (http://www.eetimes.com/in_focus/communications/OEG20021127S0035), *EE Times*, December, 2002. Retrieved on August 15, 2008.
11. ^ Graves, Steve. "Hybrid Data Management Gets Traction In Set-Top Boxes" (http://www.embedded.com/columns/technicalinsights/209601833?_requestid=19509), *Embedded.com*, July, 2008. Retrieved on August 15, 2008.

External links

- ETSI EN 300 707 V1.2.1 (2003–04) (http://www.etsi.org/deliver/etsi_en/300700_300799/300707/01.02.01_60/en_300707v010201p.pdf) "Electronic Programme Guide (EPG); Protocol for a TV Guide using electronic data transmission"
- ETSI TR 101 288 V1.3.1 (2002–12) (http://www.etsi.org/deliver/etsi_tr/101200_101299/101288/01.03.01_60/tr_101288v010301p.pdf) "Television systems; Code of practice for an Electronic Programme Guide (EPG)"

Retrieved from "http://en.wikipedia.org/w/index.php?title=Electronic_program_guide&oldid=598285748"
Categories: Television terminology | Digital television

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Docket No 2014/01

UNIFIED PATENT COURT

CENTRAL DIVISION

(Paris Seat)

Telecast BV

(a company with its registered office located in the Netherlands)

v

(1) Blue Cable France SA

(a company with its registered office located in France)

(2) Blue Cable Germany GmbH

(a company with its registered office located in Germany)

(3) TV Grid Switzerland SA

(a company with its registered office located in Switzerland)

(4) TV Grid Italy SPA

(a company with its registered office located in Italy)

CLAIMANT'S STATEMENT OF CLAIM¹

FOR INFRINGEMENT OF EP No. 1003442

Claimant's Address for Service:

Mr Michael Burdon, Partner of Olswang LLP, is authorised to accept service in relation to these proceedings

¹ Rule 13 of the 16th Draft Rules of Procedure

90 High Holborn

London, WC1V 6XX

United Kingdom

Michael.Burdon@Olswang.com

First Defendant's Address for Service:

[persons authorised to accept service]

[Postal address]

[email address]

Second Defendant's Address for Service:

[persons authorised to accept service]

[Postal address]

[email address]

Third Defendant's Address for Service:

[persons authorised to accept service]

[Postal address]

[email address]

Fourth Defendant's Address for Service:

[persons authorised to accept service]

[Postal address]

[email address]

Competence of the divisions of the Court of First Instance²

1. As explained in further detail in paragraphs 14 to 23 below, this claim is against multiple defendants who have a commercial relationship and the claim covers their related acts of infringement.
2. The Third Defendant has its residence and principal place of business in Switzerland. Switzerland does not host a local division of the Court of First Instance. In these circumstances, Article 33(1)(b) (third paragraph) of the Agreement on a Unified Patent Court ("the UPC Agreement") allows this claim to be brought before the Central Division. The subject matter of this patent infringement claim is Physics and Electricity. As such, in accordance with Article 7(2) of the UPC Agreement, this case should be allocated to the Paris Seat of the Central Division.
3. As there are multiple defendants who have a commercial relationship and the action relates to the same alleged infringement, this claim against all defendants should be brought in the Paris Seat of the Central Division.

The Claimant and its Patent

4. The Claimant is and has been at all material times, a company registered under the laws of the Netherlands under company number [01854115] with its registered office at Schouwborgstraat 8, 2511 VA, the Hague, the Netherlands.
5. By an agreement dated 24 December 2013 between United Video Programmes Inc (a company whose principal place of business is 3579E Foothill Boulevard, Pasadena, California 91101, USA) and the Claimant, United Video Programmes Inc assigned "*the patents and patent applications filed under priority of US patent no 555975*" to the Claimant, including "*all rights to past damages relating to third party infringement*" of the said patents. A copy of the said agreement is attached as Annex 1.
6. As such, the Claimant is and has been at all material times the proprietor of EP no. 1003442 entitled "*Method and apparatus for accessing information about television programs*" which claims priority from US patent no. 555975 ("the Patent"). A copy of the specification of the Patent is attached as Annex 2. At the date of this Statement of Claim, the Claimant is taking steps to record the said assignment agreement at the European Patent Office. The assignment agreement has already been registered in the German and Italian national patent registers.
7. The Patent is valid and has been in force, at all material times, in the Contracting States designated by the Patent, including France, Germany, Switzerland and Italy. All the Designated Contracting States of the Patent have ratified and implemented the UPC Agreement.

² Rule 13(l) of the 16th Draft Rules of Procedure

8. The Claimant carries on a successful business exploiting the Patent throughout Europe, including France, Germany, Switzerland and Italy and grants licences of the Patent to various TV providers in these countries.
9. The Patent was the subject of opposition proceedings in the European Patent Office. The opponents included the Defendants. The opponents, including the Defendants, withdrew their opposition. The Patent was maintained in the form in which it was granted.³

Claims of the Patent

10. The invention the subject of the Patent relates generally to a system and process that allows a television viewer to access on-screen television programs. This system of providing on-screen information about TV programs is sometimes called an Electronic Program Guide (EPG)
11. Claim 1 of the Patent is as follows: "A method for accessing information about television programs, the method comprising the steps of storing in an electronic memory of a schedule controller operably connected with a monitor screen, a plurality of television program listings, each listing including title, telecast time and channel, displaying on the monitor screen an overlay providing, from the stored listings, a title of and channel information on a selected program simultaneously with the selected program upon selection of a channel change, and displaying, responsive to a user input, a further overlay containing further information on the selected program from the stored listings."
12. Claim 2 of the Patent is as follows: "Apparatus for accessing information about television programs, the apparatus comprising the means for storing in an electronic memory of a schedule controller operably connected with a monitor screen, a plurality of television program listings, each listing including title, telecast time and channel, means for displaying on the monitor screen an overlay providing, from the stored listings, a title of and channel information on a selected program simultaneously with the selected program upon selection of a channel change, and means for displaying, responsive to a user input, a further overlay containing further information on the selected program from the stored listings."
13. The claims, in essence, require:
 - 13.1 Storage of information about TV programs;
 - 13.2 Display of the channel identity and the title of the TV program being broadcast on that channel when that channel is selected; and
 - 13.3 Display of further information about that TV program in response to user input.

³ Rule 13.1 (h)

The Defendants

14. The First Defendant is and has been at all material times, a company registered under the laws of France under company number [03055984] and with its registered office at [French address]. The First Defendant's businesses is the provision of, amongst other things, television broadcasting services in France, and the provision and licensing of goods and services relating to such broadcasting services for example, the provision of satellite television reception equipment and set-top boxes.
15. As part of its service, the First Defendant broadcasts programme information which is displayed on its subscribers' televisions as an electronic programme guide ("the Defendants' EPG"). A feature of the Defendants' EPG is that it enables the viewer to select a programme on a grid display to obtain an overlay with further information about the selected programme as shown in the screenshot below:



16. The Second Defendant is and has been at all material times, a company registered under the laws of Germany under company number [03055984] and with its registered office at [German address]. The Second Defendant is an associated company of the First Defendant with the same common ownership and control. The Second Defendant's businesses is the provision of, amongst other things, television broadcasting services in Germany, and the provision and licensing of goods and services relating to such broadcasting services for example, the provision of satellite television reception equipment and set-top boxes.
17. The Second Defendant also broadcasts programme information in Germany, in the form of the Defendants' EPG. The said EPG has the same features as described in the preceding paragraph.
18. The Third Defendant is and has been at all material times, a company registered under the laws of Switzerland under company number [123456] and with its registered office at

[Swiss address]. The Defendants' EPG (provided by the First and Second Defendants to their respective subscribers), was developed and produced by the Third Defendant. The Third Defendant warrants the technical performance, offers and provides technical support regarding, the operation and performance of the Defendants' EPG to the Fourth Defendant and its customers. The Third Defendant is also responsible for regulatory compliance in Europe including CE marking for set-top boxes.

19. The Fourth Defendant is and has been at all material times, a company registered under the laws of Italy under company number [7891011] and with its registered office at [Italian address]. The Fourth Defendant in co-operation with the Third Defendant, licensed and supplied the Defendants' EPG to, at least, the First and Second Defendants respectively. The Claimant will seek an order against the Fourth Defendant to produce details or preserve evidence of any other entities to whom it has licensed the Defendants' EPG in the Designated Contracting States. The Claimant may seek to add further defendants to this action once that information has been disclosed.
20. The Claimant will assert that in light of the foregoing matters, the Defendants have a close commercial relationship and are intimately bound up in the sale, supply, promotion, licensing and distribution of the Defendants' EPG which is the subject of this claim in some or all of the Designated Contracting States.

The Defendants' Acts of Infringement

21. The Defendants have a commercial relationship and this claim relates to their related acts of infringement.⁴ Subsequent to the publication of the application for the Patent and prior to the issue of this Claim, the Defendants and each of them have infringed the Patent under Article 25 of the UPC Agreement, by doing, without the consent of the Claimant, in some or all of the Designated Contracting States the following acts:
 - 21.1 each of the Defendants has used and offered for use, a process which is the subject matter of claim 1 of the Patent; and/or
 - 21.2 each of the First and Second Defendants has made, offered, placed on the market, used, imported or stored a product which is the subject matter of claim 2 of the Patent.
22. Further or in the alternative, pursuant to Article 26 of the UPC Agreement, each of the Third and Fourth Defendants has supplied or offered to supply means, relating to an essential element of the invention of the Patent, knowing or ought to having known, that those means are suitable and intended for putting the invention into effect.
23. Further or alternatively, there is a sufficiently close connection and association between the Defendants (as described above), that the Claimant will assert that the actions of each of the Defendants are part of a concerted action, and have been, will be and/or are likely to have been directed, procured, authorised by each other, such that the

⁴ Article 33(1)(b) UPC agreement

Defendants are jointly and severally liable in respect of all acts of patent infringement, in some or all of the Designated Contracting States.

Particulars of Infringement

- 23.1 On or before the date of these proceedings⁵, the Third Defendant developed in Switzerland the Defendants' EPG and used a process which is the subject of claim 1 of the Patent. The Third Defendant offered the Defendants' EPG for use to the Fourth Defendant in Italy or Switzerland. Further or alternatively, the Third Defendant provided means relating to an essential element of the invention of the Patent, knowing or ought to having known that those means are suitable and intended for putting the invention into effect.
- 23.2 On or before the date of these proceedings, the Fourth Defendant offered for use a process which is the subject of claim 1 of the Patent to each of the First and Second Defendants in Italy, France or Germany. Further or alternatively, the Fourth Defendant provided means relating to an essential element of the invention of the Patent, knowing or ought to having known that those means are suitable and intended for putting the invention into effect.
- 23.3 On or before the date of these proceedings, the First Defendant offered for use in France a process which is the subject of claim 1 of the Patent to its subscribers and has offered, placed on the market, imported or stored a set-top box which infringes claim 2 of the Patent.
- 23.4 On or before the date of these proceedings, the Second Defendant offered for use in Germany a process which is the subject of claim 1 of the Patent to its subscribers and has offered, placed on the market, imported or stored a set-top box which infringes claim 2 of the Patent.

Infringement Analysis

Claim 1

24. The Blue Cable electronic set-top box is configured to perform or enable the performance of all the steps of the method of claim 1 to store and display information about the television programs which are provided through the set-top box and in particular the steps of:

A.1 *storing in an electronic memory of a schedule controller*

The set-top box is the schedule controller. In order to present program information visually, the set-top box must store the program information electronically, as the EPG and details of specific programs are only displayed when selected by a user.

⁵ Rule 13(l)(i) of the 16th Draft Rules of Procedure

A.2 *operably connected with a monitor screen*

The information stored in the set-top box is displayed on the screen of a television or other visual display device. Therefore, the schedule controller (set-top box) is operably connected with a monitor screen (see screenshot at Annex 4).

A.3 *a plurality of television program listings, each listing including*

A.3.1 *title*

A.3.2 *telecast time*

A.3.3 *and channel.*

The set-top box stores information about multiple TV programs as is apparent from the information displayed in the screenshot at Annex 4.

B.1 *displaying on the monitor screen an overlay providing, from the stored listings, a title of and channel information on a selected program*

When the user selects a channel with the remote controller, the identity of that channel and information about the program being broadcast on that channel is displayed in a panel which appears on part of the screen with the TV program which is being displayed in the background being partially obscured by the panel.

B.2 *simultaneously with the selected program upon selection of a channel change*

The information is displayed automatically (without further action), and at the same time, when the particular channel is selected and the TV program on that channel is displayed.

C.1 *and displaying, responsive to a user input, a further overlay*

If the user presses the Information button on the remote controller, additional information about the program which has been selected, is displayed in a panel, which appears on part of the screen with the TV program which is being displayed in the background being partially obscured by the panel.

C.2 *containing further information on the selected program from the stored listings.*

The additional information is of the type shown for the program, "The Shadow", in the screenshot in Annex 4.

Claim 2

25. The Blue Cable set-top box has all the features of the apparatus for storing and displaying information about the TV programs which are provided through the set-top box and in particular described in claim 2:

D.1 *means for storing in an electronic memory of a schedule controller*

The Blue Cable set-top box has an electronic memory suitable for storing TV program listings. The box must store program information electronically, as the EPG and details of specific programs are only displayed when selected.

D.2 *operably connected with a monitor screen*

The information stored in the set-top box is displayed on the screen of a television or other visual display device. Therefore, the schedule controller (set-top box) is operably connected with a monitor screen (see screenshot at Annex 4).

D.3 *a plurality of television program listings each listing including*

D.3.1 title

D.3.2 telecast time

D.3.3 and channel

The set-top box stores information about multiple TV programs as is apparent from the information displayed in the screenshot at Annex 4.

E.1 *means for displaying on the monitor screen an overlay providing from the stored listings, a title of and channel information on a selected program*

The Blue Cable set-top box is configured so that when a user selects a particular channel using a remote controller, it causes the monitor screen to display the identity of the selected channel and the title of the program which is being broadcast in a panel which appears as part of the screen with the TV program which is being displayed in the background being particularly obscured by the panel.

E.2 *simultaneously with the selected program upon selection of a channel change*

The information is displayed automatically (without further action), and at the same time, when the particular channel is selected and the TV program on that channel is displayed.

F.1 *and means for displaying, responsive to a user input, a further overlay*

The Blue Cable set-top box is configured to that when the user presses the Information button on the remote controller, additional information about the program which has been selected, is displayed in a panel, which appears on part of the screen with the TV program which is being displayed in the background being partially obscured by the panel.

F.2 *containing further information on the selected program from the stored listings.*

The additional information is of the type shown for the program, "The Shadow", in the screenshot in Annex 4.

Relief

26. Unless restrained by this Court, the Defendants and each of them threaten and intend to continue to infringe the Patent, whereby the Claimant will suffer further loss and damage.
27. The Claimant's representatives wrote to the First and Second Defendants in June 2013 setting out the basis of the Claimant's complaint and asking them to cease infringing the Patent. A copy of the letter is attached as Annex 3. The First and Second Defendants failed to reply to that letter or to cease the acts of infringement complained of.
28. By infringing the Patent as aforesaid, the Defendants and each of them has caused the Claimant to suffer loss and damage. The Claimant is at present unable to give particulars of each of the Defendants' infringements of the Patents but will seek relief at the trial of this action in respect of each and every such infringement.
29. At this stage, pending disclosure and further evidence, the Claimant assesses the value of the Defendants' infringements to be [€ squillions]⁶.
30. At the trial of this action, the Claimant will seek to rely on the following evidence⁷:
 - 30.1 The fact evidence of Mr Couch Potato, a very experienced user of the Defendant's EPG who will explain the operation of the Defendants' EPG, from a user's perspective and who will explain, in particular, the display of information on a TV screen in response to the selection of channels and the additional information which can be displayed on the TV screen in response to a user request.
31. The Claimant will seek the following orders during the interim procedure⁸ to the extent to which material facts regarding infringement are denied by the Defendants:
 - 31.1 an order against the Defendants for inspection of the Defendants' EPG and details of its operation; as well as the materials and implements used in the production and development of the Defendants' EPG and other documents relating thereto;
 - 31.2 an order against the Defendants to preserve evidence of the Defendants' EPG and details of its operation; as well as the materials and implements used in the production and development of the Defendants' EPG;
 - 31.3 an order against the Defendants to preserve evidence regarding the sale, supply, promotion, licensing and distribution of the Defendants' EPG in the Designated Contracting States; and/or
 - 31.4 an order against the Defendants for inspection of their offers, tenders, proposals and contracts of sale, supply, distribution and/or licences of the Defendants' EPG in the Designated Contracting States.

⁶ Rule 13(p) of the 16th Draft Rules of Procedure

⁷ Rule 13(m) of the 16th Draft Rules of Procedure

⁸ Rule 13(o) 192, 196 and 199 of the 16th Draft Rules of Procedure

- 31.5 an order against the Defendants directing them to prepare and serve a written description of the relevant technical features of the set-top boxes and program information they supply in the Designated Contracting States; such statement to be verified as truthful, accurate, objective and comprehensive by an authorised officer of one of the Defendants who will, at the request of the Court, make themselves available for questioning.

Summary

32. The Claimant claims with respect to all Designated Contracting States:
- 1.1 a declaration that the Patent is valid and has been infringed by the Defendants and each of them;
 - 1.2 an injunction to restrain the Defendants and each of them (whether acting by their respective directors, officers, employees, servants or agents or any of them or otherwise howsoever) from infringing the Patent, whether:
 - 1.2.1 by making, offering, placing on the market, using, importing or storing a product which is within the scope of Claim 2 of the Patent;
 - 1.2.2 by using a process which is within the scope of Claim 1 of the Patent; or
 - 1.2.3 in any other way;any non-compliance with the aforesaid injunction shall be subject to a recurring penalty payment payable to the Court⁹
 - 1.3 an order for the delivery up or destruction upon oath of any product which infringes the Patent, whether by¹⁰:
 - 1.3.1 recalling the products from the channels of commerce;
 - 1.3.2 depriving the product of its infringing property;
 - 1.3.3 removing the products from the channels of commerce; and/or
 - 1.3.4 destroying the products and/or of the materials and implements concerned;
 - 1.4 damages suffered by the Claimant as a result of the Defendants' acts of infringement;
 - 1.5 an order for publication, at the Defendants' expense, of any judgment in which the Defendants and each of them are found to have infringed;
 - 1.6 legal costs;

⁹ Article 63(2) UPC agreement

¹⁰ Article 62(2) UPC agreement

1.7 further or other relief.

List of documents referred to in the Statement of Claim¹¹

The Claimant submits that these documents need not be translated.

Annex 1: Assignment agreement

Annex 2: EP No: 1003442

Annex 3: Letter before action

Annex 4: Screenshot of Defendants' EPG

¹¹ Rule 13(q) of the 16th Draft Rules of Procedure

OBJECTIONS PRÉLIMINAIRES

POUR

1. **Blue Cable France SA**, société de droit français, inscrite au registre du commerce de Paris sous le n° B 345 724 631, dont le siège est 55, rue du Faubourg Saint-Honoré, 75008 Paris, France
2. **Blue Cable Germany GmbH**, société de droit allemand, dont le siège est Spreeweg 1, 10557 Berlin, Allemagne
3. **TV Grid Switzerland SA**, société de droit suisse, dont le siège est Bundesplatz, 3000 Bern, Suisse
4. **TV Grid Italy SpA**, société de droit italien, dont le siège est Piazza del Quirinale, 1, 00187 Roma, Italie

Défendeurs

représentés par M^e Pierre Véron et M^e Amandine Métier,
avocats inscrits au Barreau de Paris, habilités à recevoir signification
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CONTRE

1. **Telecast BV**, dont le siège est Pompstationsweg 32, Den Haag, Pays-Bas

Demandeur

M. Michael Burdon,
solicitor
Michael.Burdon@olswang.com

Olswang LLP



These preliminary objections are proudly drafted in French, the official language of the first defendant under Articles 110 and 111 of the ordinance of Villers-Cotterêts signed by Francis I of France in August 1539, pursuant to Rule 19. 3 (b) of the Rules of procedure. A courtesy translation, without any legal value whatsoever, is provided for the sole benefit of the Court (in view of the arrogant, aggressive and oppressive behaviour of the claimant, the defendants do not contemplate providing the claimant with any courtesy translation).

(Mars 2014)

PLAISE AU JUGE-RAPPORTEUR

Par mémoire en demande notifié le 24 mars 2014, la société néerlandaise Telecast BV, disant avoir acquis de la société américaine United Video Programmes Inc. la propriété du brevet d'invention européen n° 1 003 442, a cru devoir former une demande en contrefaçon de ce brevet contre la société française Blue Cable France, la société allemande Blue Cable Germany GmbH, (les sociétés Blue Cable) la société suisse TV Grid Switzerland et la société italienne TV Grid (les sociétés TV Grid) devant la division centrale du Tribunal de première instance de la Juridiction unifiée du brevet ; compte tenu du domaine technique du brevet, l'affaire a été distribuée au siège de Paris :

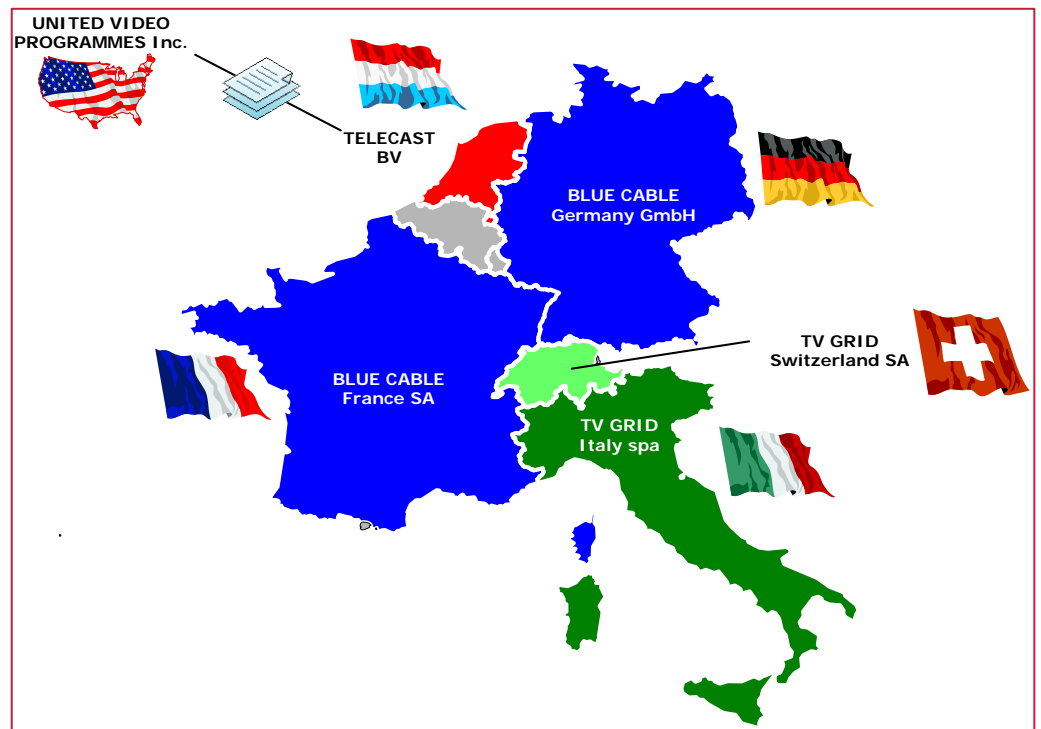


Figure 1 : carte illustrant la localisation des parties

En application de la règle 19 du Règlement de procédure de la Juridiction unifiée du brevet ¹, les sociétés Blue Cable et TV Grid formulent, par le présent mémoire, des objections préliminaires.

¹ Règle 19 du Règlement de procédure :

« 1. Dans un délai d'un mois à compter de la signification du mémoire en demande, le défendeur peut déposer une objection préliminaire concernant :

- (a) la compétence de la Juridiction
- (b) la compétence de la division indiquée par le demandeur [règle 13, § 1, point i)] ;
- (c) la langue du mémoire en demande [règle 14].

2. Une *objection préliminaire contient :

- (a) les informations prévues à la règle 24, § 1, points a) à c) ;
- (b) la décision sollicitée par le défendeur ;
- (c) les motifs fondant l'objection préliminaire ;
- (d) le cas échéant, les faits et preuves invoqués.

(Mars 2014)

Les sociétés Blue Cable et TV Grid contestent tout d'abord la compétence de la division centrale du Tribunal de première instance de la Juridiction unifiée du brevet pour connaître de la présente affaire (1.).

Elles demandent, à titre subsidiaire, à ce que la société Telecast soit déclarée irrecevable à agir puisqu'elle ne justifie pas être propriétaire du brevet européen n° 1 003 442 sur lequel elle fonde ses demandes (2.).

À titre plus subsidiaire, les sociétés Blue Cable et TV Grid demandent à ce que l'action engagée soit déclarée irrecevable en ce qui concerne les faits qui se sont déroulés sur le territoire français, en raison de l'absence d'inscription au registre national des brevets français de la cession du brevet sur le fondement duquel l'action a été engagée (3.).

À titre infiniment subsidiaire, dans l'hypothèse où, par impossible, la compétence de la division centrale serait reconnue et où l'action serait estimée recevable par le juge-rapporteur, les sociétés Blue Cable et TV Grid demandent que la société Telecast BV lui fournisse à ses frais une traduction certifiée des documents pertinents de la procédure, en particulier du mémoire en demande, dans les langues officielles des États dans lesquels elles ont leur siège (4.).

3. L'objection préliminaire est établie:

(a) dans la langue de procédure [règle 14, § 2] ; ou

(b) dans une langue officielle de l'État membre contractant dans lequel le défendeur a son domicile ou son principal établissement ou, en l'absence de domicile ou de principal établissement, son établissement.

4. Si l'action a été engagée devant une division régionale, le défendeur peut, par une objection préliminaire, demander un transfert de l'action vers la division centrale en vertu de l'article 33, § 2, de l'Accord. L'objection préliminaire contient, dans ce cas, tous les faits et preuves étayant l'existence de la même contrefaçon dans au moins trois divisions régionales.

5. Le greffe invite, dès que possible, le demandeur à faire part de ses observations sur l'objection préliminaire. Le cas échéant, le demandeur peut, de sa propre initiative, remédier à toute insuffisance [règle 19, § 1, point b) ou c)], dans un délai de 14 jours à compter de la signification de la notification de l'objection préliminaire.

Alternativement, le demandeur peut soumettre des observations écrites dans le même délai. Le juge-rapporteur est informé de toute correction apportée ou de toute observation écrite soumise par le demandeur.

6. Le dépôt d'une objection préliminaire n'a pas d'incidence sur le délai pour déposer le mémoire en défense [règle 23], sauf décision contraire du juge-rapporteur.

7. Le défaut de dépôt par le défendeur d'une objection préliminaire dans le délai visé à la règle 19, § 1 est considéré comme une acceptation de la compétence de la Juridiction et de la division choisie par le demandeur. »

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1. Incompétence de la division centrale du tribunal de première instance de la Juridiction unifiée du brevet (article 33 § 1 b) al. 3 de l'Accord)

La société Telecast a engagé son action devant la division centrale du Tribunal en application de l'article 33 § 1 b) alinéa 3² de l'Accord sur la juridiction unifiée du brevet (ci-après « l'Accord »), arguant de la présence, parmi les quatre défendeurs, d'un défendeur (la société TV Grid Switzerland SA) établi en Suisse, hors le territoire d'un État membre contractant.

Mais l'article 33 § 1 b) alinéa 3 de l'Accord ne peut pas justifier la compétence de la Division centrale vis-à-vis des trois défendeurs dont le principal établissement se trouve sur le territoire d'un État membre contractant.

En effet, cet article ne concerne que « *les actions contre **des** défendeurs ayant leur domicile ou leur principal établissement ou, en l'absence de domicile ou de principal établissement, leur établissement en dehors du territoire des États membres contractants (...)* ».

Certes, dans le cas où **tous** les défendeurs sont établis hors du territoire des États contractants, l'article 33 § 1 b) alinéa 3 de l'Accord permet au demandeur de porter son action, à son choix, soit devant la division locale ou régionale ayant compétence conformément au point a), soit devant la division centrale.

Mais cet article n'établit pas une règle de compétence dans l'hypothèse où tous les défendeurs n'ont pas leur siège en dehors d'un territoire des États membres contractants.

En cas de pluralité de défendeurs, dont certains ont leur siège dans l'un des États membres contractants, les principes de compétence énoncés à l'article 33 § 1 a) et b) premier alinéa de l'Accord doivent s'appliquer et l'action doit être portée soit devant la division locale du lieu de la contrefaçon alléguée, soit devant la division locale du siège de l'un des défendeurs :

« 1. Sans préjudice du paragraphe 7 du présent article, les actions visées à l'article 32, paragraphe 1, points a), c), f) et g), sont portées devant :

a) **la division locale** située sur le territoire de l'État membre contractant où la contrefaçon ou la menace de contrefaçon s'est produite ou est

² L'article 33 §§ 1 de l'Accord se lit ainsi (point b), 3^e paragraphe alinéa mis en valeur):

« 1. Sans préjudice du paragraphe 7 du présent article, les actions visées à l'article 32, paragraphe 1, points a), c), f) et g), sont portées devant :

a) la division locale située sur le territoire de l'État membre contractant où la contrefaçon ou la menace de contrefaçon s'est produite ou est susceptible de se produire, ou devant la division régionale à laquelle ledit État membre contractant participe ; ou

b) la division locale située sur le territoire de l'État membre contractant dans lequel le défendeur ou, s'il y a plusieurs défendeurs, l'un des défendeurs a son domicile ou son principal établissement ou, en l'absence de domicile ou de principal établissement, son établissement, ou devant la division régionale à laquelle ledit État membre contractant participe. Une action ne peut être exercée contre plusieurs défendeurs que si ceux-ci ont un lien commercial et si l'action porte sur la même contrefaçon alléguée.

Les actions visées à l'article 32, paragraphe 1, point h), sont portées devant la division locale ou régionale conformément au point b) du premier alinéa.

Les actions contre des défendeurs ayant leur domicile ou leur principal établissement ou, en l'absence de domicile ou de principal établissement, leur établissement en dehors du territoire des États membres contractants sont portées devant la division locale ou régionale conformément au point a) du premier alinéa ou devant la division centrale.

Si aucune division locale ne se trouve sur le territoire de l'État membre contractant concerné et que celui-ci ne participe pas à une division régionale, les actions sont portées devant la division centrale. »

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susceptible de se produire, ou devant la division régionale à laquelle ledit État membre contractant participe ; ou

*b) **la division locale** située sur le territoire de l'État membre contractant **dans lequel** le défendeur ou, s'il y a plusieurs défendeurs, **l'un des défendeurs a son domicile ou son principal établissement** ou, en l'absence de domicile ou de principal établissement, son établissement, ou devant la division régionale à laquelle ledit État membre contractant participe. Une action ne peut être exercée contre plusieurs défendeurs que si ceux-ci ont un lien commercial et si l'action porte sur la même contrefaçon alléguée. »*

En l'espèce, selon le mémoire en demande de la société Telecast, la cible principale du demandeur est la société TV Grid Italy SpA qui :

- ▶ a fait développer le guide des programmes électronique par sa filiale suisse, la société TV Grid Switzerland, à sa demande ;
- ▶ pour ensuite fournir, depuis l'Italie, les sociétés Blue Cable SA et Blue Cable GmbH.

Ainsi, la défenderesse qui se trouve au cœur de la contrefaçon selon la demanderesse — la prétendue araignée au centre de la prétendue toile — est la société TV Grid Italy SpA de sorte que la présente action aurait dû être portée devant la division locale italienne, en application de l'article 33 § 1 a) de l'Accord.

Les sociétés Blue Cable et TV Grid demandent donc à ce que le juge-rapporteur déclare la division centrale du Tribunal incompétente pour connaître de la présente action, au profit de la division locale italienne du Tribunal.

Si toutefois la compétence de la division centrale du Tribunal est reconnue, les sociétés Blue Cable et TV Grid demandent que l'action soit déclarée irrecevable parce que la société Telecast BV ne justifie pas être devenue propriétaire du brevet européen n° 1 003 442 et qu'elle est, par conséquent, irrecevable à agir en contrefaçon de ce brevet.

2. À titre subsidiaire, irrecevabilité de la société Telecast pour défaut de qualité à agir

La société Telecast affirme qu'elle est devenue titulaire du brevet européen n° 1 003 442, par acte de cession du 24 décembre 2013 et qu'elle est, de ce fait, recevable à agir de ce fait.

Toutefois, l'acte de cession qu'elle produit (pièce Telecast n° 1) ne vise pas le brevet européen n° 1 003 442, puisqu'il se réfère à une liste exhaustive de droits cédés figurant en annexe 1 de la cession :

"Patents" means the patents and patent applications filed under priority of US patent No 555975, whose details appear in annex 1.

Figure 2: extrait de l'acte de cession sur lequel la société Telecast se fonde pour agir

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Or la liste de l'annexe 1 de cet acte ne comporte aucune référence au brevet européen n° 1 003 442, comme le démontre l'extrait de l'acte de cession reproduit ci-après :



Figure 3: annexe 1 de l'acte de cession du 24 décembre 2013

À défaut de démontrer qu'elle est devenue le propriétaire du brevet européen n° 1 003 442 sur lequel elle fonde son action, la société Telecast sera déclarée irrecevable pour défaut de qualité à agir.

Cette irrecevabilité est manifeste et la demande de la société Telecast BV n'a aucune chance d'aboutir.

Elle doit donc être rejetée par le juge-rapporteur en application de la règle 334, point h), du Règlement de procédure, qui fixe comme suit les pouvoirs de la juridiction et du juge-rapporteur pour le traitement des affaires (mise en valeur du point h) ajoutée) :

« Sauf si l'Accord, les statuts ou les règles en disposent autrement, le juge-rapporteur ou la chambre peuvent :

(a) étendre ou raccourcir le délai pour se conformer à toute règle, instruction pratique ou ordonnance ;

(b) ajourner ou avancer la conférence de mise en état ou l'audience ;

(c) communiquer avec les parties afin de leur indiquer les souhaits ou exigences de la Juridiction ;

(d) décider de tenir une audience séparée portant sur toute question ;

(e) déterminer l'ordre dans lequel les questions doivent être tranchées ;

(f) exclure une question des débats ;

(g) rejeter une demande ou se prononcer sur une demande lorsqu'une décision sur une question préliminaire rend une décision sur d'autres questions dépourvue de pertinence pour l'issue du litige ;

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(h) rejeter sommairement un mémoire s'il n'a aucune chance d'aboutir ;

(i) joindre tout élément ou toute question ou ordonner qu'ils soient entendus conjointement ; »

Si, par impossible, le juge-rapporteur estime que la société Telecast est recevable à agir, les sociétés Blue Cable et TV Grid demandent que l'action soit déclarée irrecevable en ce qui concerne tout fait en relation avec le territoire français, en raison de l'absence d'inscription de la cession du brevet objet du litige, au registre national des brevets français.

3. À titre plus subsidiaire, irrecevabilité de l'action en ce qui concerne le territoire français en raison du défaut d'inscription de la cession au registre national des brevets français

La société Telecast BV n'a pas déposé le brevet européen n° 1 003 442 : elle prétend l'avoir acquis auprès de son déposant, la société américaine United Video Programmes Inc., le 24 décembre 2013.

Or, pour pouvoir valablement opposer son brevet européen à l'égard de sociétés établies en Allemagne, Italie et France, la société Telecast BV doit rapporter la preuve que les désignations nationales correspondantes de son brevet européen sont effectivement opposables aux tiers dans ces pays.

La société Telecast BV indique :

- ▶ avoir enregistré la cession du brevet européen n° 1 003 442 auprès des registres nationaux allemand et italien ;
- ▶ entreprendre d'inscrire la cession au Registre européen des brevets.

Mais la cession n'a pas été enregistrée en France au sein du registre national des brevets.

Or, en vertu de l'article L. 613-9 du code de la propriété intellectuelle français :

« Tous les actes transmettant ou modifiant les droits attachés à une demande de brevet ou à un brevet doivent, pour être opposables aux tiers, être inscrits sur un registre, dit registre national des brevets, tenu par l'Institut national de la propriété industrielle.

Toutefois, avant son inscription, un acte est opposable aux tiers qui ont acquis des droits après la date de cet acte, mais qui avaient connaissance de celui-ci lors de l'acquisition de ces droits.

Le licencié, partie à un contrat de licence non inscrit sur le registre national des brevets, est également recevable à intervenir dans l'instance en contrefaçon engagée par le propriétaire du brevet afin d'obtenir la réparation du préjudice qui lui est propre. »

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Dès lors, par application de l'article 24 § 1 e) de l'Accord⁴ et de l'article L. 613-9 du code de la propriété intellectuelle français, l'action de la société Telecast BV est irrecevable en ce qui concerne les faits allégués sur le territoire français, en raison de l'inopposabilité de la cession de son droit sur ce territoire.

Là encore, cette irrecevabilité est manifeste et la demande de la société Telecast BV n'a aucune chance d'aboutir, en ce qui concerne les actes de prétendue contrefaçon commis sur le territoire français

Elle doit donc être rejetée par le juge-rapporteur en application de la règle 334, point h), du Règlement de procédure sur les pouvoirs de la juridiction et du juge-rapporteur pour le traitement des affaires.

Si, toutefois, le juge-rapporteur estime, par impossible, que la demande de la société Telecast est recevable, alors il fera droit à la demande de traduction des documents pertinents de la procédure dans les langues officielles des pays dans lesquels les défenderesses ont leur siège.

4. À titre infiniment subsidiaire, demande de traduction des documents pertinents dans les langues officielles des pays dans lesquels sont établis les défenderesses

La société Telecast a attiré les défenderesses devant la division centrale du Tribunal.

En application de l'article 49 § 6 de l'Accord⁵, la langue de la procédure est donc la langue dans laquelle le brevet sur lequel l'action est fondée a été délivré, en l'occurrence l'anglais.

Toutefois, l'article 51 § 3 de l'Accord, reproduit ci-après, prévoit que, dans certains cas, une traduction des documents pertinents de la procédure doit être fournie aux défendeurs :

« 3. Nonobstant l'article 49, paragraphe 6, dans les cas où une action en contrefaçon est engagée devant la division centrale, un défendeur ayant son domicile, son établissement principal ou son établissement dans un État membre a le droit d'obtenir, sur demande, une traduction des documents pertinents dans la langue de l'État membre dans lequel il a son domicile, son principal établissement ou, en l'absence de domicile ou de principal établissement, son établissement, dans les circonstances suivantes :

a) la division centrale est saisie conformément à l'article 33, paragraphe 1, troisième ou quatrième alinéa ; et

b) la langue de procédure devant la division centrale n'est pas une langue officielle de l'État membre dans lequel le défendeur a son domicile, son principal établissement ou, en l'absence de domicile ou de principal établissement, son établissement ; et

⁴ L'article 24 §1 e) de l'Accord indique :
 « 1. En parfaite conformité avec l'article 20, lorsqu'elle a à connaître d'une affaire dont elle est saisie en vertu du présent accord, la Juridiction fonde ses décisions sur :
 (...)
 e) les droits nationaux. »

⁵ L'article 49 § 6 de l'Accord se lit ainsi :
 « 6. La langue de procédure devant la division centrale est la langue dans laquelle le brevet en cause a été délivré. »

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c) le défendeur n'a pas une connaissance suffisante de la langue de procédure. »

En effet, l'anglais, langue de la procédure, n'est pas suffisamment compréhensible pour les défenderesses, respectivement établies :

- ▶ en France, pour la société Blue Cable SA, dont la langue officielle est le français ;
- ▶ en Allemagne, pour la société Blue Cable Germany, dont la langue officielle est l'allemand ;
- ▶ en Italie, pour la société TV Grid Italy SpA, dont la langue officielle est l'italien ;
- ▶ en Suisse, pour la société TV Grid Switzerland dont les langues officielles sont l'allemand, le français, l'italien et le romanche⁶.

Il ressort du mémoire en demande de la société Telecast (page 3) que cette dernière a engagée la présente action en contrefaçon de son brevet européen n° 1 003 442 devant la division centrale du tribunal, par application de l'article 33, paragraphe 1, quatrième alinéa.

Il est donc demandé, conformément à l'article 51 § 3 de l'Accord reproduit ci-dessus, au juge-rapporteur d'ordonner à la société Telecast BV de fournir à ses frais des traductions des documents pertinents de la procédure, présents et à venir, en particulier, le mémoire en demande, dans les langues officielles suivantes comprises par les défendeurs :

- ▶ en langue française pour les besoins de la défense de la société Blue Cable France SA ;
- ▶ en langue allemande pour les besoins de la défense de la société Blue Cable Germany GmbH ;
- ▶ en langue italienne pour les besoins de la défense de la société TV Grid Italy SpA ;
- ▶ en langue romanche (dialecte *sutsilvan*)⁷ pour les besoins de la défense de la société TV Grid Switzerland SA.

Ces traductions devront être certifiées par un traducteur habilité par la plus haute juridiction nationale de chacun des pays concernés.

Les frais de la présente procédure seront supportés par la société Telecast en application de l'article 69 de l'Accord⁸.

⁶ L'article 70, paragraphe 1, de la Constitution fédérale de la Confédération suisse du 18 avril 1999 indique :
« Les langues officielles de la Confédération sont l'allemand, le français et l'italien. Le romanche est aussi langue officielle pour les rapports que la Confédération entretient avec les personnes de langue romanche. ».

⁷ La société TV Grid Switzerland précise à cet égard, que, si son siège est à Berne où sont plus couramment parlés l'allemand et le français, elle conduit ses affaires en romanche (exactement, dans le dialecte *sutsilvan*, dialecte parlé dans le canton des Grisons par environ 571 locuteurs natifs seulement) : elle a adopté cette langue de travail et de communication interne pour minimiser les risques de fuite d'informations sur les recherches qu'elle conduit ; ainsi, par exemple, si l'un de ses ingénieurs, distrait, ou l'une de ses secrétaires, inattentive, oublie dans un tramway cantonal de Berne – voire dans le chemin de fer fédéral – un document confidentiel au sujet de recherches en cours, nul ne pourra penser, à Berne – ou en Suisse –, qu'il s'agit d'un document important, puisqu'il est écrit dans une langue qui n'est pratiquée que par des personnes qui, à Berne – ou en Suisse –, sont considérées comme s'intéressant seulement à la pratique de l'agriculture de montagne, notamment l'élevage de bovidés en vue de la production de viande des Grisons.

⁸ L'article 69 de l'Accord indique :
« 1. Les frais de justice raisonnables et proportionnés et les autres dépenses exposés par la partie ayant obtenu gain de cause sont, en règle générale, supportés par la partie qui succombe, à moins que l'équité ne s'y oppose, dans la limite d'un plafond fixé conformément au règlement de procédure. ».

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PAR CES MOTIFS

Vu les règles 19 § 1 b) et 334, point h) du Règlement de procédure, les sociétés Blue Cable et TV Grid demandent au juge-rapporteur de :

À titre principal,

En application de l'article 33 § 1 a) de l'Accord,

- ▶ Déclarer la division centrale du Tribunal de première instance de la Juridiction unifiée du brevet incompétente pour connaître de la présente affaire ;
- ▶ Dire et juger que seule peut être saisie de la présente affaire la division italienne du Tribunal de première instance de la Juridiction unifiée du brevet ;

À titre subsidiaire,

- ▶ Déclarer la société Telecast irrecevable pour défaut de qualité à agir ;

À titre plus subsidiaire,

En application de l'article L. 613-9 du code de la propriété intellectuelle français,

- ▶ Déclarer la société Telecast irrecevable à agir en ce qui concerne le territoire français pour défaut d'inscription de sa licence au registre national des brevets français ;

À titre infiniment subsidiaire,

En application de l'article 51 § 3 de l'Accord :

- ▶ Ordonner à la société Telecast BV de fournir à ses frais aux défenderesses des traductions des documents pertinents de la procédure, présents et à venir, y compris le mémoire en demande, en langues française, allemande, italienne et romanche (dialecte *sutsilvan*), traductions qui devront être certifiées par un traducteur habilité par la plus haute juridiction nationale de chacun des pays concernés ;
- ▶ Dire que tous les délais de procédure seront suspendus jusqu'à fourniture des dites traductions ;

En tout état de cause,

- ▶ Ordonner à la société Telecast de payer les frais de procédure supportés par les sociétés Blue Cable et TV Grid, en application de l'article 69 du Règlement de procédure.

SOUS TOUTES RÉSERVES

2. Lorsqu'une partie n'obtient que partiellement gain de cause ou dans des circonstances exceptionnelles, la Juridiction peut ordonner que les frais soient répartis équitablement ou que les parties supportent leurs propres frais.

3. Chaque partie devrait supporter les frais inutiles qu'elle a fait engager par la Juridiction ou par l'autre partie.

4. À la demande du défendeur, la Juridiction peut ordonner au requérant de fournir une garantie appropriée pour les frais de justice et autres dépenses exposés par le défendeur qui pourraient incomber au requérant, notamment dans les cas visés aux articles 59 à 62. »

PRELIMINARY OBJECTIONS

ON BEHALF OF

1. **Blue Cable France SA**, a company governed by the French laws, entered in the trade register of Paris under N° B 345 724 631, with its registered office located 55, rue du Faubourg Saint-Honoré, 75008 Paris, France
2. **Blue Cable Germany GmbH**, a company governed by the laws of Germany, with its registered office located Spreeweg 1, 10557 Berlin, Germany
3. **TV Grid Switzerland SA**, a company governed by the laws of Switzerland, with its registered office located Bundesplatz, 3000 Bern, Switzerland
4. **TV Grid Italy SpA**, a company governed by the laws of Italy, with its registered office located Piazza del Quirinale 1, 00187 Roma, Italy

Defendants

represented by Mr Pierre Véron and Ms Amandine Métier,
attorneys-at-law, members of the Paris Bar
who are authorised to accept service
pierre.veron@veron.com and amandine.metier@veron.com

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53, avenue Maréchal Foch, 69006 Lyon
Tel. 04.72.69.39.39 - Fax 04.72.69.39.49

AGAINST

Telecast BV, with its registered office located Pompstationsweg 32, Den Haag, the Netherlands

Claimant

represented by Mr Michael Burdon,
solicitor
Michael.Burdon@olswang.com

Olswang LLP*



These preliminary objections are proudly drafted in French, the official language of the first defendant under Articles 110 and 111 of the Ordinance of Villers-Cotterêts signed by Francis I of France in August 1539, pursuant to Rule 19.3 (b) of the Rules of procedure. A courtesy translation, without any legal value whatsoever, is provided for the sole benefit of the Court (in view of the arrogant, aggressive and oppressive behaviour of the claimant, the defendants do not contemplate providing the claimant with any courtesy translation).

(March 2014)

MAY IT PLEASE THE JUDGE-RAPPORTEUR

By way of a Statement of claim served on 24 March 2014, the Dutch company Telecast BV, which alleges to have acquired from the US company United Video Programmes Inc. the ownership of European patent N° 1 003 442, decided to file a claim for infringement of this patent against the French company Blue Cable France, the German company Blue Cable Germany GmbH (hereinafter collectively referred to as "*Blue Cable*"), the Swiss company TV Grid Switzerland and the Italian company TV Grid (hereinafter collectively referred to as "*TV Grid*"), before the central division of the Court of First Instance of the Unified Patent Court; considering the technical field of the patent, the case was allocated to the Paris seat:

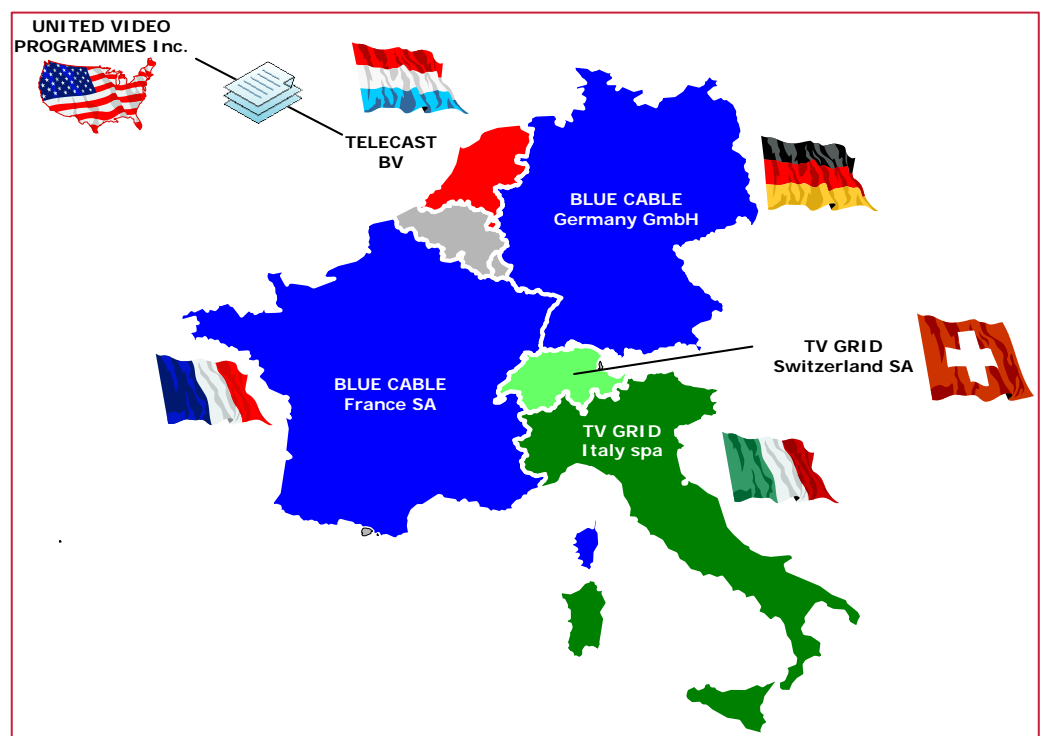


Figure 1: map showing where the parties are located

In accordance with Rule 19 of the Rules of Procedure of the Unified Patent Court ¹, Blue Cable and TV Grid raise preliminary objections by way of this claim.

¹ Rule 19 of the Rules of Procedure:

"1. Within one month of service of the Statement of claim, the defendant may lodge a Preliminary objection concerning:

- (a) the jurisdiction and competence of the Court;
- (b) the competence of the division indicated by the claimant [Rule 13.1(i)];
- (c) the language of the Statement of claim [Rule 14].

2. A *Preliminary objection shall contain:

- (a) particulars in accordance with Rule 24.1(a) to (c);
- (b) the decision or order sought by the defendant; (c) the grounds upon which the Preliminary objection is based; and
- (d) where appropriate the facts and evidence relied on.

Preliminary objections on behalf of Blue Cable France SA, Blue Cable Germany GmbH, TV Grid Switzerland SA and TV Grid Italy SpA

(March 2014)

Blue Cable and TV Grid first of all dispute the competence of the central division of the Court of First Instance of the Unified Patent Court to hear this action **(1.)**.

In the alternative, they request that Telecast's action be held inadmissible since Telecast does not justify being the owner of European patent N° 1 003 442 upon which its claims are based **(2.)**.

In the further alternative, concerning the acts that occurred on the French territory, Blue Cable and TV Grid request that the initiated action be held inadmissible by reason of the absence of entry, in the French patent register, of the assignment of the patent, on the basis of which the action was initiated **(3.)**.

In the very alternative, in the unlikely event that the competence of the central division were to be recognised and the action were to be considered admissible by the judge-rapporteur, Blue Cable and TV Grid request that Telecast BV provide, at its expense, a certified translation of the relevant documents of the procedure, in particular the Statement of claim, in the official languages of the Contracting Member States where they have a registered office **(4.)**.

*3. The Preliminary objection shall be drawn up:
(a) in the language of the proceedings [Rule 14.3]; or
(b) in one of the official languages of the European Patent Office.*

4. If the action has been commenced before a regional division the defendant may by a Preliminary objection request a transfer of the action to the central division pursuant to Article 33(2) of the Agreement. The Preliminary objection shall in such a case contain all facts and evidence supporting the existence of the same infringement in three or more regional divisions.

5. The Registry shall as soon as practicable invite the claimant to comment on the Preliminary objection. Where applicable, the claimant may of his own motion correct any deficiency [Rule 19.1(b) or (c)], within 14 days of service of notification of the Preliminary objection. Alternatively the claimant may submit written comments within the same period. The judge-rapporteur shall be informed of any correction made or written comments submitted by the claimant. If the deficiency referred to in Rule 19.1(b) is corrected and the claimant has indicated another division, which is competent, the judge-rapporteur shall refer the action to the division indicated by the claimant.

6. The period for lodging the Statement of defence [Rule 23] shall not be affected by the lodging of a Preliminary objection, unless the judge-rapporteur decides otherwise.

7. The defendant's failure to lodge a Preliminary objection within the time period referred to in Rule 19.1 shall be treated as a submission to the jurisdiction and competence of the Court and the competence of the division chosen by the claimant."

(March 2014)

1. Incompetence of the central division of the Court of First Instance of the Unified Patent Court (Article 33(1)(b), subparagraph 3 of the Agreement)

Telecast brought its action before the central division of the Court of First Instance in pursuance of Article 33(1)(b), subparagraph 3² of the Agreement on the Unified Patent Court (hereinafter referred to as "*the Agreement*"), claiming that one of the four defendants (namely, TV Grid Switzerland SA) is established outside the territory of a Contracting Member State.

But Article 33(1)(b), subparagraph 3 of the Agreement, cannot justify the competence of the central division vis-à-vis the three defendants, whose main places of business are located within the territory of a Contracting Member State.

As a matter of fact, Article 33(1)(b) only concerns "*Actions against defendants having their residence, or principal place of business or, in the absence of residence or principal place of business, their place of business, outside the territory of the Contracting Member States (...).*"

Admittedly, when **all** the defendants are established outside the territory of the Contracting Member States, Article 33(1)(b), subparagraph 3 of the Agreement, allows the claimant to bring its action, as it wishes, either before the local or regional division having competence, by virtue of paragraph (a), or before the central division.

However, this article does not establish a rule of competence in the case where all the defendants do not have their registered office outside a territory of the Contracting Member States.

In the case of a plurality of defendants, among whom some have their registered office in one of the Contracting Member States, the principles of competence laid down in Article 33(1)(a) and (b), first subparagraph of the Agreement, should apply; and the action should be brought either before the local division of the place of the alleged infringement or before the local division where the registered office of one of the defendants is:

"1. Without prejudice to paragraph 7 of this Article, actions referred to in Article 32(1)(a), (c), (f) and (g) shall be brought before:

² Article 33(1) reads as follows (b), 3rd paragraph in bold:

"1. Without prejudice to paragraph 7 of this Article, actions referred to in Article 32(1)(a), (c), (f) and (g) shall be brought before:

a) the local division hosted by the Contracting Member State where the actual or threatened infringement has occurred or may occur, or the regional division in which that Contracting Member State participates; or

b) the local division hosted by the Contracting Member State where the defendant or, in the case of multiple defendants, one of the defendants has its residence, or principal place of business, or in the absence of residence or principal place of business, its place of business, or the regional division in which that Contracting Member State participates. An action may be brought against multiple defendants only where the defendants have a commercial relationship and where the action relates to the same alleged infringement.

Actions referred to in Article 32(1)(h) shall be brought before the local or regional division in accordance with point (b) of the first subparagraph.

Actions against defendants having their residence, or principal place of business or, in the absence of residence or principal place of business, their place of business, outside the territory of the Contracting Member States shall be brought before the local or regional division in accordance with point (a) of the first subparagraph or before the central division.

If the Contracting Member State concerned does not host a local division and does not participate in a regional division, actions shall be brought before the central division."

(March 2014)

a) **the local division** hosted by the Contracting Member State **where the actual or threatened infringement has occurred** or may occur, or the regional division in which that Contracting Member State participates; or

b) **the local division** hosted by the Contracting Member State **where the defendant or, in the case of multiple defendants, one of the defendants has its residence, or principal place of business, or in the absence of residence or principal place of business, its place of business, or the regional division in which that Contracting Member State participates. An action may be brought against multiple defendants only where the defendants have a commercial relationship and where the action relates to the same alleged infringement.**"

In this particular instance, according to Telecast's Statement of claim, the claimant's main target is TV Grid Italy SpA:

- ▶ whose electronic program guide was developed at its request by its Swiss subsidiary, TV Grid Switzerland;
- ▶ which then supplied, from Italy, Blue Cable SA and Blue Cable GmbH.

The defendant which, according to the claimant, is at the heart of the infringement — the so-called spider in the so-called web — is TV Grid Italy SpA, so that this action should have been brought before the Italian local division, pursuant to Article 33(1)(a) of the Agreement.

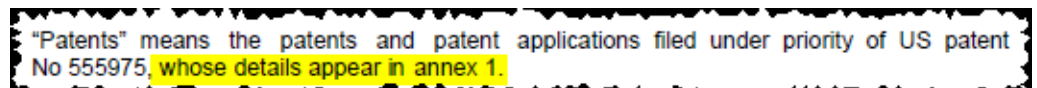
Therefore, Blue Cable and TV Grid request that the judge-rapporteur hold the central division of the Court of First Instance incompetent to hear this action, which should be allocated to the Italian local division of the Court of First Instance.

However, should the competence of the central division of the Court of First Instance be recognised, Blue Cable and TV Grid request that the action be held inadmissible because Telecast BV does not justify becoming the owner of European patent N° 1 003 442, and, as a consequence, its action for infringement of this patent is inadmissible.

2. In the alternative, inadmissibility of Telecast's action for lack of standing to bring an action

Telecast contends that it became the owner of European patent N° 1 003 442 by way of an assignment agreement dated 24 December 2013, and that, as such, it is admissible to bring an action.

However, the assignment agreement, which it presents (Telecast exhibit N° 1), does not refer to European patent N° 1 003 442 but refers to an exhaustive list of assigned rights shown in Annex 1 of the assignment:



"Patents" means the patents and patent applications filed under priority of US patent No 555975, whose details appear in annex 1.

Figure 2: extract from the assignment agreement upon which Telecast relies to bring an action

Yet, the list in Annex 1 of this agreement contains no reference to European patent N° 1 003 422, as shown in the extract from the assignment agreement reproduced hereinafter:

(March 2014)



Figure 3: Annex 1 of the assignment agreement dated 24 December 2013

Since Telecast fails to prove that it has become the owner of European patent N° 1 003 442 upon which its action is based, its action will be held inadmissible for lack of standing to bring an action.

This inadmissibility is manifest and Telecast BV's claim has no prospect of succeeding.

Therefore, it must be dismissed by the judge-rapporteur in pursuance of Rule 334(h) of the Rules of Procedure, which stipulates that the case management powers of the Court and the judge-rapporteur (emphasis added in bold) are as follows:

"Except where the Agreement, the Statute or these Rules provide otherwise, the judge-rapporteur, the presiding judge or the panel may:

(a) extend or shorten the period for compliance with any rule or order [Rule 9.3];

(b) adjourn or bring forward the interim conference or the oral hearing;

(c) communicate with the parties to instruct them about wishes or requirements of the Court;

(d) direct a separate hearing of any issue;

(e) decide the order in which issues are to be decided;

(f) exclude an issue from consideration;

(g) dismiss or decide on a claim after a decision on a preliminary issue makes a decision on further issues irrelevant to the outcome of the action;

(h) dismiss a claim summarily if it has no prospect of succeeding;

(i) consolidate any matter or issue or order them to be heard together;

(j) make any order pursuant to Rules 103 to 109."

(March 2014)

In the very unlikely event that the judge-rapporteur were to consider that Telecast's action is admissible, Blue Cable and TV Grid request that the action be held inadmissible with regard to any act in relation with the French territory, by reason of the absence of entry in the French patent register of the assignment of the patent in dispute.

3. In the further alternative, inadmissibility of the action on the French territory by reason of the absence of entry in the French patent register of the patent assignment

Telecast BV did not file European patent N° 1 003 442: it contends having acquired it from its applicant, the US company United Video Programmes Inc., on 24 December 2013

Yet, in order to validly enforce its European patent against companies established in Germany, Italy and France, Telecast BV must provide evidence that the corresponding national designations of its European patent are really enforceable against third parties in these countries.

Telecast BV explains that:

- ▶ the assignment agreement of European patent N° 1 003 442 was entered in the German and Italian patent registers;
- ▶ steps have been taken to record the assignment agreement in the European patent register.

However, the assignment agreement has not been entered in the French patent register.

Yet under Article L. 613-9 of the French Intellectual Property Code:

"All acts transferring or modifying the rights deriving from a patent application or a patent must, to be enforceable against third parties, be entered in a register, known as the National Patent Register kept by the National Institute of Industrial Property.

However, before its registration, an act is enforceable against third parties who have acquired rights after the date the act occurred, but who were aware of it when acquiring the rights.

The licensee, party to a licence agreement, not entered in the national register of patents, is also entitled to intervene in the infringement proceedings instituted by the owner of the patent to seek compensation for the damage it has sustained."

Therefore, by virtue of Article 24(1)(e) of the Agreement³ and Article L. 613-9 of the French Intellectual Property Code, Telecast BV's action is inadmissible, concerning the acts that allegedly occurred on the French territory, by reason of the unenforceability of the assignment of its rights on that territory.

³ Article 24(1)(e) of the Agreement specifies:

"1. In full compliance with Article 20, when hearing a case brought before it under this Agreement, the Court shall base its decisions on:

(...)

(e) national law

(March 2014)

Once more, this inadmissibility is manifest and Telecast BV's claim has no prospect of succeeding with respect to the alleged acts of infringement committed on the French territory.

It must therefore be dismissed by the judge-rapporteur in pursuance of Rule 334(h) of the Rules of Procedure on the case management powers of the judge-rapporteur.

However, in the unlikely event that the judge-rapporteur were to consider that Telecast's claim is admissible, he will then accede to the request for a translation of the relevant documents of the procedure in the official languages of the countries where the defendants have their registered office.

4. In the very alternative, request for the translation of the relevant documents in the official languages of the countries where the defendants are established

Telecast brought an action against the defendants before the central division of the Court of First Instance.

Under Article 49(6) of the Agreement⁴, the language of proceedings is thus the language of the granted patent upon which the action is based, in this particular instance, English.

However, pursuant to Article 51(3) of the Agreement, reproduced herebelow, a translation of the relevant documents of the procedure must be provided to the defendants:

"3. Notwithstanding Article 49(6), in cases where an action for infringement is brought before the central division, a defendant having its residence, principal place of business or place of business in a Member State shall have the right to obtain, upon request, translations of relevant documents in the language of the Member State of residence, principal place of business or, in the absence of residence or principal place of business, place of business, in the following circumstances:

(a) jurisdiction is entrusted to the central division in accordance with Article 33(1) third or fourth subparagraph, and

(b) the language of proceedings at the central division is a language which is not an official language of the Member State where the defendant has its residence, principal place of business or, in the absence of residence or principal place of business, place of business, and

(c) the defendant does not have proper knowledge of the language of the proceedings."

As a matter of fact, the language of the proceedings, English, is not sufficiently understood by the defendants, which are established respectively:

- in France, by Blue Cable SA, whose official language is French;

⁴ Article 46(6) of the Agreement reads as follows:

(6) *The language of proceedings at the central division shall be the language in which the patent concerned was granted."*

⁵ Article 70(1) of the Federal Constitution of the Swiss Confederation of 18 April 1999 specifies that: *"The official languages of the Confederation are German, French and Italian. Romansh is also an official language of the Confederation when communicating with persons who speak Romansh."*

(March 2014)

- ▶ in Germany, by Blue Cable Germany, whose official language is German;
- ▶ in Italy, by TV Grid Italy SpA, whose official language is Italian;
- ▶ In Switzerland, by TV Grid Switzerland, whose official languages are German, French, Italian and Romansh ⁵.

It emerges from Telecast's Statement of claim (page 3) that its action for infringement of its European patent N° 1 003 442 was brought before the central division of the Court of First Instance, pursuant to Article 33(1), fourth subparagraph.

Therefore, in accordance with Article 51(3) of the Agreement reproduced herebelow, it is asked that the judge-rapporteur order Telecast BV to provide, at its expense, translations of the relevant documents of the procedure, existing or to come, in particular the Statement of claim, in the following official languages understood by the defendants:

- ▶ in French, for the purpose of the defence of Blue Cable France SA;
- ▶ in German, for the purpose of the defence of Blue Cable Germany GmbH;
- ▶ in Italian, for the purpose of the defence of TV Grid Italy SpA;
- ▶ in Romansh (*Sutsilvan* dialect) ⁶ for the purpose of the defence of TV Grid Switzerland SA.

These translations will have to be certified by a translator authorised by the highest national court of each of the countries concerned.

The costs of these proceedings should be borne by Telecast pursuant to Article 69 of the Agreement ⁷.

⁵ Article 70(1) of the Federal Constitution of the Swiss Confederation of 18 April 1999 specifies that: "*The official languages of the Confederation are German, French and Italian. Romansh is also an official language of the Confederation when communicating with persons who speak Romansh.*"

⁶ TV Grid Switzerland would like to explain that, although its registered office is located in Bern where German and French are mostly spoken, it conducts business in Romansh (more precisely in *Sutsilvan*, a dialect spoken in the canton of Grisons by approximately 571 native speakers): it has adopted this language for work and internal communication so as to minimise the risks of leak of information on the research work it conducts; for example, if one of its engineers is distracted or one of its secretaries is inattentive, and forgets in the Bern canton tramway – or even on a train of the federal railways – a confidential document relating to ongoing research, no one will be able to think, in Bern – or in Switzerland –, that this is an important document, since it is written in a language that is used only by people who, in Bern – or in Switzerland –, are regarded to be only interested in practising mountain agriculture, in particular cattle breeding for the production of Grison meat.

⁷ Article 69 of the Agreement specifies that:
 "1. Reasonable and proportionate legal costs and other expenses incurred by the successful party shall, as a general rule, be borne by the unsuccessful party, unless equity requires otherwise, up to a ceiling set in accordance with the Rules of Procedure.
 2. Where a party succeeds only in part or in exceptional circumstances, the Court may order that costs be apportioned equitably or that the parties bear their own costs.
 3. A party should bear any unnecessary costs it has caused or another party.
 4. At the request of the defendant, the Court may order the applicant to provide adequate security for the legal costs and other expenses incurred by the defendant which the applicant may be liable to bear, in particular in the cases referred to in Articles 59 to 62."

(March 2014)

ON THESE GROUNDS

Having regard to Rules 19.1 (b) and 334 (h) of the Rules of Procedure, Blue Cable and TV Grid request that the judge-rapporteur:

As a main claim,

Pursuant to Article 33(1)(a) of the Agreement,

- ▶ hold that the central division of the Court of First Instance of the Unified Patent Court is incompetent to hear this case;
- ▶ hold that this case may only be brought before the Italian division of the Court of First Instance of the Unified Patent Court;

In the alternative,

- ▶ hold that Telecast's action is inadmissible for lack of standing to bring an action

In the further alternative,

In pursuance of Article L. 613-9 of the French Intellectual Property Code,

- ▶ hold that Telecast's action is inadmissible as far as the French territory is concerned by reason of the absence of entry of its licence in the French patent register;

In the very alternative,

Pursuant to Article 51(3) of the Agreement:

- ▶ order Telecast BV to provide, at its expense, the defendants with the translations of the relevant documents of the procedure, existing or to come, including the Statement of claim, in French, German, Italian and Romansh (*Sutsilvan* dialect); such translations should be certified by a translator authorised by the highest national court of each of the countries concerned;
- ▶ hold that the proceedings will be stayed until the said translations are provided;

In any case,

- ▶ order Telecast to pay the costs of the procedure borne by Blue Cable and TV Grid, pursuant to Article 69 of the Agreement.

WITH ALL RESERVES

Docket No 2014/01

UNIFIED PATENT COURT

CENTRAL DIVISION

(Paris Seat)

Telecast BV

(a company with its registered office located in the Netherlands)

v

(1) Blue Cable France SA

(a company with its registered office located in France)

(2) Blue Cable Germany GmbH

(a company with its registered office located in Germany)

(3) TV Grid Switzerland SA

(a company with its registered office located in Switzerland)

(4) TV Grid Italy SPA

(a company with its registered office located in Italy)

CLAIMANT'S RESPONSE TO DEFENDANTS' PRELIMINARY OBJECTIONS

Claimant's Address for Service:

Mr Michael Burdon, partner of Olswang LLP, is authorised to accept service in relation to these proceedings

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Defendants' Representatives and Address for Service:

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Introductory Comments

1. The Claimant can be very brief in its response to the Preliminary Objections filed by the Defendants on 1 April 2014 (appropriately) as they raise nothing of any substance which requires a detailed riposte. Indeed it is a rather desperate attempt by the Defendants to delay and complicate these proceedings, adding unnecessary cost, in a pathetic attempt to distract this wonderful and honourable Court from the true issues in this case; namely, that the Defendants are blatantly infringing this valuable Patent and deserve to be enjoined and pay substantial damages.
2. The Preliminary Objections are themselves not admissible. They are filed in French, not English, which is the language in which the Patent was granted, and the language of the Statement of Claim, and therefore of these proceedings pursuant to Article 49(6) of the Agreement and Rule 14(3). The purported and rather desperate justification of the relevance of this outdated and outmoded minority language selected by the Defendants is based on an ancient ordinance of a big-nosed monarch from the 16th century; something which is clearly inappropriate in this brave new world of modern patent litigation in the 21st century.
3. The justification is that French is the language of the First Defendant – no such justification for changing the language is provided in the Rules and unsurprisingly the Defendants do not provide any reference to a rule in support of their contention.
4. The Preliminary Objections should be rejected without further consideration. However, in case this mighty and honourable Court takes pity on the Defendants, the Claimant will address the various allegations.

Allegation 1

5. The Defendants have the temerity to suggest that this Court and the Judges of the Central Division are incompetent!
6. While such an allegation might well be justified in relation to the judges of the inferior national courts who deal with petty localised disputes, no such accusation should be levelled at the noble and learned judges of this mighty and august supra-national institution.
7. The Defendants' accusation appears to be based on a bizarre and tortuous reading of Article 33(1)(b) of the Agreement that a claim can only be brought in the Central Division if various defendants are all undertaking infringing activity in Europe but none of those defendants has a place of business of any description in any CMS. Such a situation is highly unlikely and clearly cannot have been intended.
8. The Agreement and Rules clearly envisage a situation in which several divisions of the Court can all potentially entertain jurisdiction and jurisdictional rules thereby provide the Claimant with a degree of choice. Article 33(1)(b), third paragraph of the Agreement is an example of such an option, clearly allowing a claim to be brought in the Central Division where one of the

defendants is resident outside the Contracting Member States (“CMS”); in this case, Switzerland.

9. The Defendants resort to a sinister and arachnophobic notion of a “spider in the web”. There is no place for such outlandish allegory in the brave new modern world of the UPC.
10. In the unlikely event the Claimant is incorrect, a simple cursory inspection of the map provided by the Defendants at Figure 1 will show that, if there is a spider in the web in this situation, it is most likely to be located in the centre of the geographical web; namely in Switzerland. The Court should take care to avoid the flimsy but sticky strands of the web of deceit which the Defendants seek to weave.

Allegation 2

11. The Defendants claim this action is inadmissible because the Claimant is not the owner of the Patent(s). The allegation is factually and legally incorrect, as the Claimant has already established in the Statement of Claim. But more important, for present purposes, is that this misfounded allegation is not an issue with which this mighty and honourable Court ought to be concerned.
12. The role of the UPC is to consider the validity and infringement of patents, not trivial peripheral issues such as ownership and entitlement. The Defendants have no standing to raise this issue but if it does require resolution it is clearly a matter for the exclusive jurisdiction of the courts of the Netherlands and not the UPC.
13. Furthermore, this desperate point on ownership is not something which is appropriate for a Preliminary Objection under Rule 19(1) nor can it be the subject of a summary finding under Rule 334(h).
14. In the unlikely event this Court considers it does have power and interest in this peripheral issue, it should provide directions, in due course for the submission of expert evidence on Dutch law, which is the law of the assignment agreement.

Allegation 3

15. In a further example of its obstructive and shallow attempts to distract the Court from its heinous infringements, the Defendants moan about the lack of registration of one small part of this Patent in a minority country occupying a very small proportion of the extensive and far-reaching competence of the mighty supranational UPC. This Court should not be troubled by such minor and petty matters. The CMS have clearly relinquished any right to maintain such petty nationalistic formalities. These minor formalities might apply to xenophobic patent owners who are silly enough to opt out of the grand scheme of the UPC but not to those proud and sensible patent owners who decry national patents in favour of the glory of a greater harmonised Europe.

16. The Claimant is any event taking steps to record the assignment and change of ownership in the European register and those formalities will soon be completed. The timing of such registration is outside the Claimant's control. If this Court had any concerns, the Claimant would be much obliged if the Judge-Rapporteur would direct the good chaps at the EPO to sharpen their quill pen and attend to this formality. Claimant will also co-operate expeditiously with any practical suggestion from the Judge-Rapporteur that the Claimant attend to any minor national formalities if that would assist this mighty and honourable Court.

Allegation 4

17. In a further and final desperate attempt at sabotage, the Defendants request translations into an astonishing 4 languages, a measure in itself mind-bogglingly contrary to the clear intention of the forefathers of this mighty body to eradicate all minority languages and reinforce the supreme linguistic trilogy of English, French and German. Such translations will cause delay and expense and provide no significant benefit.
18. The Defendants, and the extremely worldly and expensive lawyers they have engaged, have clearly understood the Statement of Claim in nit-pickingly precise detail in order to prepare and present these extremely creative, but ultimately futile, Preliminary Objections.
19. The Defendants have conveniently ignored the important third cumulative requirement of Article 51(3)(c) of the Agreement that in order to justify translations, the Defendants need to demonstrate that they do not have proper knowledge of the language of the proceedings. Clearly, in this day and age, everybody other than perhaps the most incompetent imbecile living a nomadic life in the far reaches of outer Mongolia speaks English and English is the working language of the world of technology and entertainment which the Defendants inhabit.
20. The principles of case management set out in Rule 332(h) require the likely benefits of a measure to justify the cost. There are no benefits. There would be considerable cost. No translations should be ordered.

Summary

21. The Judge-Rapporteur should reject these tactical manoeuvres and preliminary obfuscations of the Defendants. The Judge-Rapporteur should also order the Defendants immediately to pay the Claimant the sum of £10,000 in compensation for the very reasonable and conservatively-estimated attorneys' fees that the Claimant has been forced to incur in responding to these attempted distractions. The Court should send a clear message that such tactical ploys, which are clearly contrary to the spirit, and German-inspired efficiency of this wonderful court, will not be tolerated. It follows the Judge-Rapporteur should award attorneys' fees on a fully compensatory basis and require immediate payment by the Defendants to the Claimant. There is clear basis to do so in Article 69(3) of the Agreement in relation to unnecessary costs, supported by the case management principles of Rule 332.

Further Application by Claimant

22. It is with considerable regret that the Claimant must inform this honourable Court of the most heinous and flagrant act of disrespect by the Defendants. The Court will be most aggrieved to learn that the Defendants ignored the Judge-Rapporteur's Order of 17 March 2014 that the Defendants file their Statement of Defence and Counterclaim for revocation by 3 April 2014. The Defendants with no prior notice or explanation completely ignored the direction of the Judge-Rapporteur and filed the Defence and a miserable Counterclaim on 9 April 2014. The Claimant's counsel reminded the Defendants' counsel of the deadline and enquired whether there was any reason for the non-compliance on 4 April 2014. No response or explanation was forthcoming. The Rules are clear on this point. Rule 19(6) states, "*The period for lodging the Statement of Defence shall not be affected by the lodging of a Preliminary objection, unless the judge-rapporteur decides otherwise*". The Claimant therefore requests summary judgment in accordance with Rule 355.
23. In the unlikely event that the Court condones such blatant disrespect, Claimant will require further time in which to respond the Statement of Defence and Counterclaim. The Claimants representatives are now taking a well-deserved vacation over the Easter period. It will use its best endeavours to file the Reply to the Statement of Defence and Defence to the Counterclaim and any application to amend its patent (which is unlikely to be necessary in light of the undoubtedly inventive concept which is so clearly and comprehensively described in the Patent and its claims) before the interim hearing.

The Claimant therefore requests that this mighty and honourable Court orders that -

1. The Preliminary Objections of the Defendants are rejected in their entirety.
2. The Defendants do pay the Claimants the sum of £10000 within 7 days.
3. Judgment be given in favour of the Claimant and together with all remedies sought by the Claimant in its Statement of Claim.
4. In the alternative to order 3, the Claimant has further time in which to file and serve its Reply and Defence to Counterclaim and any application to amend the Patent.

FILED AND SERVED 11 APRIL 2014

By

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Unified Patent Court APEB mock trial interim conference on Tuesday 22 April 9:00 am BST, 10:00 CEST

Technical support 8:00 am BST, 9:00 CEST



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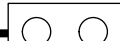
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Defendants' presentation for the preliminary objections and interim conference

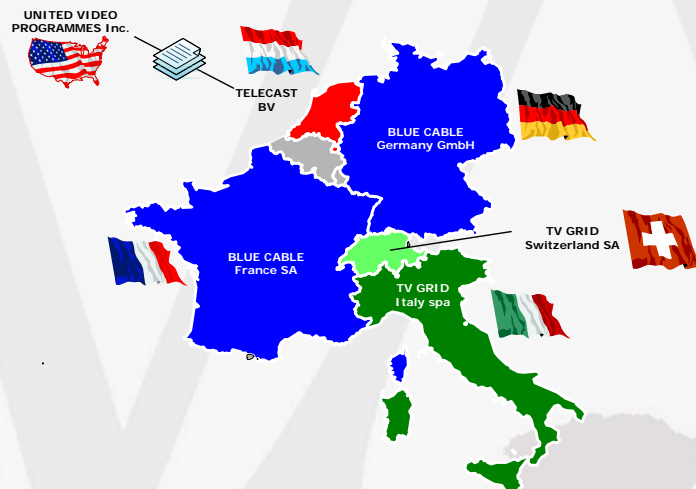
22 April 2014 • APEB Mock Trial
Düsseldorf • Paris • London • Lyon

Pierre Véron and Amandine Métier



Unified Patent Court
Rules of Procedure

The parties



French is an appropriate language for the preliminary objections

Rule 19 – Preliminary objection

1. Within one month of service of the Statement of claim, the defendant may lodge a Preliminary objection concerning:

- (a) the jurisdiction and competence of the Court;
- (b) the competence of the division indicated by the claimant [Rule 13.1(i)];
- (c) the language of the Statement of claim [Rule 14] ...

French is an appropriate language for the preliminary objections

Rule 19 – Preliminary objection

...

3. The Preliminary objection shall be drawn up:

- (a) in the language of the proceedings [Rule 14.3];
or
- (b) in one of the official languages of the European Patent Office.

Preliminary objections

- No jurisdiction of the Central Division
(because not **all** defendants domiciled outside Contracting Member States)
- In the alternative, inadmissibility of the action for lack of standing to bring an action
(claimant not proprietor of the patent)
- In the further alternative, inadmissibility of the action on the French territory
(absence of entry in the French patent register of the patent assignment)
- In the very alternative, defendants should be provided with translations of the statement of claim under Article 51(3) Agreement

Article 32

Competence of the Court

(1) *The Court shall have exclusive competence in respect of:*

(a) **actions for actual or threatened *infringements* of patents and supplementary protection certificates and related defences, including counterclaims concerning licences;**

Article 33

**Competence of the divisions
of the Court of First Instance**

(1) Without prejudice to paragraph 7 of this Article, actions referred to in Article **32(1)(a)**, (c), (f) and (g) shall be brought before:

(a) the **local division** hosted by the Contracting Member State **where the actual or threatened infringement has occurred** or may occur, or the regional division in which that Contracting Member State participates; or...

= place of infringement

Article 33

**Competence of the divisions
of the Court of First Instance**

(b) the **local division** hosted by the Contracting Member State **where the defendant or, in the case of multiple defendants, one of the defendants has its residence, or principal place of business**, or in the absence of residence or principal place of business, its place of business, or the regional division in which that Contracting Member State participates. **An action may be brought against multiple defendants only where the defendants have a commercial relationship and where the action relates to the same alleged infringement.**

= domicile of one of the defendants

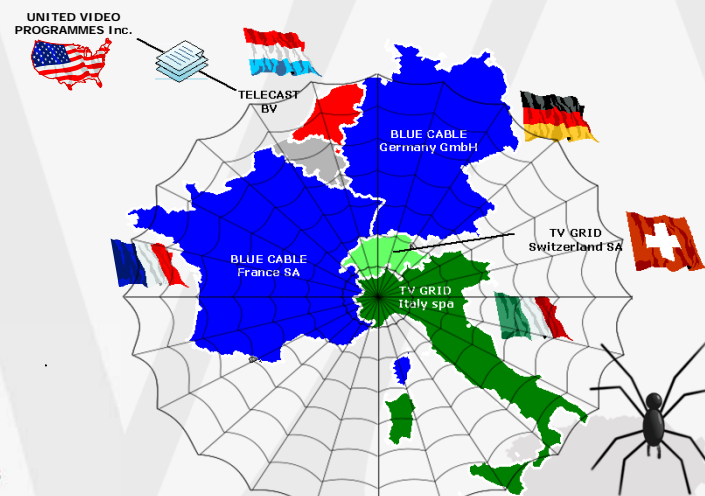
Article 33

**Competence of the divisions
of the Court of First Instance**

*Actions against **defendants having their residence, or principal place of business** or, in the absence of residence or principal place of business, their place of business, **outside the territory of the Contracting Member States** shall be brought before the **local or regional division in accordance with point (a) of the first subparagraph or before the central division.***

Nothing like: "where the defendant or, in the case of multiple defendants, one of the defendants" nor like:
"An action may be brought against multiple defendants only where the defendants have a commercial relationship and where the action relates to the same alleged infringement."

= CD has jurisdiction only if all defendants domiciled outside CMS

**The so-called spider
in the so-called web is in Italy**

Conclusion on jurisdiction

Blue Cable and TV Grid request that the judge-rapporteur hold the central division of the Court of First Instance incompetent to hear this action, which should be allocated to the Italian local division of the Court of First Instance.

In the alternative

Action is inadmissible

- Judge-rapporteur may decide on blatant inadmissibility
- In the alternative, inadmissibility of the action for lack of standing to bring an action (claimant not proprietor of the patent)
- In the further alternative, inadmissibility of the action on the French territory (absence of entry in the French patent register of the patent assignment)

Rule 334 (h)**Action bound to fail**

*“Except where the Agreement, the Statute or these Rules provide otherwise, **the judge-rapporteur**, the presiding judge or the panel **may**:*

- (a) extend or shorten the period for compliance with any rule or order [Rule 9.3];*
- (b) adjourn or bring forward the interim conference or the oral hearing;*
- (c) communicate with the parties to instruct them about wishes or requirements of the Court;*
- (d) direct a separate hearing of any issue;*
- (e) decide the order in which issues are to be decided;*
- (f) exclude an issue from consideration;*
- (g) dismiss or decide on a claim after a decision on a preliminary issue makes a decision on further issues irrelevant to the outcome of the action;*
- (h) dismiss a claim summarily if it has no prospect of succeeding;***

Inadmissibility for lack of standing to bring an action

Claimant has no right on the patent at issue (EP 1 003 442) which is not listed among the patents that he has acquired

Annex 1 (List of assigned patents and patent application)	
•	US 555975
•	WO 92/01804
•	EP 0 682 845
•	EP 1 454 823
•	EP 1 456 571
•	EP 1 532 321
•	AT 589 753
•	AU 789 956
•	AU 5 990 596
•	BR 9 544 899
•	CA 2 499 751
•	CN 1 199 447
•	CN 1 213 856
•	ES 2 021 796
•	ES 2 856 423
•	HK 1 334 412
•	JP 068945
•	JP 069001
•	KR 0104895
•	KR 0106541

Patents means the patents and patent applications filed under priority of US patent No 555975, whose details appear in annex 1.

Unified Patent Court
Rules of Procedure

Inadmissibility because acquisition not entered in FR patent registry (RNB)

- The claimant says that he has entered the acquisition in the DE and IT patent registries
- But he confesses that he had not entered the acquisition in the FR patent registry: article L. 613-9 FR IPC is applicable (art. 24 Agreement)

Unified Patent Court
Rules of Procedure

Inadmissibility because acquisition not entered in FR patent registry (RNB)

Article L. 613-9 of the French Intellectual Property Code:

"All acts transferring or modifying the rights deriving from a patent application or a patent must, to be enforceable against third parties, be entered in a register, known as the National Patent Register kept by the National Institute of Industrial Property."

In the very alternative

Request for translation

Article 46 (6) Agreement:

(6) The language of proceedings at the central division shall be the language in which the patent concerned was granted."

In the very alternative

Request for translation

Article 51(3) Agreement:

"3. Notwithstanding Article 49(6), in cases where an action for infringement is brought before the central division, a defendant having its residence, principal place of business or place of business in a Member State shall have the right to obtain, upon request, translations of relevant documents in the language of the Member State of residence, principal place of business or, in the absence of residence or principal place of business, place of business, in the following circumstances:

In the very alternative

Request for translation

(a) jurisdiction is entrusted to the central division in accordance with Article 33(1) third or fourth subparagraph, and

(b) the language of proceedings at the central division is a language which is not an official language of the Member State where the defendant has its residence, principal place of business or, in the absence of residence or principal place of business, place of business, and

(c) the defendant does not have proper knowledge of the language of the proceedings.”

In the very alternative

Request for translation

Telecast BV should provide, at its expense, translations :

- in French, for the purpose of the defence of Blue Cable France SA;
- in German, for the purpose of the defence of Blue Cable Germany GmbH;
- in Italian, for the purpose of the defence of TV Grid Italy SpA;
- in Romansh (*Sutsilvan* dialect) for the purpose of the defence of TV Grid Switzerland SA.

These translations will have to be certified by a translator authorised by the highest national court of each of the countries concerned.

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Thank you

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INTERIM PROCEDURE

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Section H1 (Electricity)

Judge-rapporteur: Dr. Klaus Grabinski
Registrar: Mr. Dominique Ménard

CASE No. 2014/01/CDH1	CLAIMANT(S) Telecast BV Representative(s): Mr. Michael Burdon (Olswang LLP) Email(s) provided for service (r.271): michael.burdon@olswang.com	DEFENDANT(S) Blue Cable France SA Blue Cable Germany GmbH TV Grid Switzerland SA TV Grid Italy SpA Representative(s): Me. Pierre Véron and Me. Amandine Métier (Véron & Associés) Email(s) provided for service (r.271) pierre.veron@veron.com amandine.metier@veron.com
PATENT(S)-IN-SUIT EP 1 003 442	DATE 29.04.2014	

SERVICE OF AN ORDER OF THE JUDGE-RAPPORTEUR (R.6(1))

You are hereby informed that, in the above identified case, the Judge-rapporteur issued on **22 April 2014** the enclosed order on the defendants' preliminary objections and other procedural issues.

In accordance with Art.73(2)(b)(ii) and r.21(1) and r.220(2), any appeal, to extent left by the Judge-rapporteur, shall be lodged within a period

of 15 (fifteen) days

from the service of this order, this period being computed in accordance with r.300 and r.301.

The order has been recorded in the register in accordance with r.351(3).

Remark: In all future communications with the Registry, please quote the Case No. as indicated above, i.e. including the final four characters (which identify the Section responsible for the subsequent procedure).

Remark: The Registry may proceed to service on the parties at an electronic address which they have provided for the purpose of service in the proceedings. Where the electronic address for service of a party changes, that party must give notice in writing of the changes as soon as it has taken place to the Registry and every other party (r.6, 271, 276 and 279).

The Registrar

Unified Patent Court
Court of First Instance
Central Division

22 April 2014

Case No 2014/01/CDH1

Decision on Preliminary Objection and other issues

in the case

Telecast BV, with its registered office located Pompstationsweg 32, Den Haag, the Netherlands,

Claimant,

Representative:

Mr Michael Burdon, solicitor, Olswang
LLP, 90 High Holborn, London, WC1V
6XX, United Kingdom,
Michael.Burdon@olswang.com

against

1. Blue Cable France SA, a company governed by the French laws, entered in the trade register of Paris under N° B 345 724 631, with its registered office located 55, rue du Faubourg Saint-Honoré, 75008 Paris, France,
2. Blue Cable Germany GmbH, a company governed by the laws of Germany, with its registered office located Spreeweg 1, 10557 Berlin, Germany,
3. TV Grid Switzerland SA, a company governed by the laws of Switzerland, with its registered office located Bundesplatz, 3000 Bern, Switzerland,
4. TV Grid Italy SpA, a company governed by the laws of Italy, with its registered office located Piazza del Quirinale 1, 00187 Roma, Italy,

Defendants,

Representatives:

Mr Pierre Véron and Ms Amandine Métier, attorneys-at-law, members of the Paris Bar, 1, rue Volney, 75002 Paris, France, pierre.veron@veron.com and amandine.metier@veron.com

After having heard the parties the Judge-Rapporteur Dr. Klaus Grabinski decides on 22 April 2014:

1. a) The central division of the Court of First Instance of the Unified Patent Court is competent to hear the case with regard to all defendants.
1. b) The request to hold that the case may only be brought before the Italian division of the Court of First Instance of the Unified Patent Court is not admissible.
2. The requests of the defendants to hold that the action of the claimant is inadmissible are dismissed.
3. The request of the defendants to obtain translations of the relevant documents of the procedure in French, German, Italian and Romansh is dismissed.
4. The request of the claimant to order that the defendant pays the sum of 10.000 £ within 7 days is to be dealt with as part of the final cost order.
5. The request of the claimant to give default judgment is dismissed.
6. Claimant may submit his reply to the statement of defence, defence to the counterclaim and (possibly) application to amend the patent not later than 1 Mai 2014.
7. Defendants may submit their rejoinder to the reply, reply to the defence and (possibly) defence to the application to amend the patent not later than 12 Mai 2014.

Facts

Claimant brings an action for infringement of European patent 1 003 442 (“European patent”) entitled “Method and apparatus for accessing information about television programs” which claims priority from US patent 555 975. Registered proprietor in the register of the EPO is the United Video Programmes Inc. (“United Video”). Designated contracting states, amongst others, are France, Germany, Switzerland and Italy. The language of the European patent is English.

On 24 December 2013 claimant concluded with United Video an assignment agreement according to which United Video assigned “the patents and patent applications filed under priority of US patent no 555975 whose details appear in annex 1”. The list of assigned patents and patent applications does not mention the European patent. Ownership of the claimant has been entered in the German and Italian national patent registers. Claimant has applied to register ownership in the European register.

The four defendants are companies with its registered offices located in France (“defendant 1”), in Germany (“defendant 2”), in Switzerland (“defendant 3”) and in Italy (“defendant 4”).

Defendant 1’s business is, amongst other things, the provision of television broadcasting services in France and the provision of satellite television reception equipment and set-top boxes. As part of its service, Defendant 1 broadcasts programme information which is displayed on its subscribers’ television as an electronic program guide (“EPG”).

Defendant 2 broadcasts programme information in Germany in the form of Defendant 1’s EPG.

Defendants’ EPG was developed and produced by defendant 3 who warrants the technical performance, offers and provides technical support regarding the operation and performance of the defendant’s EPG to defendant 4 and its customers.

Defendant 4 in co-operation with defendant 3 licensed and supplied the defendant’s EPG to defendants 1 and 2.

Claimant takes the view that, by these activities, the defendants are jointly and severally infringing the European patent. Claimant’s statement of claim and all further submissions to the Court are filed in English.

In their preliminary objection defendants argue that claimant’s action is inadmissible under various aspects with regard to all or some defendants. In the alternative, they invite the court to order that defendants are provided with translations of relevant documents into French, German, Italian and Romansh. Claimant questions the admissibility of the preliminary objection and opposes defendants’ requests.

Opinion

1. a) The request of the defendant to hold that the central division of the Court of First Instance of the Unified Patent Court is incompetent to hear this case is admissible as a preliminary objection under Rule 19 (1) b) Rules of Procedure but not founded. The central division is competent to hear the case beforehand with regard to all defendants under Article 33 (1) b) subparagraphs 1 and 3 UPC-Agreement.

With regard to defendant 3, a company having its registered offices located in Switzerland, and, thus, outside the territory of the Contracting Member States, jurisdiction of the central division follows directly from Article 33 (1) b) subparagraph 3 and needs no further explanation.

With regard to the other three defendants having their registered offices in France, Germany and Italy Article 33 (1) b) subparagraph 1 provides that in case of multiple defendants instead of bringing a multitude of parallel infringement actions before different local or regional divisions the claimant may bring a one and only infringement action against all defendants before a one and only local or regional division where one of the defendants has its principal place of business provided the defendants have a commercial relationship and the action relates to the same alleged infringement. The ratio of this provision is clearly to give the claimant an option to avoid parallel litigations against multiple defendants.

The court is of the opinion that the same ratio applies when one or more of the multiple defendants have their principal place of business outside the territory of the Contracting Member States. Also

under these circumstances the claimant shall be given an option to avoid parallel litigations against multiple defendants.

In this case, there is also no justification to limit the choice of the claimant to bring the infringement action only before the local or regional division where one or more of the defendants have their principal place of business and not to the central division. When one of the defendants has its place of principal business outside the territory of the Contracting Member States the central division becomes what would have been otherwise the local or regional division which opens the choice for the claimant to also bring its action against the other defendants before the central division provided the defendants have a commercial relationship and the action relates to the same infringement.

It follows from these general considerations that, under the given circumstances, claimant was entitled to bring its action also against defendants 1, 2 und 4 to the central division since according to the uncontested allegations of the claimant that all defendants have a commercial relationship and the action relates to the same alleged infringement.

b) The request to hold that this case may only be brought before the Italian division is not admissible. The central division has no jurisdiction to decide to which local or regional division a case may only be brought.

2. The requests to hold that claimant's action as inadmissible for lack of standing to bring an action and, in the alternative, to hold that claimant's action as inadmissible as far as the French territory is concerned by reason of the absence of entry of its license in the French patent register are inadmissible as preliminary objections under Rule 19 (1) and (4) and also do not give any reason to dismiss the claim summarily under Rule 334 (h) Rules of Procedure.

3. The request of defendants for translation of the relevant documents into French, German, Italian and Romansh is admissible under Article 51 (3) of the Agreement but not founded.

Condition of the right to obtain translations of relevant documents in the language of the Member State of principal place of business or place of business is that the defendant does not have proper knowledge of the language of the proceedings, Article 51 (3) c). Defendants allege only in very general terms that English as the language of proceedings under Article 49 (6) is not sufficiently understood. These allegations are not sufficient to convince the court that the requirements of Article 51 (3) c) have been met. Defendants' business is in the field of developing, licensing and providing television broadcasting services. In this field of technology English is the predominant language of communication. In addition, it is no contested that the four companies that are located in four different states with four different languages cooperate in the development, licensing and marketing of their services. They could not explain that this communication is not done in English.

4. The request of claimant to order the defendants immediately to pay the claimant the sum of 10.000 £ in compensation for unnecessary costs pursuant to Art. 69 (3) of the agreement is part of the final cost order under Rule 150 Rules of Procedure and not be decided at this stage of proceedings.

5. The request of claimant to give judgment by default is dismissed. Defendants did not comply with the order of the judge-rapporteur to file the statement of defence by 3 April. In fact, they submitted the defence 6 days later on 9 April. The court, however, takes into account the very convincing

excuse of the representative of the claimant in the interim conference that the dog of his secretary ate the draft of the statement of defence and that he had to write it again which took a lot of time. The court also takes also into account that the oral hearing is set for 22 May which still leaves time for the claimant to submit its response to the defence and the counterclaim and the rejoinder of the defendant without causing delay in the overall schedule.

6. Leave to appeal is granted with regard to decision 1 a) as an issue of fundamental importance.



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Section H1 (Electricity)

Judge-rapporteur: Dr. Klaus Grabinski
Registrar: Mr. Dominique Ménard

CASE No. 2014/01/CDH1	CLAIMANT(S) Telecast BV Representative(s): Mr. Michael Burdon (Olswang LLP) Email(s) provided for service (r.271): michael.burdon@olswang.com	DEFENDANT(S) Blue Cable France SA Blue Cable Germany GmbH TV Grid Switzerland SA TV Grid Italy SpA Representative(s): Me. Pierre Véron and Me. Amandine Métier (Véron & Associés) Email(s) provided for service (r.271) pierre.veron@veron.com amandine.metier@veron.com
PATENT(S)-IN-SUIT EP 1 003 442	DATE 09.05.2014	

COMMUNICATION OF THE MINUTES OF AN INTERIM CONFERENCE AND SUMMONS TO THE ORAL HEARING

In light of Articles 43 and seq. of the Agreement on a Unified Patent Court and Rules 331 and seq. of the Rules of Procedure relating to case management, and in accordance with the Rules governing the Registry adopted by the Presidium on 6 May 2014, minutes of interim conferences are being communicated to the parties for ease of reference. The content of these minutes shall not be binding in anyway whatsoever and shall in any case not contradict the oral content of the interim conference as recorded and made publicly available in accordance with Rule 106 of the Rules of Procedure.

1. During the interim conference held by the Judge-rapporteur on **22 April 2014** in the above-identified case were present (via video conference):

- Mr. Judge-rapporteur Dr. Klaus Grabinski;
- Mr. Registrar Dominique Ménard;
- Mr. Michael Burdon, as representative for the Claimant;
- Me. Pierre Véron and Mrs. Amandine Métier, as representatives for the Defendants.

In a first part of the interim conference were addressed and discussed the preliminary objections and other issues raised by the Defendants on 31 March 2014. The Judge-rapporteur issued an order in this respect, which has been communicated orally during the interim conference and served by the Registrar on 29 April 2014 and to which reference is made.

In addition, upon request of the Judge-rapporteur, the Registrar acknowledges that the Claimant expressly agreed to limit its claims in the present case to alleged infringements committed within the territory of all States designated by the patent-in-suit that are at the same time Contracting Member States of the UPC, which, *inter alia*, excludes Switzerland.

In a second part of the interim conference were addressed and discussed the following case management issues:

- Entitlement of the patent-in-suit: considering that the Claimant has not contested the Defendants' allegation that assignment to the Claimant of the patent-in-suit has not been recorded with the French Patent Register pursuant to Article L. 613-9 of the French Intellectual Property Code, the Judge-rapporteur invited the Claimant to apply for such record and to use any available mean to expedite the record procedure so as to be able to provide evidence of its completion prior to the oral hearing.
- Orders to preserve evidence sought by the Claimant against the Defendants: the Judge-rapporteur indicated the parties that, within 10 (ten) days from the interim conference, he will issue a decision on the orders to preserve evidence sought by the Claimant against the Defendants.
- Application of the Claimant for the hearing of Mr. Couch Potato as a witness: considering that the Defendant have not contested the description made by the Claimant of the allegedly infringing programme from a factual perspective, the Judge-rapporteur considered that there was no need to summon Mr. Couch Potato as a witness to the oral hearing. However, the Judge-rapporteur did not prohibit that Mr. Couch Potato attend the oral hearing, which is public, and may be heard by the Panel, if need be and to the extent laid down by the Claimant in their written pleadings.
- Application of the Defendants for the hearing of Mr. Peter D. Hallenbeck as a witness: considering that the Claimant has contested neither the date nor the disclosure, prior to the priority date of the patent-in-suit, of Mr. Peter D. Hallenbeck's publication (Exhibit No. 6 of the Defendants), the Judge-rapporteur considered that there was no need to summon Mr. Peter D. Hallenbeck as a witness to the oral hearing. However, the Judge-rapporteur did not prohibit that Mr. Peter D. Hallenbeck attend the oral hearing, which is public, and may be heard by the Panel, if need be and to the extent laid down by the Defendants in their written pleadings.
- Potential settlement of the case: the Judge-rapporteur invited the parties to initiate amicable discussions outside of the interim conference and offered any needed assistance in this respect. The Judge-rapporteur indicated that he was open to schedule, even on short notice, any interim conference which could be useful to that end.

2. In accordance with r.104(c), the following schedule was established by the Judge-rapporteur and communicated to the parties for the further progress of the proceedings:

- Claimant may submit its Reply to the Statement of Defence, Defence to the Counterclaim and (possibly) Application to amend the patent not later than **1 May 2014**;
- Defendants may submit their Rejoinder to the Reply, Reply to the Defence and (possibly) Defence to the Application to amend the patent not later than **12 May 2014**.

In accordance with r.108, the parties are summoned to the oral hearing which shall take place before the Panel

on 22 May 2014, from 1:30 pm to 5:30 pm

On an exceptional basis, considering the very high media coverage of this first UPC case and the remarkably large audience expected, the oral hearing will take place outside the walls of the UPC, at the Grand Auditorium of the MEDEF, 55 avenue Bosquet, 75007 Paris, France.

The above minutes and summons have been recorded in the register.

Remark: *In all future communications with the Registry, please quote the Case No. as indicated above, i.e. including the final four characters (which identify the Section responsible for the subsequent procedure).*

Remark: *The Registry may proceed to service on the parties at an electronic address which they have provided for the purpose of service in the proceedings. Where the electronic address for service of a party changes, that party must give notice in writing of the changes as soon as it has taken place to the Registry and every other party (r.6, 271, 276 and 279).*

The Registrar



INTERIM PROCEDURE

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Section H1 (Electricity)

Judge-rapporteur: Dr. Klaus Grabinski
Registrar: Mr. Dominique Ménard

CASE No. 2014/01/CDH1	CLAIMANT(S) Telecast BV Representative(s): Mr. Michael Burdon (Olswang LLP) Email(s) provided for service (r.271): michael.burdon@olswang.com	DEFENDANT(S) Blue Cable France SA Blue Cable Germany GmbH TV Grid Switzerland SA TV Grid Italy SpA Representative(s): Me. Pierre Véron and Me. Amandine Métier (Véron & Associés) Email(s) provided for service (r.271) pierre.veron@veron.com amandine.metier@veron.com
PATENT(S)-IN-SUIT EP 1 003 442	DATE 13.05.2014	

SERVICE OF AN ORDER OF THE JUDGE-RAPPORTEUR (R.6(1))

You are hereby informed that, in the above identified case, the Judge-rapporteur issued on **12 May 2014** the enclosed order on the claimant's Application for preserving evidence (r.192 and seq.)

In accordance with Art.73(2)(a) and r.220(1)(c), any appeal shall be lodged within a period

of 15 (fifteen) days

from the service of this order, this period being computed in accordance with r.300 and r.301.

The order has been recorded in the register in accordance with r.351(3).

Remark: In all future communications with the Registry, please quote the Case No. as indicated above, i.e. including the final four characters (which identify the Section responsible for the subsequent procedure).

Remark: The Registry may proceed to service on the parties at an electronic address which they have provided for the purpose of service in the proceedings. Where the electronic address for service of a party changes, that party must give notice in writing of the changes as soon as it has taken place to the Registry and every other party (r.6, 271, 276 and 279).

The Registrar

Case No 2014/01/CDH1

Decision on claimant's request for an order to preserve evidence

in the case

Telecast BV, with its registered office located Pompstationsweg 32, Den Haag, the Netherlands,

Claimant,

Representative:

Mr Michael Burdon, solicitor, Olswang
LLP, 90 High Holborn, London, WC1V
6XX, United Kingdom,
Michael.Burdon@olswang.com

against

1. Blue Cable France SA, a company governed by the French laws, entered in the trade register of Paris under № B 345 724 631, with its registered office located 55, rue du Faubourg Saint-Honoré, 75008 Paris, France,
2. Blue Cable Germany GmbH, a company governed by the laws of Germany, with its registered office located Spreeweg 1, 10557 Berlin, Germany,
3. TV Grid Switzerland SA, a company governed by the laws of Switzerland, with its registered office located Bundesplatz, 3000 Bern, Switzerland,
4. TV Grid Italy SpA, a company governed by the laws of Italy, with its registered office located Piazza del Quirinale 1, 00187 Roma, Italy,

Defendants,

Representatives:

Mr Pierre Véron and Ms Amandine
Métier, attorneys-at-law, members of the
Paris Bar, 1, rue Volney, 75002 Paris,
France, pierre.veron@veron.com and
amandine.metier@veron.com

After having heard the parties in writing and at the interim conference of 22 April 2014 the Judge-Rapporteur Dr. Klaus Grabinski decides on 12 May 2014:

Claimant's request to preserve evidence regarding the sale, supply promotion, licensing and distribution of the Defendants' EPG in the Designated Contracting States is dismissed.

Reasons

In the Interim Conference of 22 April 2014 Claimant made clear that he is no longer searching an order to preserve evidence of the Defendants' EPG and details of its operation, as well as the materials and implements used in the production and development of the Defendants' EPG.

However, Claimant insisted that he is still searching an order to preserve evidence regarding the sale, supply promotion, licensing and distribution of the Defendants' EPG in the Designated Contracting States.

The request is not admissible. In his request Claimant is not specifying which kind of measures to preserve evidence he invites the Court to order. It is also not specified at what venue evidence shall be preserved.

The request is also not founded. An order to preserve evidence requires, as a rule, that less trenchant options have been tried by claimant without success or have no prospect of success. For example, it would be disproportional to order an inspection of premises if the allegedly infringing product is freely available on the market and, thus, could be easily acquired by claimant. With regard to a request to preserve evidence on the sale, supply promotion, licensing and distribution of the allegedly infringing product claimant, as a rule, is required to call upon defendant to provide him with the necessary evidence before searching a respective court order unless there is a demonstrable risk of evidence being destroyed. Claimant did not give any indications that he required defendant out-of-court to provide him with the evidence or that there is a risk of evidence being destroyed by defendant.

STATEMENT OF DEFENCE

ON BEHALF OF

1. **Blue Cable France SA**, a company governed by the French laws, entered in the trade register of Paris under N° B 345 724 631, with its registered office located 55, rue du Faubourg Saint-Honoré, 75008 Paris, France
2. **Blue Cable Germany GmbH**, a company governed by the laws of Germany, with its registered office located Spreeweg 1, 10557 Berlin, Germany
3. **TV Grid Switzerland SA**, a company governed by the laws of Switzerland, with its registered office located Bundesplatz, 3000 Bern, Switzerland
4. **TV Grid Italy SpA**, a company governed by the laws of Italy, with its registered office located Piazza del Quirinale 1, 00187 Roma, Italy

Defendants

represented by Mr Pierre Véron and M^e Amandine Métier,
attorneys-at-law, members of the Paris Bar, who are authorised to accept service
pierre.veron@veron.com and amandine.metier@veron.com

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AGAINST

1. **Telecast BV**, with its registered office located Pompstationsweg 32, Den Haag, the Netherlands

Claimant

Mr Michael Burdon,
solicitor
Michael.Burdon@olswang.com

Olswang LLP

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MAY IT PLEASE THE COURT 3

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MAY IT PLEASE THE COURT

By way of a Statement of claim dated 24 March 2014, Telecast BV (hereinafter referred to as "*Telecast*") initiated proceedings for infringement of claims 1 and 2 of its European patent N° 1 003 442 against Blue Cable France, Blue Cable Germany (hereinafter referred to as "*Blue Cable*"), TV Grid Switzerland and TV Grid Italy SpA (hereinafter referred to as "*TV Grid*") (collectively "*the defendants*").

On 31 March 2014, the defendants filed preliminary objections in accordance with Rule 19 of the Rules of Procedure.

By way of this statement of defence, in accordance with Rules 24¹ and 25² of the Rules of Procedure, the defendants request that the Court hold that claims 1 and 2 of European patent N° 1 003 442 are invalid or, at least, hold that the Blue Cable apparatuses at issue (set-top boxes) do not implement these claims.

¹ Rule 24 of the Rules of Procedure reads as follows:

"The Statement of defence shall contain:

(a) the names of the defendant and of the defendant's representative;

(b) postal and electronic addresses for service on the defendant and the names and addresses of the persons authorised to accept service;

(c) the action number of the file;

(d) an indication whether the defendant has lodged a Preliminary objection [Rule 19];

(e) an indication of the facts relied on, including any challenge to the facts relied on by the claimant;

(f) the evidence relied on [Rule 170.1], where available, and an indication of any further evidence which will be offered in support;

(g) the reasons why the action shall fail, arguments of law and any argument arising from the provisions of Article 28 of the Agreement and where appropriate any challenge to the claimant's proposed claim interpretation;

(h) an indication of any order the defendant will seek in respect of the infringement action during the interim procedure [Rule 104(e)];

(i) a statement whether the defendant disputes the claimant's assessment of the value of the infringement action and the grounds for such dispute; and

(j) a list of the documents, including any witness statements, referred to in the Statement of defence together with any request that all or part of any such document need not be translated and/or any Application pursuant to Rule 262.2. Rule 13.2 and .3 shall apply mutatis mutandis."

² Rule 25 of the Rules of Procedure indicates:

"1. If the Statement of defence includes an assertion that the patent (or patents) alleged to be infringed is (are) invalid the Statement of defence shall include a Counterclaim against the proprietor(s) of the patent (or patents) for revocation of said patent (or patents.) in accordance with Rule 43. The Counterclaim for revocation shall contain:

(a) an indication of the extent to which revocation of the patent (or patents) is requested;

(b) one or more grounds for revocation, which shall as far as possible be supported by arguments of law, and where appropriate an explanation of the defendant's proposed claim construction;

(c) an indication of the facts relied on;

(d) the evidence relied on, where available, and an indication of any further evidence which will be offered in support;

(e) an indication of any order the defendant will seek during the interim procedure [Rule 104(e)];

*(f) where the defendant assesses that the value of the dispute including the Counterclaim exceeds the value of the infringement action by more than [EUR***] an indication of the value of the dispute including the Counterclaim;*

(g) a statement of his position, if any, on the options provided for in Article 33(3)(a), (b) or (c) of the Agreement and Rule 37.4;

(h) a list of the documents, including any witness statements, referred to in the Counterclaim for revocation together with any request that all or part of any such documents need not be translated. Rule 13.2 and .3 shall apply mutatis mutandis; and

(i) insofar as the proprietor(s) of the patent (or patents) are not claimant(s) in the infringement proceedings, the information required by Rule 13.1(b) and (d) in respect of said proprietor(s).

2. Lorsque le demandeur n'est pas le titulaire ou n'est pas le seul titulaire du brevet ou des brevets concernés, le greffe signifie, dès que possible, une copie de la demande reconventionnelle en nullité au titulaire ou aux titulaires concernés, conformément à la règle 13.1 (e), et fournit une copie de chaque document visé au § 2. La règle 271 s'applique mutatis mutandis. Les titulaires concernés deviennent parties à la procédure en nullité et sont considérés défendeurs dans toutes les procédures ultérieures. Les titulaires fournissent les informations en vertu de la règle 13.1 (e) si elles n'ont pas déjà été fournies par le demandeur. »

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FACTS AND PROCEEDINGS

Telecast BV and European patent N° 1 003 442

Telecast BV, a company governed by Dutch laws, alleges that it is the holder of European patent N° 1 003 442 (Telecast exhibit N° 2).

This patent was filed on 10 September 1995 by the U.S. company United Video Programs Inc, specialising in the development of electronic program guides (EPGs), claiming priority from a U.S. patent application.

The patent was granted on 12 June 2002.

Telecast BV considers that it acquired it on 24 December 2013 as well as the other patents filed under the same U.S. priority.

The assignment was entered in the German and Italian patent registers.

Telecast BV granted licences under this patent (and other patents covering functionalities relating to EPGs) to various program providers.

European patent N° 1 003 442 relates to a "*method and apparatus for accessing information about television programs*", which allegedly improves existing electronic program guides.

Blue Cable France, Blue Cable Germany, TV Grid SpA and TV Grid Switzerland

At the request of TV Grid Italy, a program guide has been developed by TV Grid Switzerland.

This electronic program guide is provided by TV Grid Italy to Blue Cable France and Blue Cable Germany which integrate them in their set-top boxes.

Electronic program guides

In the last 30 years or so, the number of television broadcasting stations has increased enormously.

The broadcasters wish the consumer to know what programs are being or are to be broadcast.

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Until the advent of electronic means of broadcasting, this information was disseminated principally in paper form: it took the form of a list of programs listed by channel and by broadcast time, with various possible methods of listing the starting and end time, the channel and some notes about the program.

One answer to the increase in the number of channels and programs and the size of the listings was to provide electronic lists directly available to a TV viewer on the screen.

The information on the programs can be transmitted by various means, preferably over the air by private service providers: by calling up the relevant list and looking up the relevant day, time and channel, the viewer can see what program is being broadcast at the relevant time.

In a typical case, the electronic program guide is controlled by a handle selector, which controls a selecting highlight on the screen, and a program is selected by highlighting it and pressing a selection button, at which an operation is carried out in relation to that program, for example providing more information about it.

Opposition at the European Patent Office against European patent N° 1 003 442

European patent N° 1 003 442 was opposed at the European Patent Office.

The opposition division issued a preliminary opinion holding that claim 1 lacks novelty and inventive step (Blue Cable / TV Grid exhibit N° 2).

United Video Programs filed amended claims (Blue Cable / TV Grid exhibit N° 3) to reply to this preliminary opinion but the opposition was then withdrawn, so that the claims as originally filed are in force.

These proceedings

Telecast BV decided to assert European patent N° 1 003 442 against Blue Cable and TV Grid.

In June 2013, it wrote letters to Blue Cable France and Blue Cable Germany asking them to stop implementing the method according to claim 1 of European patent N° 1 003 442 and to stop manufacturing, holding, putting on the market and offering for sale set-top boxes protected by claim 2 of the patent.

As Blue Cable considered that it was perfectly entitled to market the set-top boxes in dispute equipped with their electronic program guide, it deemed it unnecessary to reply to those warning letters.

Statement of defence on behalf of Blue Cable France SA, Blue Cable Germany GmbH, TV Grid Switzerland SA and TV Grid Italy SpA

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In a statement of claim dated 24 March 2014, Telecast BV lodged against Blue Cable France, Blue Cable Germany, TV Grid Switzerland and TV Grid Italy a claim for infringement of its European patent N° 1 003 442 before the Central division of the Unified Patent Court.

Considering the technical field of the patent concerned, the case was attributed to the Paris seat.

On 19 March 2014, Blue Cable and TV Grid raised preliminary objections in accordance with Rule 19 of the Rules of Procedure.

In the present statement, they set out their arguments in defence for obtaining the invalidity of claims 1 and 2 of European patent N° 1 003 442 in all its national designations and the dismissal of the claims for infringement.

DISCUSSION

Blue Cable and TV Grid request that the Court hold claims 1 and 2 of European patent N° 1 003 442 invalid for lack of patentability, lack of novelty and, at least, lack of inventive step (1.).

Should claims 1 and 2 of European patent N° 1 003 442 be held valid, Blue Cable and TV Grid request that the Court hold that their set-top boxes do not implement these claims (2.).

1. Counterclaim for revocation of claims 1 and 2 of European patent N° 1 003 442

Pursuant to Article 65, (1) and (2) of the Agreement:

“The Court shall decide on the validity of a patent on the basis of an action for revocation or a counterclaim for revocation.

The Court may revoke a patent, either entirely or partly, only on the grounds referred to in Articles 138(1) and 139(2) of the EPC.”

Article 138, 1) of the European Patent Convention (hereinafter referred to as “EPC”) mentions:

“Subject to Article 139, a European patent may be revoked with effect for a Contracting State only on the grounds that:

a) the subject-matter of the European patent is not patentable under Articles 52 to Article 57;

b) the European patent does not disclose the invention in a manner sufficiently clear and complete for it to be carried out by a person skilled in the art;

c) the subject-matter of the European patent extends beyond the content of the application as filed or, if the patent was granted on a divisional application or on a new application filed under Article 61, beyond the content of the earlier application as filed;

d) the protection conferred by the European patent has been extended; or

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e) the proprietor of the European patent is not entitled under Article 60, paragraph 1."

The defendants consider that European patent N° 1 003 442 must be revoked on the grounds that it constitutes a non-patentable presentation of information in accordance with Article 52 (2), d) EPC (1.1.).

Should the Court consider that the invention the subject-matter of European patent N° 1 003 442 is patentable, it will note that claims 1 and 2:

- ▶ are not new pursuant to Article 54 EPC (1.2.);
- ▶ do not involve an inventive step pursuant to Article 56 EPC (1.3.).

1.1. Lack of patentability of the invention the subject-matter of European patent N° 1 003 442 because it relates to a presentation of information

Article 52, (2) EPC states:

"The following in particular shall not be regarded as inventions within the meaning of paragraph 1:

- a) discoveries, scientific theories and mathematical methods;*
- b) aesthetic creations;*
- c) schemes, rules and methods for performing mental acts, playing games or doing business, and programs for computers;*
- d) **presentations of information.**"*

Claims 1 and 2 of European patent N° 1 003 442 read as follows (paragraphs added):

"1. A method for accessing information about television programs, the method comprising the steps of

- ▶ *storing in an electronic memory of a schedule controller operably connected with a monitor screen, a plurality of television program listings, each listing including title, telecast time and channel,*
- ▶ *displaying on the monitor screen an overlay providing, from the stored listings, a title of and channel information on a selected program simultaneously with the selected program upon selection of a channel change,*
- ▶ *and displaying, responsive to a user input, a further overlay containing further information on the selected program from the stored listings."*

"2. Apparatus for accessing information about television programs, the apparatus comprising

- ▶ *the means for storing in an electronic memory of a schedule controller operably connected with a monitor screen, a plurality of television program listings, each listing including title, telecast time and channel,*
- ▶ *means for displaying on the monitor screen an overlay providing, from the stored listings, a title of and channel information on a selected program simultaneously with the selected program upon selection of a channel change,*

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- ▶ *and means for displaying, responsive to a user input, a further overlay containing further information on the selected program from the stored listings."*

The invention the subject-matter of European patent N° 1 003 442 therefore relates to a method for accessing information about television programs and to an apparatus for accessing this information.

According to a first feature, the information is stored in an electronic memory of a schedule controller, this schedule controller being operably connected with a monitor screen, a plurality of television program listings, *i.e.* with a television screen, each television program listing including the title of the program, the telecast time and the channel.

According to a second feature, the method the subject-matter of the invention or the apparatus further comprises means for displaying on the monitor screen an overlay providing, from the stored listings, the information relating to the selected title.

According to a third feature, the method the subject-matter of the invention or the apparatus finally comprises means for displaying, responsive to a user input, a further overlay containing further information on the selected program from the stored listings.

In other words, in addition to the first step consisting in storing in an electronic memory various items of information about the programs, the claims of European patent N° 1 003 442 relate to a feature concerning means for obtaining a primary display that overlays the program selected on the screen and to a feature concerning means for obtaining a secondary display, appearing in response to a user input and giving access to further information.

According to the invention, the information relating to a selected title is in the form of banners.

Therefore, the invention the subject-matter of European patent N° 1 003 442 relates to how the information is displayed on a television screen and to the access to this information by the users.

In this respect, the description indicates:

"[0002] (...) When using a television set as a display for a schedule system, the size and resolution of the television display limit the amount of text that can be displayed with the grid. Improved techniques are required for conveying the most amount of information to the user in an easily understood manner within the limitations of the television display." (Telecast exhibit N° 2, page 2, column 1)

"[0003] Accordingly, it is an object of this invention to provide a television schedule system and process with a user interface that is configured to compensate for the particular nature of the television schedule information. [0004] It is another object of the invention to provide such a user interface in which supplemental schedule information is presented in overlays that obscure a minimum amount of useful other information." (Telecast exhibit N° 2, page 2, column 1)

"[0010] (...) The program note 52 overlays and hides 3 or 4 listings of a guide. To minimize concealment of the guide, an auto-roving note is used. The program note will overlay either the top half or bottom half of the screen, as necessary to avoid masking the title of the selected listing."

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It thus emerges from the description itself that it was already known from the prior art to store, extract and provide information about television programs, using a computer programme contained in a device connected to a television screen.

The invention the subject-matter of European patent N° 1 003 442 therefore consists in providing an electronic guide for television programs and in providing additional information on a selected title by overlay, without this overlaid additional information hiding the totality of the television screen, in order for the user to be able to always see part of the program guide.

However, far from giving the technical reasons that would make it possible to visualise more information on a selected program, claims 1 and 2 merely indicate that the information on a selected program can be visualised in the form of notes overlaying the general information already displayed.

Yet the mere presentation of information cannot be patentable.

The boards of appeal of the EPO held in particular that the mere organisation of the display of information cannot have a technical character if this organisation is not structured (technical board of appeal 3.5.01, 17 March 2011, T 1235/07³):

“The Board is thus in this case taking a wider view of ‘presentation of information’ than just the actual information that is displayed, the so-called cognitive content, to include also structural aspects of how the information is displayed. In the Board’s view, such additional aspects can only contribute to inventive step if they have technical character.”

The description of European patent N° 1 003 442 mentions no technical contribution concerning the organisation of the claimed visualisation of the information about the programs.

Therefore, the invention the subject-matter of European patent N° 1 003 442 presents no technical character and, consequently, does not meet the patentability requirement of Article 52 (2) d) EPC.

Claims 1 and 2 of European patent N° 1 003 442 should therefore be held invalid for this first reason.

Should the Court consider that this invention is not excluded from patentability, it will note that it is not new or, at least, that it lacks an inventive step.

1.2. Lack of novelty of claims 1 and 2 of European patent N° 1 003 442

In accordance with Article 54 (1) EPC:

“An invention shall be considered to be new if it does not form part of the state of the art.”

The method for accessing information about television programs, the subject-matter of claim 1 of European patent N° 1 003 442, comprises the following steps:

³ See also the decision of 1 April 2009, technical board of appeal 3.5.01, T 1143/06

Statement of defence on behalf of Blue Cable France SA, Blue Cable Germany GmbH, TV Grid Switzerland SA and TV Grid Italy SpA

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- a) a step of storing in an electronic memory of a schedule controller operably connected with a monitor screen, a plurality of television program listings, each listing including title, telecast time and channel;
- b) a step of displaying on the monitor screen an overlay providing, from the stored listings, a title or channel information on a selected program simultaneously with the selected program upon selection of a channel change;
- c) a step of displaying, responsive to a user input, a further overlay containing further information on the selected program from the stored listings.

Claim 2 relates to an apparatus that can implement the steps of the method described above.

Therefore, the observations made with regard to claim 1 will apply *mutatis mutandis* to claim 2.

Claims 1 and 2 of European patent N° 1 003 442 are not new over European patent application N° 0 447 968, filed by RCA Licensing Corporation, whose inventor is Mr Bruno Hennig (hereinafter referred to as "*the Hennig patent application*", Blue Cable / TV Grid exhibit N° 1).

The Hennig patent application was filed on 14 March 1991 and relates to an "*Apparatus for providing TV program information*".

The invention the subject-matter of this patent application describes how to obtain information concerning television programs, such as the starting and end time, by means of pages called "VPT" in particular (*Videorecorder Programming by Teletext*⁴).

This patent application discloses all the features of claims 1 and 2 of European patent N° 1 003 442.

⁴ Teletext is an information retrieval service in the form of text and animations, which is transmitted within the television signal of a channel (source: Wikipedia).

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This patent application relates to television receivers incorporating teletext decoders comprising a memory storing information on the programs, such as, in particular, the title, the channel, and the starting and end time of the program (page 4, column 6, lines 1 to 6), as illustrated by figure 1a) reproduced below:

P402	402	CH-TEXT	15.02.90	14:25:03
SRG	TV-DRS	Donnerstag	15. Februar	1990
			24101	150290
			CF	
08.30	0830	Schulfernsehen: Geographie		
09.20	0920	Reise durch unseren Körper		
09.50	2500	Ende / Pause		
12.55	1255	Nachrichten		
13.00	1300	Ein Heim für Tiere		
13.55	1355	Zeitspiegel: Herrscher des goldenen Dreiecks		
14.45	1445	HTV		
15.40				

Figure 1: figure 1a of European patent application № 0 447 968 (Hennig) showing the information on the programs stored in a television receiver incorporating a teletext decoder

Therefore, feature a) of claim 1 of European patent № 1 003 442 is not novel.

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The Hennig patent application further provides for the possibility of displaying in overlays (references 540 and 540') the title or the information on the channel of a selected program simultaneously with the selected program upon selection of a channel change, as illustrated by figures 5a and 5b reproduced below:

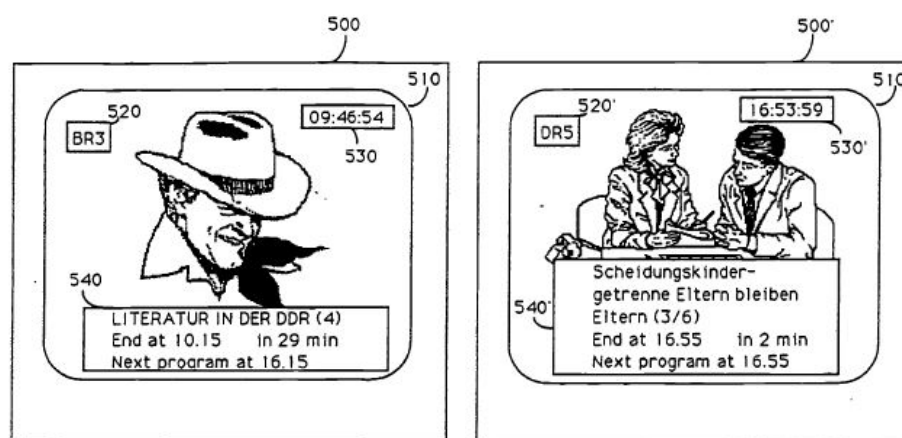


Figure 2: figures 5a and 5b of European patent application № 0 447 968 (Hennig) illustrating the overlay of information on the selected program in banners 540 and 540'

Finally, the Hennig patent application teaches a displaying step, responsive to a user input, of another overlay containing further information concerning the selected program from the stored listings.

The description of the Hennig patent application indicates in this respect:

"The display (540, 540'), indicating the remaining duration, has to be updated during the time the microcomputer waits for the next appearance of pages, and if desired, the title of the following program can also be displayed" (page 4, column 5, lines 9 to 13)

Therefore, the method the subject-matter of claim 1 and the device implementing this method, which is the subject-matter of claim 2, are not new when compared to the teachings of the Hennig patent application.

Therefore, they should be held invalid by the Court.

The defendants add in this respect that during the opposition procedure concerning European patent № 1 003 442, United Video Program Inc., the holder of the patent at that time, admitted that claims 1 and 2 of its patent were not new, in particular when compared to the teachings of the Hennig patent application.

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In reply to the opponents' arguments and to a communication from the examiner (Blue Cable / TV Grid exhibit N° 2), United Video Program Inc. accepted to amend its claims⁵ to indicate that the displaying step the subject-matter of feature c) of claim 1 differs from the displaying step the subject-matter of feature b) in that it permits to display in overlays other items of information than those already displayed:

"You will recall that the basis of the invention is to provide a method/apparatus for effectively splitting the provision of program guide information into manageable parts (see patentee's letter of 18 July 2006 under 'Main Request'). Thus, claim 1 recites the one overlay of program title and channel which appears on the screen 'simultaneously with the selected program upon selection of a channel change'. The other, supplemental, overlay is user-selected in addition to that one overlay.

The use of the phrase 'supplemental overlay' is intended to make clear that the overlay in question is not merely a repeat of the one overlay (i.e. a further showing of the same thing), but is separate and distinct from it." (Blue Cable / TV Grid exhibit N° 3, page 2)

Since the opposition was subsequently withdrawn by the opponents, European patent N° 1 003 442 was finally granted as filed, without the amendments proposed in the main request having been finally adopted.

It remains that the holder of European patent N° 1 003 442 admitted during the opposition procedure that claims 1 and 2 are not new over the teachings of the Hennig patent application.

The Court can only note that claims 1 and 2 should therefore be held invalid for lack of novelty.

In any case, these claims will be held invalid for lack of inventive step.

1.3. Lack of inventive step of claims 1 and 2 of European patent N° 1 003 442

Article 56 EPC reads:

"An invention shall be considered as involving an inventive step if, having regard to the state of the art, it is not obvious to a person skilled in the art. If the state of the art also includes documents within the meaning of Article 54, paragraph 3, these documents shall not be considered in deciding whether there has been an inventive step."

⁵ Claims 1 and 2 the subject of United Video Program Inc.'s main claim presented during the opposition procedure read as follows (pièce Blue Cable / TV Grid n° 3):

"1. A method for accessing information about television programs, the method comprising the steps of storing in an electronic memory of a schedule controller operably connected with a monitor screen, a plurality of television program listings, each listing including title, telecast time and channel, displaying on the monitor screen an overlay providing, from the stored listings, a title of and channel information on a selected program simultaneously with the selected program upon selection of a channel change, and displaying, responsive to a user input, a further-supplemental overlay containing further-supplemental information on the selected program from the stored listings.

2. Apparatus for accessing information about television programs, the apparatus comprising the means for storing in an electronic memory of a schedule controller operably connected with a monitor screen, a plurality of television program listings, each listing including title, telecast time and channel, means for displaying on the monitor screen an overlay providing, IO from the stored listings, a title of and channel information on a selected program simultaneously with the selected program upon selection of a channel change, and means for displaying, responsive to a user input, a further-supplemental overlay containing further-supplemental information on the selected program from the selected listings."

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According to the description of European patent N° 1 003 442, the invention solves the problem of the organisation and visualisation of the large amount of information relating to television programs.

In particular, the purpose of the invention is to allow a user to obtain information on a specific program without this information taking up too large a part of the television screen so that part of the program list remains visible.

Claims 1 and 2 of European patent N° 1 003 442 do not involve any inventive step for the skilled person, regarding both:

- ▶ the teachings of the Hennig European patent application N° 0 447 968 (1.3.1.);
- ▶ and the publication "*Personal Home TV Programming Guide*", by Peter D. Hallenbeck, presented during the *IEEE 1990, International Conference on consumer electronics* held in Chicago from 6 to 8 June 1990 (Blue Cable / TV Grid exhibits N° 4 and 5) and the information on this system available prior to European patent N° 1 003 442 (Blue Cable / TV Grid exhibit N° 6) (1.3.2.).

1.3.1. Lack of inventive step over the teachings of European patent application N° 0 447 968

It has been previously demonstrated (see paragraph 1.2) that the Hennig European patent application disclosed all the features of claims 1 and 2 of European patent N° 1 003 442.

Should the Court consider that all of the features of claims 1 and 2 are not disclosed in this document, it will note that the person skilled in the art did not need to exercise any inventive skill to arrive at the invention considering the teachings of the Hennig patent application.

The Hennig patent application already teaches the visualisation of the information about a program in the form of notes (banners) taking up only part of the television screen (see references 540 and 540' on figures 5a and 5b reproduced below):

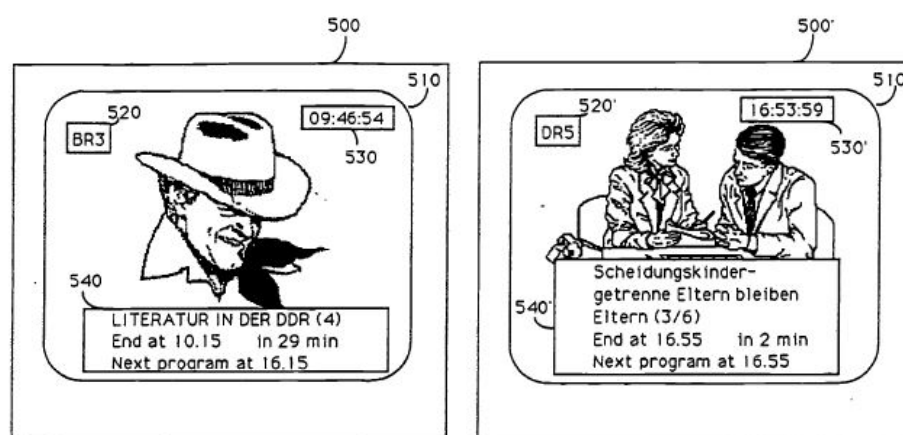


Figure 3: figures 5a and 5b of European patent application N° 0 447 968 (Hennig) illustrating the overlay of information on the selected program in program banners 540 and 540'

Therefore, the mere overlay of the banner on the list of all the programs in order that part of that list can still be read by the user merely constitutes an improved visualisation for the user that does not confer any technical advantage.

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This is only an arbitrary choice that could obviously be made by the person skilled in the art, who is an engineer specialising in audio-visual reception systems, set-top boxes in particular.

Therefore, claims 1 and 2 of European patent N° 1 003 442 should be held invalid for lack of inventive step.

They should also be held invalid having regard to the teachings of the system from the prior art named "*SuperGuide*".

1.3.2. Lack of inventive step over the publication "*Personal Home TV Programming Guide*" by Peter D. Hallenbeck and over the information available on that system prior to European patent N° 1 003 442

Peter D. Hallenbeck developed, as of 1985 (that is, nine years before Telecast's alleged invention), a system for the organisation and access to television programs called "*SuperGuide*".

This system was presented during the *IEEE 1990 International Conference on consumer electronics* held in Chicago from 6 to 8 June 1990 (Blue Cable / TV Grid exhibits N° 4 and 5).

Two versions were developed, one in 1985 and the other in 1988, taking into account the increase in memory capacity and therefore the amount of information that can be displayed on the users' television screen:

"The Original Guide loaded the listing for all services available, much as the paper guides print the listings for all available services. The listings are stored in the local box to allow for immediate response to any action taken by the viewer.

[...]

The New SuperGuide System

Design of the new system began in 1988. Keeping in mind the perils of any "second system," we out to correct the "undocumented features" in first system and incorporate many of the little things we learned people interactions with the original SuperGuide system.

[...]

The Great DRAM crunch of '88 made us determined to significantly increase how much information we could store in a given amount of memory" (Blue Cable / TV grid exhibit N° 4)

Statement of defence on behalf of Blue Cable France SA, Blue Cable Germany GmbH, TV Grid Switzerland SA and TV Grid Italy SpA

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An article from Wikipedia also details the functionalities of the SuperGuide developed by Peter D. Hallenbeck (Blue Cable / TV Grid exhibit № 6), in its first and second versions, as illustrated by the pictures reproduced below:

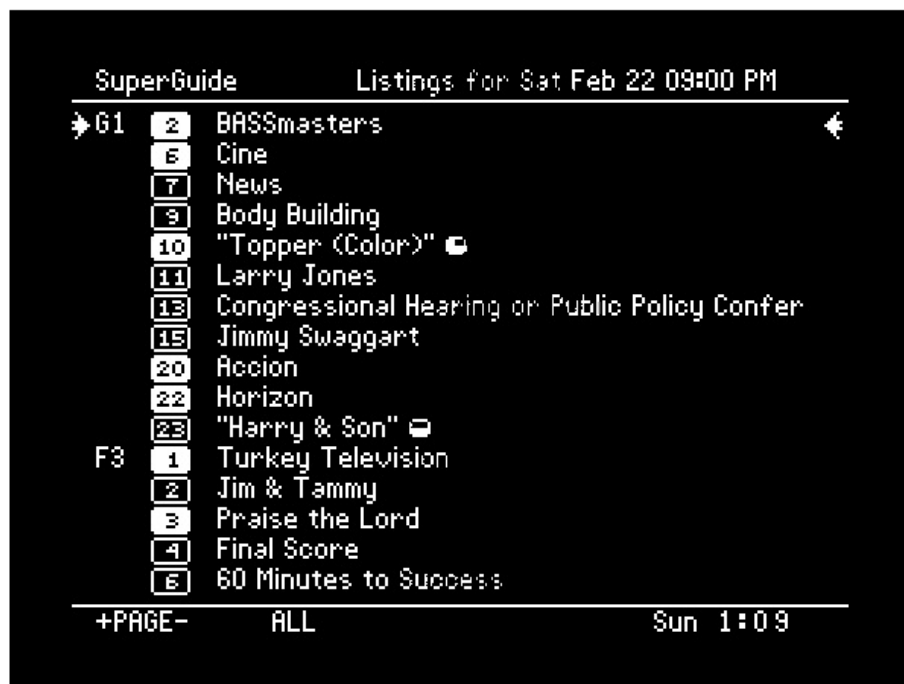


Figure 4: screen shot taken from the first version of the SuperGuide system developed by Peter D. Hallenbeck, in February 1986 http://en.wikipedia.org/wiki/File:SuperGuide_1_screen_16L.jpg (Blue Cable / TV Grid exhibit № 4)

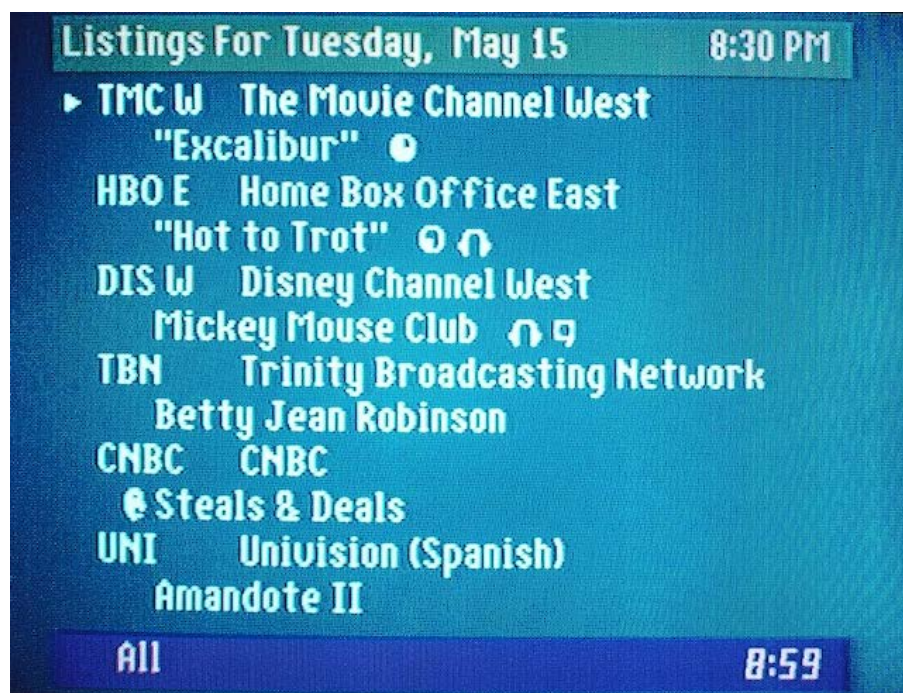


Figure 5: screen shot taken from the second version of the SuperGuide system developed by Peter D. Hallenbeck, in May 1990 (Blue Cable / TV Grid exhibit № 4)

Considering the teachings of the SuperGuide system, the person skilled in the art did not have to exercise any inventive skill to present additional information on the programs in banners that do not take up the totality of a television screen.

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Therefore, claims 1 and 2 of European patent N° 1 003 442 do not involve an inventive step.

In order to convince the Court, the defendants request that Peter D. Hallenbeck, who developed the SuperGuide system, be heard in these proceedings, in accordance with Rule 176 of the Rules of Procedure:

*“Subject to the orders of the Court referred to in Rules 104(e) and 112.2(b) a party seeking to offer oral witness evidence shall make an * Application for the hearing of the witness which shall set out:*

- (a) the reasons why the witness should be heard in person;*
- (b) the facts which the party expects the witness to confirm; and*
- (c) the language in which the witness shall give evidence”*

Considering the information that Peter D. Hellenbeck is likely to provide to enlighten the Court about the prior art with regard to European patent N° 1 003 442 and in order that this information can be challenged by the parties, the Court is requested to authorise the hearing of Peter D. Hallenbeck.

Peter D. Hallenbeck being a U.S. citizen, he can be heard in the language of the proceedings, namely English.

The defendants therefore request that the judge-rapporteur accede to this request for the hearing of a witness during the interim hearing of 22 April 2014.

In accordance with Rule 180, paragraph 2⁶, the defendants are prepared to pay a sum that the Court will consider sufficient to cover the expenses incurred by the witness.

2. Absence of infringement of claims 1 and 2 of European patent N° 1 003 442

Telecast alleges that claims 1 and 2 of its European patent N° 1 003 442 are infringed by Blue Cable’s set-top boxes incorporating the software developed by TV Grid.

However, it has been demonstrated previously that claims 1 and 2 of European patent N° 1 003 442 are not valid.

Therefore, the request lodged by Telecast on this issue should be dismissed.

⁶ Article 180 of the Rules of Procedure reads as follows:

“1. A witness shall be entitled to reimbursement of:

- (a) expenses for travelling and stay; and*

- (b) loss of income caused by his hearing in person.*

After the witness has carried out his duties and upon his request, the Registry shall make a payment to the witness towards the expenses incurred.

2. Where a party has lodged an Application for the hearing of a witness in person, the Court shall make the summoning of the witness conditional upon the deposit of a sum sufficient to cover the expenses referred to in paragraph 1.

Where the Court orders of its own motion that a witness be heard in person, the funds necessary shall be provided by the Court.”

(April 2014)

In any case, Telecast does not prove that the defendants' electronic program guide implement claims 1 and 2 of this patent.

The defendants will recall that the method for accessing information on television programs, the subject-matter of claim 1 of European patent N° 1 003 442, comprises the following steps:

- a) a step of storing in an electronic memory of a schedule controller operably connected with a monitor screen, a plurality of television program listings, each listing including title, telecast time and channel;
- b) a step of displaying on the monitor screen an overlay providing, from the stored listings, a title of and channel information on a selected program simultaneously with the selected program upon selection of a channel change;
- c) a step of displaying, responsive to a user input, a further overlay containing further information on the selected program from the stored listings.

Telecast does not prove that the additional information displayed when the title of a program is selected are overlaid on the programs guide, hiding part of the programs list to the user as required by features b) and c) of this claim.

Yet the electronic program guide provided by the Blue Cable and TV Grid's set-top boxes does not provide information overlaid over the program grid; as a matter of fact, the information about a selected program is integrated to the said program grid as shown by the photograph reproduced below:



Figure 6: screen shot of Blue Cable's electronic program guide

Therefore, features b) and c) are not infringed.

Consequently, the request lodged by Telecast with respect to the alleged infringement of claims 1 and 2 of its European patent N° 1 003 442 should be dismissed.

(April 2014)

ON THESE GROUNDS

Having regard to Rules 176 and 180 of the Rules of Procedure, the judge-rapporteur is requested, in the interim proceedings:

- ▶ To authorise the hearing of Peter D. Hellenbeck in order to attest to the functionalities of the SuperGuide system developed before the filing date of European patent N° 1 003 442;
- ▶ To record that the defendants are prepared to pay a sum sufficient to cover the expenses incurred by the witness;

Having regard to Article 65, (1) and (2) of the Agreement and Article 138, 1) of the European Patent Convention, the Court is requested to:

- ▶ Hold claims 1 and 2 of European patent N° 1 003 442 invalid for lack of patentability, lack of novelty or at least for lack of inventive step, for all the national designations concerned;
- ▶ In any case, dismiss all the requests lodged by Telecast with respect to the infringement and the compensation for the damage it alleges it has suffered;
- ▶ Order Telecast to pay for the expenses incurred by Blue Cable and TV Grid for its defence, in accordance with Article 69 of the Agreement.

EXHIBITS PRODUCED IN COURT

No	Designation
1.	European patent application N° 0 447 968
2.	Communication of the observations of the opposition division dated 9 February 2007
3.	Letter dated 10 August 2007 from United Video Program Inc.'s European representative in reply to the observations of the opposition division, with claims 1 and 2 as filed in annex
4.	Article entitled " <i>Personal Home TV Programming Guide</i> "
5.	List of the speakers at the <i>IEEE 1990 International Conference on consumer electronics</i> held in Chicago from 6 to 8 June 1990
6.	<i>Electronic program guide</i> , Wikipedia, the free encyclopaedia

WITH ALL RESERVES

MÉMOIRE EN DÉFENSE

POUR

1. **Blue Cable France SA**, société de droit français, inscrite au registre du commerce de Paris sous le n° B 345 724 631, dont le siège est 55, rue du Faubourg Saint-Honoré, 75008 Paris, France
2. **Blue Cable Germany GmbH**, société de droit allemand, dont le siège est Spreeweg 1, 10557 Berlin, Allemagne
3. **TV Grid Switzerland SA**, société de droit suisse, dont le siège est Bundesplatz, 3000 Bern, Suisse
4. **TV Grid Italy SpA**, société de droit italien, dont le siège est Piazza del Quirinale, 1, 00187 Roma, Italie

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(Avril 2014)

PLAISE AU TRIBUNAL

Par mémoire en demande du 24 mars 2014, la société Telecast BV (ci-après « société Telecast ») a engagé une procédure en contrefaçon des revendications n° 1 et 2 de son brevet européen n° 1 003 442 à l'encontre des sociétés Blue Cable France, Blue Cable Germany (ci-après « les sociétés Blue Cable »), TV Grid Switzerland et TV Grid Italy SpA (ci-après « les sociétés TV Grid ») (collectivement « les défendeurs »).

Le 31 mars 2014, les défendeurs ont déposé des objections préliminaires en application de la règle 19 du Règlement de procédure.

Par le présent mémoire en défense, en application des règles 24¹ et 25² du Règlement de procédure, les défendeurs demandent au tribunal d'annuler les revendications n° 1 et 2 du brevet européen n° 1 003 442 ou, à tout le moins, de juger que les appareils incriminés (*set-top boxes*) Blue Cable ne mettent pas en œuvre ces revendications.

¹ La règle 24 du Règlement de procédure se lit ainsi :

« Le *mémoire en défense* contient :

(a) les noms du défendeur et du représentant du défendeur ;

(b) les adresses postale et électronique pour les significations au défendeur et les noms et adresses des personnes habilitées à recevoir signification ;

(c) le numéro d'affaire du dossier ;

(d) l'indication, le cas échéant, que le défendeur a déposé une objection préliminaire [règle 19] ;

(e) une indication des faits invoqués, y compris toute contestation des faits invoqués par le demandeur ;

(f) la preuve invoquée [règle 170.1], lorsqu'elle est disponible, et une indication de toute autre preuve qui sera présentée à l'appui ;

(g) les raisons pour lesquelles l'action doit être rejetée, les arguments de droit et tout argument tiré des dispositions de l'article 28 de l'Accord et, le cas échéant, toute contestation de l'interprétation des revendications proposée par le demandeur ;

(h) une indication de toute mesure que le défendeur sollicitera au sujet de l'action en contrefaçon, au cours de la procédure de mise en état [règle 104 (e)] ;

(i) l'indication le cas échéant, que le défendeur conteste l'estimation par le demandeur de la valeur de l'action en contrefaçon et les motifs de cette contestation ; et

(j) une liste des documents, y compris les attestations de témoin, visés au mémoire en défense ainsi que toute requête selon laquelle la traduction intégrale ou partielle de ces documents n'est pas nécessaire ou toute demande en vertu de la règle 262.2. Les règles 13.2 et 13.3 s'appliquent mutatis mutandis. »

² La règle 25 du Règlement de procédure indique :

« 1. S'il est prétendu, dans le mémoire en défense, que les brevets prétendument contrefaits sont nuls, le mémoire en défense doit inclure une demande reconventionnelle en nullité desdits brevets à l'encontre des titulaires des brevets conformément à la règle 43. La demande reconventionnelle en nullité contient :

(a) une indication de la portée de la nullité des brevets sollicitée ;

(b) un ou plusieurs motifs de nullité, qui sont étayés, autant que possible, par des arguments de droit, et, le cas échéant, une explication de l'interprétation des revendications proposée par le défendeur ;

(c) une indication des faits invoqués ;

(d) les preuves invoquées, lorsqu'elles sont disponibles, et une indication de toutes autres preuves qui seront présentées à l'appui ;

(e) une indication de toute mesure que le défendeur sollicitera au cours de la procédure de mise en état [règle 104 (e)] ;

(f) si le défendeur estime que la valeur du litige, y compris la demande reconventionnelle, excède la valeur de l'action en contrefaçon de plus de [EUR***], une indication de la valeur du litige incluant la demande reconventionnelle ;

(g) une déclaration de sa position, le cas échéant, sur les options prévues à l'article 33, § 3, points a), b) ou c) de l'Accord et à la règle 37.4 ;

(h) une liste des documents, y compris les attestations de témoin, visés à la demande reconventionnelle en nullité ainsi que toute requête selon laquelle la traduction intégrale ou partielle de ces documents n'est pas nécessaire. Les règles 13.2 et 13.3 s'appliquent mutatis mutandis, et ;

(i) dans la mesure où les titulaires des brevets ne sont pas demandeurs à la procédure en contrefaçon, les informations requises par la règle 13.1 (b) et (d) concernant lesdits titulaires.

2. Lorsque le demandeur n'est pas le titulaire ou n'est pas le seul titulaire du brevet ou des brevets concernés, le greffe signifie, dès que possible, une copie de la demande reconventionnelle en nullité au titulaire ou aux titulaires concernés, conformément à la règle 13.1 (e), et fournit une copie de chaque document visé au § 2. La règle 271 s'applique mutatis mutandis. Les titulaires concernés deviennent parties à la procédure en nullité et sont considérés défendeurs dans toutes les procédures ultérieures. Les titulaires fournissent les informations en vertu de la règle 13.1 (e) si elles n'ont pas déjà été fournies par le demandeur. »

(Avril 2014)

FAITS ET PROCÉDURE

La société Telecast BV et le brevet européen n° 1 003 442

La société de droit néerlandais Telecast BV prétend être titulaire du brevet européen n° 1 003 442 (pièce Telecast n° 2).

Ce brevet a été déposé le 10 septembre 1995 par la société américaine United Video Programmes Inc, spécialisée dans le développement de guides de programmes électroniques (EPG) sous priorité d'une demande de brevet des États-Unis d'Amérique.

Le brevet a été délivré le 12 juin 2002.

La société Telecast BV considère qu'elle l'a acquis le 24 décembre 2013 au même titre que les autres brevets déposés sous la même priorité américaine.

La cession a été inscrite au registre national des brevets en Allemagne et en Italie.

La société Telecast BV a accordé des licences d'exploitation de ce brevet (ainsi que pour d'autres brevets portant sur des fonctionnalités liées aux EPG) à différents fournisseurs de programmes.

Le brevet européen n° 1 003 442 porte sur une « *méthode et un appareil pour obtenir des informations sur des programmes de télévision* », qui prétend améliorer les guides de programmes électroniques connus.

Les sociétés Blue Cable France, Blue Cable Germany, TV Grid SpA et TV Grid Switzerland

À la demande de la société TV Grid Italy, un guide des programmes a été développé par la société TV Grid Switzerland.

Ce guide électronique des programmes est fourni par la société TV Grid Italy aux sociétés Blue Cable France et Blue Cable Germany qui les insèrent dans leur boîtiers décodeurs (« ci-après *set-top boxes* »).

Les guides de programmes électroniques

Au cours des trois dernières décennies, le nombre de chaînes de télévision disponibles a très fortement augmenté.

Les exploitants de chaînes ont intérêt à ce que les téléspectateurs puissent avoir connaissance des programmes en cours de diffusion ou à venir.

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Jusqu'à l'apparition des moyens de communication électroniques, ces informations étaient essentiellement diffusées sous format papier : elles étaient présentées sous forme d'une liste de programmes organisée par chaîne et par heure de diffusion, avec des variantes pouvant porter sur l'heure de début et de fin du programme, la chaîne de diffusion ou encore intégrer des commentaires sur les programmes.

Face à cet accroissement du nombre de chaînes disponibles et à l'allongement consécutif des grilles de programmes, la solution a été d'offrir des grilles électroniques accessibles au téléspectateur directement sur son écran de télévision.

Les informations relatives aux programmes peuvent être transmises par différents moyens, de préférence par les ondes *via* les services de prestataires privés : le téléspectateur peut savoir quel programme est diffusé à une heure donnée en sélectionnant une grille et en recherchant une heure, un horaire et une chaîne déterminés.

Typiquement, la navigation dans le guide de programmes électronique se fait au moyen d'une télécommande, laquelle contrôle un marqueur de sélection sur l'écran, et la sélection d'un programme est réalisée en pointant le marqueur sur le programme puis en pressant le bouton de sélection sur la télécommande, après quoi une opération relative à ce programme est lancée, telle que l'obtention d'informations complémentaires sur celui-ci.

Opposition au brevet européen n° 1 003 442 devant l'Office européen des brevets

Le brevet européen n° 1 003 442 a fait l'objet d'une opposition devant l'Office européen des brevets.

La division d'opposition a émis un avis préliminaire concluant à l'absence de nouveauté et d'activité inventive de la revendication 1 (pièce Blue Cable / TV Grid n° 2).

La société United Video Programmes a soumis des revendications modifiées (pièce Blue Cable / TV Grid n° 3) en réponse à cet avis préliminaire mais l'opposition a ensuite été retirée, de sorte que seules les revendications telles que initialement déposées sont en vigueur.

La présente procédure

La société Telecast BV a imaginé d'opposer le brevet européen n° 1 003 442 aux sociétés Blue Cable et TV Grid.

En juin 2013, elle a cru pouvoir mettre en demeure les sociétés Blue Cable France et Blue Cable Germany de cesser de mettre en œuvre la méthode protégée par la revendication 1 du brevet européen n° 1 003 442 et de cesser de fabriquer, détenir, mettre dans le commerce et offrir à la vente des *set-top boxes* protégées par la revendication 2 dudit brevet.

Les sociétés Blue Cable, considérant qu'elles sont parfaitement en droit de commercialiser les *set-top boxes* litigieuses munies de leur guide électronique des programmes, ont estimé inutile de répondre à ces lettres de menace.

(Avril 2014)

Par mémoire en demande du 24 mars 2014, la société Telecast BV a formé contre les sociétés Blue Cable France, Blue Cable Germany, TV Grid Switzerland et TV Grid Italy une demande en contrefaçon de son brevet européen n° 1 003 442 devant la division centrale de la Juridiction unifiée du brevet.

Compte-tenu du domaine technique du brevet concerné, l'affaire a été attribuée au siège de Paris.

Les sociétés Blue Cable et TV Grid ont formulé, le 19 mars 2014, des objections préliminaires en application de la règle 19 du Règlement de procédure.

Elles exposent, dans le présent mémoire, leur défense tendant à obtenir l'annulation des revendications n° 1 et 2 du brevet européen n° 1 003 442 dans toutes ses désignations nationales et le rejet des demandes en contrefaçon.

DISCUSSION

Les sociétés Blue Cable et TV Grid demandent au tribunal d'annuler les revendications n° 1 et 2 du brevet européen n° 1 003 442 pour absence de brevetabilité, défaut de nouveauté ou à tout le moins manque d'activité inventive (1.)

Dans l'hypothèse où la validité des revendications n° 1 et 2 du brevet européen n° 1 003 442 serait reconnue, les sociétés Blue Cable et TV Grid demandent au Tribunal de juger que leurs *set top boxes* ne les mettent pas en œuvre (2.).

1. Demande reconventionnelle en nullité des revendications n° 1 et 2 du brevet européen n° 1 003 442

Selon l'article 65, 1) et 2) de l'Accord :

« La Juridiction statue sur la validité d'un brevet sur la base d'une action en nullité ou d'une demande reconventionnelle en nullité.

La Juridiction ne peut annuler un brevet, en tout ou en partie, que pour les motifs visés à l'article 138, paragraphe 1, et à l'article 139, paragraphe 2, de la CBE. »

L'article 138, 1) de la Convention sur le brevet européen (ci-après « la CBE ») indique :

« Sous réserve de l'article 139, le brevet européen ne peut être déclaré nul, avec effet pour un État contractant, que si :

a) l'objet du brevet européen n'est pas brevetable en vertu des articles 52 à 57 ;

b) le brevet européen n'expose pas l'invention de façon suffisamment claire et complète pour qu'un homme du métier puisse l'exécuter ;

c) l'objet du brevet européen s'étend au-delà du contenu de la demande telle qu'elle a été déposée ou, lorsque le brevet a été délivré sur la base d'une demande divisionnaire ou d'une nouvelle demande déposée en vertu de l'article 61, si l'objet du brevet s'étend au-delà du contenu de la demande antérieure telle qu'elle a été déposée ;

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- d) la protection conférée par le brevet européen a été étendue ; ou*
e) le titulaire du brevet européen n'avait pas le droit de l'obtenir en vertu de l'article 60, paragraphe 1. »

Les défendeurs estiment que le brevet européen n° 1 003 442 doit être déclaré nul au motif qu'il constitue une présentation d'informations non-brevetables en application de l'article 52 (2), d) de la CBE (**1.1.**).

Si le Tribunal estime que l'invention objet du brevet européen n° 1 003 442 est brevetable, alors il ne pourra que constater que les revendications n° 1 et 2 :

- ▶ ne sont pas nouvelles au sens de l'article 54 de la CBE (**1.2.**) ;
- ▶ n'impliquent pas une activité inventive au sens de l'article 56 de la CBE (**1.3.**).

1.1. Absence de brevetabilité de l'invention objet du brevet européen n° 1 003 442 comme portant sur une présentation d'informations

L'article 52, (2) de la CBE indique :

« Ne sont pas considérés comme des inventions au sens du paragraphe 1 notamment :

- a) les découvertes, les théories scientifiques et les méthodes mathématiques ;*
- b) les créations esthétiques ;*
- c) les plans, principes et méthodes dans l'exercice d'activités intellectuelles, en matière de jeu ou dans le domaine des activités économiques, ainsi que les programmes d'ordinateur ;*
- d) les présentations d'informations. »*

Les revendications n° 1 et 2 du brevet européen n° 1 003 442 se lisent comme suit (alinéas ajoutés) :

« 1. Procédé permettant d'accéder à des informations concernant des programmes de télévision, le procédé comprenant les étapes

- ▶ *de stockage dans une mémoire électronique d'un dispositif de commande de grilles connecté en fonctionnement à un écran de contrôle d'une pluralité d'intitulés de programmes de télévision, chaque intitulé comprenant le titre, l'heure de diffusion et le canal,*
- ▶ *d'affichage d'une superposition sur l'écran de contrôle fournissant, parmi les intitulés stockés, le titre ou des informations sur le canal d'un programme sélectionné simultanément au programme sélectionné lors de la sélection d'un changement de canal,*
- ▶ *et d'affichage, en réponse à une entrée de l'utilisateur, d'une autre superposition contenant d'autres informations concernant le programme sélectionné parmi les intitulés stockés. »*

« 2. Appareil permettant d'accéder à des informations concernant des programmes de télévision, l'appareil comprenant

- ▶ *un moyen pour stocker dans une mémoire électronique d'un dispositif de commande de grilles connecté en fonctionnement à un écran de contrôle une pluralité d'intitulés de programmes de télévision, chaque intitulé comprenant le titre, l'heure de diffusion et le canal,*
- ▶ *un moyen pour afficher une superposition sur l'écran de contrôle fournissant, parmi les intitulés stockés, le titre ou des informations sur le canal d'un programme sélectionné simultanément au programme sélectionné lors de la sélection d'un changement de canal,*

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- ▶ *et un moyen pour afficher, en réponse à une entrée de l'utilisateur, une autre superposition contenant d'autres informations concernant le programme sélectionné parmi les intitulés stockés. »*

L'invention objet du brevet européen n° 1 003 442 est donc relative à un procédé permettant d'accéder à des informations relatives à des programmes de télévision et à un appareil permettant d'accéder à ces informations.

Selon une première caractéristique, les informations sont stockées dans une mémoire électronique d'un dispositif de commande de grilles, ledit dispositif étant connecté en fonctionnement à un écran de contrôle d'une pluralité d'intitulés de programmes de télévision, soit à un écran de télévision, chaque intitulé de programme de télévision comprenant le titre du programme, l'heure de diffusion et le canal.

Selon une deuxième caractéristique, le procédé objet de l'invention ou l'appareil comprend, en outre, des moyens pour afficher une superposition sur l'écran de contrôle fournissant, parmi les intitulés stockés, les informations relatives au titre sélectionné.

Selon une troisième caractéristique, le procédé objet de l'invention ou l'appareil comprend, enfin, des moyens pour afficher, en réponse à une entrée de l'utilisateur, une autre superposition contenant d'autres informations concernant le programme sélectionné parmi les intitulés stockés.

En d'autres termes, outre l'étape préalable de stockage dans une mémoire électronique de différentes informations sur les programmes, les revendications du brevet européen n° 1 003 442 portent sur une caractéristique relative à des moyens pour obtenir un affichage primaire qui se superpose sur le programme sélectionné à l'écran et sur une caractéristique relative à des moyens pour obtenir un affichage secondaire, qui apparaît en réponse à une entrée de l'utilisateur et donne accès à d'autres informations.

Selon l'invention, les informations relatives à un titre sélectionné se présentent notamment sous la forme de bandeaux.

L'invention objet du brevet européen n° 1 003 442 porte donc sur la manière dont sont présentées les informations sur un écran de télévision et leur accès par les utilisateurs.

À cet égard, la description indique :

"[0002] (...) When using a television set as a display for a schedule system, the size and resolution of the television display limit the amount of text that can be displayed with the grid. Improved techniques are required for conveying the most amount of information to the user in an easily understood manner within the limitations of the television display." (pièce Telecast n° 2, page 2, colonne 1)

"[0003] Accordingly, it is an object of this invention to provide a television schedule system and process with a user interface that is configured to compensate for the particular nature of the television schedule information. [0004] It is another object of the invention to provide such a user interface in which supplemental schedule information is presented in overlays that obscure a minimum amount of useful other information." (pièce Telecast n° 2, page 2, colonne 1)

"[0010] (...) The program note 52 overlays and hides 3 or 4 listings of a guide. To minimize concealment of the guide, an auto-roving note is used. The program note will overlay either the top half or bottom half of the screen, as necessary to avoid masking the title of the selected listing."

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Ainsi, il ressort de la description même qu'il était déjà connu de stocker, extraire et fournir des informations sur les programmes de télévision dans l'art antérieur, au moyen d'un programme d'ordinateur contenu dans un dispositif relié à un écran de télévision.

L'invention objet du brevet européen n° 1 003 442 consiste donc à proposer un guide électronique des programmes de télévision et à fournir des informations additionnelles sur un titre sélectionné par superposition, sans toutefois que ces informations additionnelles superposées n'occultent la totalité de l'écran de télévision, afin que l'utilisateur puisse toujours voir une partie du guide des programmes.

Mais loin de donner les raisons techniques qui permettraient de visualiser plus d'informations sur un programme sélectionné, les revendications n° 1 et 2 se contentent d'indiquer que les informations sur un programme sélectionné peuvent être visualisées sous forme de bandeaux venant se superposer aux informations générales déjà affichées.

Or, la simple présentation d'informations ne saurait être brevetable.

Les chambres de recours de l'OEB ont notamment jugé que la simple organisation de la projection d'informations ne saurait revêtir un caractère technique si cette organisation n'est pas structurée (chambre de recours technique 3.5.01, 17 mars 2011, T 1235/07³) :

« The Board is thus in this case taking a wider view of "presentation of information" than just the actual information that is displayed, the so-called cognitive content, to include also structural aspects of how the information is displayed. In the Board's view, such additional aspects can only contribute to inventive step if they have technical character. »

La description du brevet européen n° 1 003 442 ne fait état d'aucun apport technique quant à l'organisation de la visualisation des informations des programmes revendiquée.

Dès lors, l'invention objet du brevet européen n° 1 003 442 ne présente aucun caractère technique et ne répond donc pas à la condition de brevetabilité de l'article 52 (2) d) de la CBE.

Les revendications n° 1 et 2 du brevet européen n° 1 003 442 seront donc annulées pour cette première raison.

Dans l'hypothèse où le Tribunal considérerait que cette invention n'est pas exclue de la brevetabilité, il ne pourra que constater qu'elle ne fait pas preuve de nouveauté ou, à tout le moins, d'activité inventive.

1.2. Absence de nouveauté des revendications n° 1 et 2 du brevet européen n° 1 003 442

En vertu de l'article 54 (1) de la CBE :

« Une invention est considérée comme nouvelle si elle n'est pas comprise dans l'état de la technique. »

Le procédé permettant d'accéder à des informations concernant des programmes de télévision, objet de la revendication n° 1 du brevet européen n° 1 003 442, comporte les étapes suivantes :

³ Voir également la décision du 1^{er} avril 2009, chambre de recours technique 3.5.01, T 1143/06

(Avril 2014)

- a) une étape de stockage dans une mémoire électronique d'un dispositif de commande de grilles connecté à un écran de contrôle d'une pluralité d'intitulés de programmes de télévision, chaque intitulé comprenant le titre, l'heure de diffusion et le canal ;
- b) une étape d'affichage d'une superposition sur l'écran de contrôle fournissant, parmi les intitulés stockés, le titre ou des informations sur le canal d'un programme sélectionné simultanément au programme sélectionné lors de la sélection d'un changement de canal ;
- c) une étape d'affichage, en réponse à une entrée de l'utilisateur, d'une autre superposition contenant d'autres informations concernant le programme sélectionné parmi les intitulés stockés.

La revendication n° 2 porte sur un appareil susceptible de mettre en œuvre les étapes du procédé précédemment décrit.

Les observations faites à l'égard de la revendication n° 1 s'appliqueront donc *mutatis mutandis* à la revendication n° 2.

Les revendications n° 1 et 2 du brevet européen n° 1 003 442 ne font pas preuve de nouveauté au regard de la demande de brevet européen n° 0 447 968, déposée par la société RCA Licensing Corporation, dont l'inventeur est Monsieur Bruno Hennig (ci-après « *la demande de brevet Hennig* », pièce Blue Cable / TV Grid n° 1).

La demande de brevet Hennig a été déposée le 14 mars 1991 et concerne un « *Apparatus for providing TV program information* ».

L'invention objet de cette demande de brevet décrit comment obtenir des informations, comme l'heure du début et de fin, sur les programmes de télévision notamment au moyen des pages dites « VPT » (*Videorecorder Programming by Teletext* ou « *enregistrement vidéo au moyen de la programmation par télétexte*⁴).

Cette demande de brevet divulgue toutes les caractéristiques des revendications n° 1 et 2 du brevet européen n° 1 003 442.

⁴ Le télétexte est un service permettant de délivrer des informations sous format texte et animations, retransmis dans les signaux de télédiffusion d'une chaîne (source : Wikipédia).

Mémoire en défense pour le compte des sociétés Blue Cable France SA, Blue Cable Germany GmbH, TV Grid Switzerland SA et TV Grid Italy SpA

(Avril 2014)

En effet, cette demande de brevet concerne des récepteurs de télévision incorporant des décodeurs télétexte comportant une mémoire stockant des informations sur les programmes, comme notamment le titre des programmes, le canal et l'heure de début et de fin (page 4, colonne 6, lignes 1 à 6), comme l'illustre la figure 1a) reproduite ci-après :

P402	402	CH-TEXT	15.02.90	14:25:03
SRG	TV-ORF	Donnerstag	15. Februar	1990
			24101	150290
			CF	
08.30	0830	Schulfernsehen: Geographie		
09.20	0920	Reise durch unseren Körper		
09.50	2500	Ende / Pause		
12.55	1255	Nachrichten		
13.00	1300	Ein Heim für Tiere		
13.55	1355	Zeitspiegel: Herrscher des goldenen Dreiecks		
14.45	1445	HTV		
15.40				

Figure 1 : figure 1a de la demande de brevet européen n° 0 447 968 (Hennig) montrant les informations des programmes stockés dans un récepteur de télévision incorporant un décodeur télétexte

La caractéristique a) de la revendication n° 1 du brevet européen n° 1 003 442 est donc dépourvue de nouveauté.

(Avril 2014)

La demande de brevet Hennig offre, en outre, la possibilité d'afficher par superposition (références 540 et 540') le titre ou des informations sur le canal d'un programme sélectionné simultanément au programme sélectionné lors de la sélection d'un changement de canal, comme l'illustrent les figures 5a et 5b reproduites ci-après :

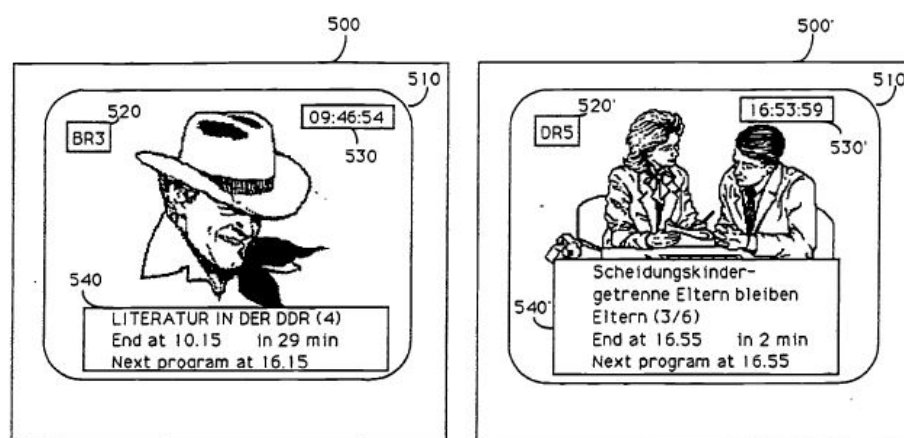


Figure 2 : figures 5a et 5b de la demande de brevet européen n° 0 447 968 (Hennig) illustrant la superposition d'informations sur le programme sélectionné dans des bandeaux 540 et 540'

Enfin, la demande de brevet Hennig enseigne une étape d'affichage, en réponse à une entrée de l'utilisateur, d'une autre superposition contenant d'autres informations concernant le programme sélectionné parmi les intitulés stockés.

En effet, la description de la demande de brevet Hennig indique à cet égard :

« The display (540, 540'), indicating the remaining duration, has to be updated during the time the microcomputer waits for the next appearance of pages, and if desired, the title of the following program can also be displayed » (page 4, colonne 5, lignes 9 à 13)

Le procédé objet de la revendication n° 1 et le dispositif mettant en œuvre ce procédé, objet de la revendication n° 2 ne sont donc pas nouveaux au regard des enseignements de la demande de brevet Hennig.

Elles seront donc annulées par le Tribunal.

Les défendeurs précisent à cet égard que dans le cadre de la procédure d'opposition relative au brevet européen n° 1 003 442, la société United Video Programme Inc., alors titulaire du brevet, a admis que les revendications n° 1 et 2 de son brevet ne faisaient pas preuve de nouveauté, notamment au regard des enseignements de la demande de brevet Hennig.

(Avril 2014)

En effet, en réponse aux arguments des opposants et à une notification de l'examinateur (pièce Blue Cable / TV Grid n° 2), la société United Video Programme Inc. a accepté de modifier ses revendications⁵ afin d'indiquer que l'étape d'affichage objet de la caractéristique c) de la revendication n° 1 se distingue de l'étape d'affichage objet de la caractéristique b) en ce qu'elle permet d'afficher en superposition d'autres informations que celles qui sont déjà affichées :

« You will recall that the basis of the invention is to provide a method/apparatus for effectively splitting the provision of program guide information into manageable parts (see patentee's letter of 18 July 2006 under 'Main Request'). Thus, claim 1 recites the one overlay of program title and channel which appears on the screen 'simultaneously with the selected program upon selection of a channel change'. The other, supplemental, overlay is user-selected in addition to that one overlay.

The use of the phrase 'supplemental overlay' is intended to make clear that the overlay in question is not merely a repeat of the one overlay (i.e. a further showing of the same thing), but is separate and distinct from it." (pièce Blue Cable / TV Grid n° 3, page 2)

L'opposition ayant par la suite été retirée par les opposants, le brevet européen n° 1 003 442 a finalement été délivré tel que déposé, sans que les modifications proposées dans la requête principale du titulaire aient été finalement adoptées.

Il n'en demeure pas moins que le titulaire du brevet européen n° 1 003 442, dans le cadre de l'opposition, a admis que les revendications n° 1 et 2 ne sont pas nouvelles au regard des enseignements de la demande de brevet Hennig.

Le Tribunal ne pourra que constater que les revendications n° 1 et 2 doivent donc être annulées pour absence de nouveauté.

À tout le moins, ces revendications seront déclarées nulles pour défaut d'activité inventive.

1.3. Absence d'activité inventive des revendications n° 1 et 2 du brevet européen n° 1 003 442

L'article 56 de la CBE indique :

« Une invention est considérée comme impliquant une activité inventive si, pour un homme du métier, elle ne découle pas d'une manière évidente de l'état de la technique. Si l'état de la technique comprend également des documents visés à l'article 54, paragraphe 3, ils ne sont pas pris en considération pour l'appréciation de l'activité inventive. »

⁵ Les revendications n° 1 et 2 objet de la requête principale de la société United Video Programme Inc. présentée dans le cadre de l'opposition se lisaient comme suit (pièce Blue Cable / TV Grid n° 3) :

« 1. A method for accessing information about television programs, the method comprising the steps of storing in an electronic memory of a schedule controller operably connected with a monitor screen, a plurality of television program listings, each listing including title, telecast time and channel, displaying on the monitor screen an overlay providing, from the stored listings, a title of and channel information on a selected program simultaneously with the selected program upon selection of a channel change, and displaying, responsive to a user input, a further-supplemental overlay containing further-supplemental information on the selected program from the stored listings.

2. Apparatus for accessing information about television programs, the apparatus comprising the means for storing in an electronic memory of a schedule controller operably connected with a monitor screen, a plurality of television program listings, each listing including title, telecast time and channel, means for displaying on the monitor screen an overlay providing, IO from the stored listings, a title of and channel information on a selected program simultaneously with the selected program upon selection of a channel change, and means for displaying, responsive to a user input, a further-supplemental overlay containing further-supplemental information on the selected program from the selected listings."

(Avril 2014)

Selon la description du brevet européen n° 1 003 442, l'invention répond au problème de l'organisation de la visualisation d'un nombre important d'informations relatives aux programmes de télévision.

En particulier, l'invention a pour but de permettre à un utilisateur d'obtenir des informations sur un programme particulier sans que ces informations occupent une partie trop importante de l'écran de télévision afin qu'une partie de la liste des programmes soit toujours visible.

Les revendications n° 1 et 2 du brevet européen n° 1 003 442 ne font preuve d'aucune activité inventive pour l'homme du métier que ce soit :

- ▶ au regard des enseignements de la demande de brevet européen Hennig n° 0 447 968 (1.3.1.) ;
- ▶ ou au regard de la publication « *Personal Home TV Programming Guide* », de Peter D. Hallenbeck, exposée lors de la conférence "IEEE 1990, International Conference on consumer electronics" qui s'est tenue à Chicago du 6 au 8 juin 1990 (pièces Blue Cable / TV Grid n° 4 et 5) et des informations disponibles sur ce système antérieurement au brevet européen n° 1 003 442 (pièce Blue Cable / TV Grid n° 6) (1.3.2.).

1.3.1. Absence d'activité inventive au regard des enseignements de la demande de brevet européen n° 0 447 968

Il a été précédemment démontré (voir paragraphe 1.2) que la demande de brevet européen Hennig divulguait l'ensemble des caractéristiques des revendications n° 1 et 2 du brevet européen n° 1 003 442.

Si le tribunal considère que l'ensemble des caractéristiques des revendications n° 1 et 2 ne sont pas divulguées par ce document, il ne pourra que constater que l'homme du métier n'avait à déployer aucune activité inventive pour parvenir à l'invention au regard des enseignements de la demande de brevet Hennig.

En effet, la demande de brevet Hennig enseigne déjà la visualisation des informations d'un programme sous forme de notes (bandeaux) n'occupant qu'une partie de l'écran de télévision (voir les références 540 et 540' sur les figures 5a et 5b reproduites ci-après) :

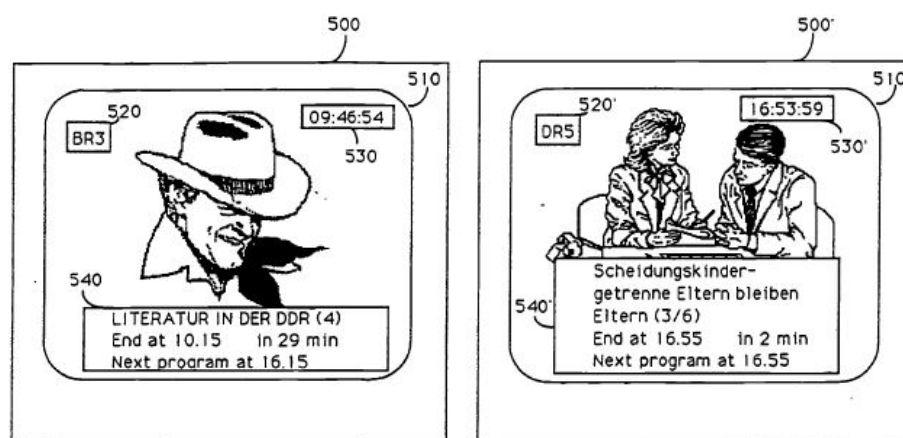


Figure 3 : figures 5a et 5b de la demande de brevet européen n° 0 447 968 (Hennig) illustrant la superposition d'informations sur le programme sélectionné dans des bandeaux 540 et 540'

(Avril 2014)

Dès lors, le simple fait de superposer le bandeau sur la liste de tous les programmes afin qu'une partie de cette liste soit toujours consultable par l'utilisateur ne constitue qu'un simple confort de visualisation pour l'utilisateur qui ne confère aucun avantage technique.

Il ne s'agit que d'un choix arbitraire qui s'offrait à l'évidence à l'homme du métier, qui est un ingénieur spécialisé dans les systèmes de réception audiovisuelle, en particulier les *set-top boxes*.

Les revendications n° 1 et 2 du brevet européen n° 1 003 442 seront donc annulées pour absence d'activité inventive.

Elles le seront également au regard des enseignements du système antérieur dénommé « *SuperGuide* ».

1.3.2. Absence d'activité inventive au regard de la publication « *Personal Home TV Programming Guide* » de Peter D. Hallenbeck et des informations disponibles sur ce système antérieurement au brevet européen n° 1 003 442

Peter D. Hallenbeck a mis au point dès 1985 (soit neuf années avant la prétendue invention de la société Telecast) un système d'organisation et d'accès aux programmes de télévision intitulé « *SuperGuide* ».

Ce système a été présentée lors de la conférence "*IEEE 1990 International Conference on consumer electronics*" qui s'est tenue à Chicago du 6 au 8 juin 1990 (pièces Blue Cable / TV Grid n° 4 et 5).

Deux versions furent développées, l'une en 1985 et l'autre en 1988, prenant en considération l'augmentation de la capacité des mémoires et donc le nombre d'informations pouvant être délivrées sur les écrans de télévision des utilisateurs :

« The Original Guide loaded the listing for all services available, much as the paper guides print the listings for all available services. The listing are stored in the local box to allow for immediate response to any action taken by the viewer.

[...]

The New SuperGuide System

Design of the new system began in 1988. Keeping in mind the perils of any "second system," we out to correct the "undocumented features" in first system and incorporate many of the little things we learned people interactions with the original SuperGuide system.

[...]

The Great DRAM crunch of '88 made us determined to significantly increase how much information we could store in a given amount of memory" (pièce Blue Cable / TV grid n° 4)

Mémoire en défense pour le compte des sociétés Blue Cable France SA, Blue Cable Germany GmbH, TV Grid Switzerland SA et TV Grid Italy SpA

(Avril 2014)

Un article issu de Wikipédia détaille également les fonctionnalités du SuperGuide mis au point par Peter D. Hallenbeck (pièce Blue Cable / TV Grid n° 6), dans sa première et sa deuxième versions, comme l'illustrent les images reproduites ci-après :

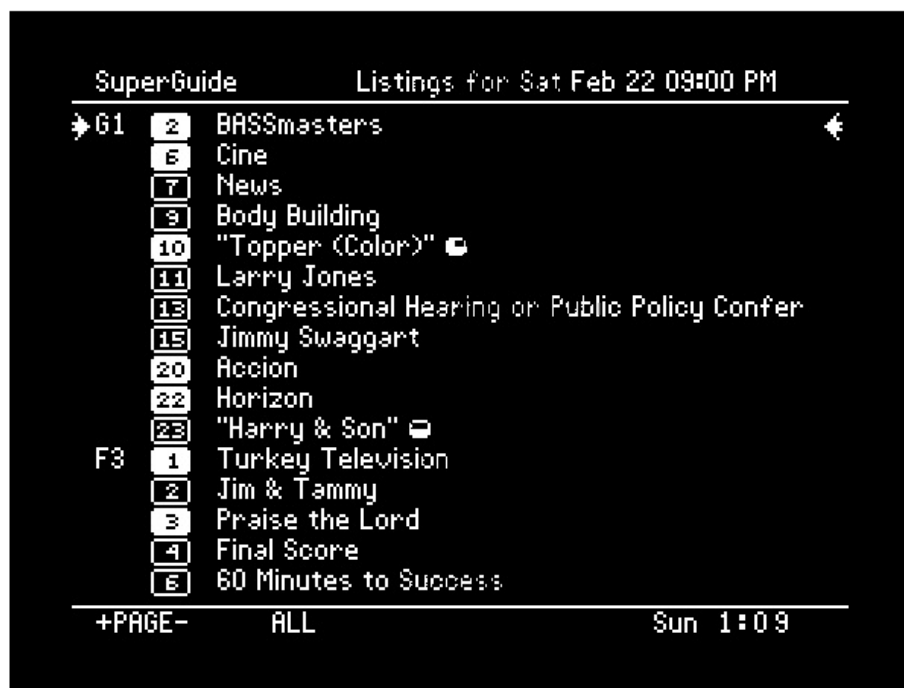


Figure 4: capture d'écran issue de la première version du système SuperGuide mis au point par Peter D. Hallenbeck, en

février 1986 http://en.wikipedia.org/wiki/File:SuperGuide_1_screen_16L.jpg (pièce Blue Cable / TV Grid n° 4)

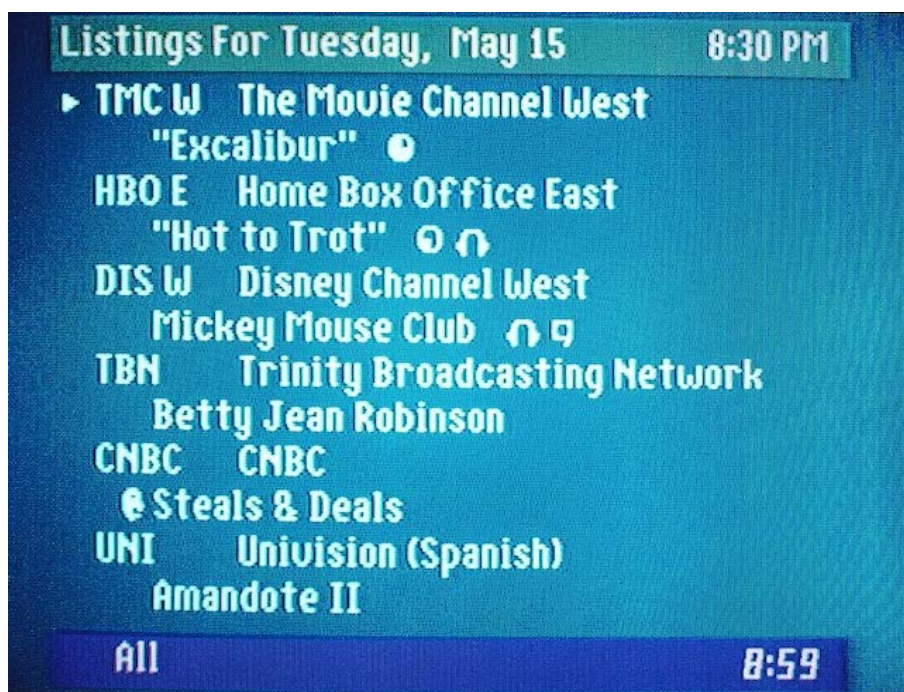


Figure 5: capture d'écran issue de la seconde version du système SuperGuide mis au point par Peter D. Hallenbeck, en mai 1990 (pièce Blue Cable / TV Grid n° 4)

(Avril 2014)

Au regard des enseignements du système SuperGuide, l'homme du métier n'avait à mettre en œuvre aucune activité inventive pour présenter des informations additionnelles sur les programmes dans des bandeaux ne couvrant pas la totalité d'un écran de télévision.

Les revendications n° 1 et 2 du brevet européen n° 1 003 442 ne font donc pas preuve d'activité inventive.

Afin d'en convaincre le Tribunal, les défendeurs demandent à ce que Peter D. Hallenbeck, développeur du système SuperGuide, soit entendu dans le cadre de la présente affaire, par application de la Règle 176 du Règlement de procédure :

« Sous réserve des décisions de la Juridiction visées aux règles 104 (e) et 112, paragraphe 2, b), une partie souhaitant fournir un témoignage oral dépose une *demande d'audition du témoin en personne qui expose :

(a) les raisons pour lesquelles le témoin devrait être entendu en personne ;

(b) les faits dont la partie s'attend à ce qu'ils soient confirmés par le témoin ; et

(c) la langue dans laquelle le témoin déposera. »

Au regard des informations que Peter D. Hallenbeck est susceptible de fournir pour éclairer le Tribunal sur l'art antérieur au brevet européen n° 1 003 442 et afin que ces informations puissent être soumises à la contradiction, il est demandé au Tribunal d'autoriser l'audition de Peter D. Hellenbeck à l'audience.

Peter D. Hallenbeck étant de nationalité américaine, il pourra être auditionné dans la langue de la procédure, à savoir l'anglais.

Les défendeurs prient donc le juge rapporteur de bien vouloir accéder à la présente demande d'audition de témoin lors de la conférence de mise en état du 22 avril 2014.

En application de la règle 180, paragraphe 2⁶, les défendeurs sont prêts à verser une somme que le Tribunal jugera suffisante pour couvrir les frais que le témoin aura engagés.

2. Absence de contrefaçon des revendications n° 1 et 2 du brevet européen n° 1 003 442

La société Telecast prétend que les revendications n° 1 et 2 de son brevet européen n° 1 003 442 seraient reproduites par les *set-top boxes* des sociétés Blue Cable incorporant le logiciel mis au point par les sociétés TV Grid.

⁶ L'article 180 des Règles de procédure se lit ainsi :

« 1. Un témoin a droit au remboursement :

(a) des frais de déplacement et de séjour ; et

(b) de la perte de revenu causée par son audition en personne.

Une fois que le témoin a rempli ses obligations et à sa demande, le greffe rembourse à ce témoin les frais qu'il a engagés.

2. Lorsqu'une partie a déposé une demande d'audition d'un témoin en personne, la Juridiction subordonne la citation du témoin au dépôt d'une somme suffisante pour couvrir les frais visés au paragraphe 1.

Lorsque la Juridiction, de sa propre initiative, ordonne qu'un témoin soit entendu en personne, les fonds nécessaires sont fournis par la Juridiction. »

Mémoire en défense pour le compte des sociétés Blue Cable France SA, Blue Cable Germany GmbH, TV Grid Switzerland SA et TV Grid Italy SpA

(Avril 2014)

Or, il a été précédemment démontré que les revendications n° 1 et 2 du brevet européen n° 1 003 442 ne sont pas valables.

La demande formée par la société Telecast sur ce point sera donc rejetée.

En tout état de cause, la société Telecast ne prouve pas que le guide électronique des programmes des défendeurs met en œuvre les revendications n° 1 et 2 de ce brevet.

Les défendeurs rappelleront que le procédé permettant d'accéder à des informations concernant des programmes de télévision, objet de la revendication n° 1 du brevet européen n° 1 003 442, comporte les étapes suivantes :

- a) une étape de stockage dans une mémoire électronique d'un dispositif de commande de grilles connecté à un écran de contrôle d'une pluralité d'intitulés de programmes de télévision, chaque intitulé comprenant le titre, l'heure de diffusion et le canal ;
- b) une étape d'affichage d'une superposition sur l'écran de contrôle fournissant, parmi les intitulés stockés, le titre ou des informations sur le canal d'un programme sélectionné simultanément au programme sélectionné lors de la sélection d'un changement de canal ;
- c) une étape d'affichage, en réponse à une entrée de l'utilisateur, d'une autre superposition contenant d'autres informations concernant le programme sélectionné parmi les intitulés stockés.

La société Telecast ne prouve pas que les informations additionnelles s'affichant lors de la sélection du titre d'un programme sont affichées par superposition sur le guide des programmes, cachant, aux yeux de l'utilisateur une partie de la liste des programmes, comme le requièrent les caractéristiques b) et c) de la revendication n° 1.

Mémoire en défense pour le compte des sociétés Blue Cable France SA, Blue Cable Germany GmbH, TV Grid Switzerland SA et TV Grid Italy SpA

(Avril 2014)

Et pour cause, le guide électronique des programmes offert par les *set-top boxes* des sociétés Blue Cable et TV Grid n'offre pas d'informations superposées à la grille de programme ; en effet, les informations portant sur un programme sélectionné sont intégrées à ladite grille de programme comme le montre la photographie reproduite ci-après :



Figure 6 : capture écran du guide électronique des programmes Blue Cable

Les caractéristiques b) et c) ne sont donc pas reproduites.

La demande formée par la société Telecast au titre de la prétendue reproduction des revendications n° 1 et 2 de son brevet européen n° 1 003 442 sera donc rejetée.

(Avril 2014)

PAR CES MOTIFS

Vu les règles 176 et 180 du Règlement de procédure, il est demandé au juge-rapporteur, dans le cadre de la conférence de mise en état de :

- ▶ Autoriser l'audition de Peter D. Hellenbeck à l'audience pour attester des fonctionnalités du système SuperGuide développé avant la date de dépôt du brevet européen n° 1 003 442 ;
- ▶ Donner acte aux défendeurs qu'ils sont prêts à verser une somme suffisante pour couvrir les frais du témoin ;

Vu l'article 65, 1) et 2) de l'Accord et l'article 138, 1) de la Convention sur le brevet européen, il est demandé au tribunal de :

- ▶ Déclarer nulles les revendications n° 1 et 2 du brevet européen n° 1 003 442 pour défaut de brevetabilité, absence de nouveauté ou à tout le moins défaut d'activité inventive, pour toutes les désignations nationales concernées ;
- ▶ Rejeter en tout état de cause les demandes formées par la société Telecast au titre de la contrefaçon et de l'indemnisation du préjudice qu'elle prétend avoir subi ;
- ▶ Ordonner à la société Telecast le paiement des frais engagés par les sociétés Blue Cable et TV Grid pour se défendre, en application de l'article 69 de l'Accord.

PIÈCES VERSÉES AUX DÉBATS

No	Désignation
1.	Demande de brevet européen n° 0 447 968
2.	Notification des observations de la division d'opposition en date du 9 février 2007
3.	Lettre datée du 10 août 2007 du mandataire européen de la société United Video Programme Inc. en réponse aux observations de la division d'opposition, comportant en annexe les revendications n° 1 et 2 telles que proposées
4.	Article intitulé " <i>Personal Home TV Programming Guide</i> "
5.	Liste des interventions à la conférence " <i>IEEE 1990 International Conference on consumer electronics</i> " qui s'est tenue à Chicago du 6 au 8 juin 1990
6.	<i>Electronic program guide</i> , Wikipedia, the free encyclopaedia

WITH ALL RESERVES

AMENDED STATEMENT OF DEFENCE

ON BEHALF OF

1. **Blue Cable France SA**, a company governed by the French laws, entered in the trade register of Paris under N° B 345 724 631, with its registered office located 55, rue du Faubourg Saint-Honoré, 75008 Paris, France
2. **Blue Cable Germany GmbH**, a company governed by the laws of Germany, with its registered office located Spreeweg 1, 10557 Berlin, Germany
3. **TV Grid Switzerland SA**, a company governed by the laws of Switzerland, with its registered office located Bundesplatz, 3000 Bern, Switzerland
4. **TV Grid Italy SpA**, a company governed by the laws of Italy, with its registered office located Piazza del Quirinale 1, 00187 Roma, Italy

Defendants

represented by Mr Pierre Véron and M^e Amandine Métier,
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AGAINST

1. **Telecast BV**, with its registered office located Pompstationsweg 32, Den Haag, the Netherlands

Claimant

Mr Michael Burdon,
solicitor
Michael.Burdon@olswang.com

Olswang LLP

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Amended statement of
defence on behalf of Blue
Cable France SA, Blue
Cable Germany GmbH, TV
Grid Switzerland SA and TV
Grid Italy SpA

(28 April 2014)

**4.3.2. *Lack of inventive step over the publication “Personal
Home TV Programming Guide” by Peter D. Hallenbeck and
over the information available on that system prior to
European patent N° 1 003 442*** **21**

**5. *Absence of infringement of claims 1 and 2 of European
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(28 April 2014)

MAY IT PLEASE THE COURT

By way of a Statement of claim dated 24 March 2014, Telecast BV (hereinafter referred to as "*Telecast*") initiated proceedings for infringement of claims 1 and 2 of its European patent N° 1 003 442 against Blue Cable France, Blue Cable Germany (hereinafter referred to as "*Blue Cable*"), TV Grid Switzerland and TV Grid Italy SpA (hereinafter referred to as "*TV Grid*") (collectively "*the defendants*").

On 31 March 2014, the defendants filed preliminary objections in accordance with Rule 19 of the Rules of Procedure ¹, which relate to:

- ▶ the jurisdiction of the Central division of the Unified Patent Court to hear these proceedings;
- ▶ the admissibility of Telecast's claim, because this company does not justify that it is the holder of European patent N° 1 003 442 and, in any case, that it has entered the acquisition of this right in the French Patent Register;
- ▶ the provision of translations of the procedural documents.

¹ Rule 19 of the Rules of Procedure:

" 1. Within one month of service of the Statement of claim, the defendant may lodge a Preliminary objection concerning:
 (a) the jurisdiction and competence of the Court
 (b) the competence of the division indicated by the claimant [Rule 13.1(i)];
 (c) the language of the Statement of claim [Rule 14].

2. A *Preliminary objection shall contain:
 (a) particulars in accordance with Rule 24.1(a) to (c);
 (b) the decision or order sought by the defendant;
 (c) the grounds upon which the Preliminary objection is based; and
 (d) where appropriate the facts and evidence relied on.

3. The Preliminary objection shall be drawn up:
 (a) in the language of the proceedings [Rule 14.3]; or
 (b) in one of the official languages of the European Patent Office.

4. If the action has been commenced before a regional division the defendant may by a Preliminary objection request a transfer of the action to the central division pursuant to Article 33(2) of the Agreement. The Preliminary objection shall in such a case contain all facts and evidence supporting the existence of the same infringement in three or more regional divisions.

5. The Registry shall as soon as practicable invite the claimant to comment on the Preliminary objection. Where applicable, the claimant may of his own motion correct any deficiency [Rule 19.1(b) or (c)], within 14 days of service of notification of the Preliminary objection. Alternatively the claimant may submit written comments within the same period. The judge-rapporteur shall be informed of any correction made or written comments submitted by the claimant. If the deficiency referred to in Rule 19.1(b) is corrected and the claimant has indicated another division, which is competent, the judge-rapporteur shall refer the action to the division indicated by the claimant.

6. The period for lodging the Statement of defence [Rule 23] shall not be affected by the lodging of a Preliminary objection, unless the judge-rapporteur decides otherwise.

7. The defendant's failure to lodge a Preliminary objection within the time period referred to in Rule 19.1 shall be treated as a submission to the jurisdiction and competence of the Court and the competence of the division chosen by the claimant."

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In accordance with Rules 24² and 25³ of the Rules of Procedure, the defendants, by way of their Statement of defence of 9 April 2014, requested that the Court hold that claims 1 and 2 of European patent N° 1 003 442 are invalid or, at least, hold that the Blue Cable apparatuses at issue (set-top boxes) do not implement these claims.

By way of a decision of 22 April 2014, the Judge-rapporteur ruled on the preliminary objections lodged by Blue Cable and TV Grid.

He dismissed the objection relating to the lack of jurisdiction of the Central division of the Unified Patent Court, but authorised the parties to lodge an appeal on this issue, what Blue Cable and TV Grid made on 24 April 2014.

Blue Cable and TV Grid therefore request a stay of the proceedings pending the decision of the Court of Appeal on this issue.

Moreover, the Judge-rapporteur considered that the defendants' objections to find Telecast's claims inadmissible because it has no standing to sue, at least regarding the French territory, did not constitute preliminary objections within the meaning of Rule 19(1) and (4) of the Rules of Procedure and that they could not allow the summary dismissal of the Statement of claim in application of Rule 334 (h) of the Rules of Procedure.

But he did not judge that these claims were ill-founded.

² Rule 24 of the Rules of Procedure reads as follows:

"The Statement of defence shall contain:

(a) the names of the defendant and of the defendant's representative;

(b) postal and electronic addresses for service on the defendant and the names and addresses of the persons authorised to accept service;

(c) the action number of the file;

(d) an indication whether the defendant has lodged a Preliminary objection [Rule 19];

(e) an indication of the facts relied on, including any challenge to the facts relied on by the claimant;

(f) the evidence relied on [Rule 170.1], where available, and an indication of any further evidence which will be offered in support;

(g) the reasons why the action shall fail, arguments of law and any argument arising from the provisions of Article 28 of the Agreement and where appropriate any challenge to the claimant's proposed claim interpretation;

(h) an indication of any order the defendant will seek in respect of the infringement action during the interim procedure [Rule 104(e)];

(i) a statement whether the defendant disputes the claimant's assessment of the value of the infringement action and the grounds for such dispute; and

(j) a list of the documents, including any witness statements, referred to in the Statement of defence together with any request that all or part of any such document need not be translated and/or any Application pursuant to Rule 262.2. Rule 13.2 and .3 shall apply mutatis mutandis."

³ Rule 25 of the Rules of Procedure indicates:

"1. If the Statement of defence includes an assertion that the patent (or patents) alleged to be infringed is (are) invalid the Statement of defence shall include a Counterclaim against the proprietor(s) of the patent (or patents) for revocation of said patent (or patents.) in accordance with Rule 43. The Counterclaim for revocation shall contain:

(a) an indication of the extent to which revocation of the patent (or patents) is requested;

(b) one or more grounds for revocation, which shall as far as possible be supported by arguments of law, and where appropriate an explanation of the defendant's proposed claim construction;

(c) an indication of the facts relied on;

(d) the evidence relied on, where available, and an indication of any further evidence which will be offered in support;

(e) an indication of any order the defendant will seek during the interim procedure [Rule 104(e)];

*(f) where the defendant assesses that the value of the dispute including the Counterclaim exceeds the value of the infringement action by more than [EUR***] an indication of the value of the dispute including the Counterclaim;*

(g) a statement of his position, if any, on the options provided for in Article 33(3)(a), (b) or (c) of the Agreement and Rule 37.4;

(h) a list of the documents, including any witness statements, referred to in the Counterclaim for revocation together with any request that all or part of any such documents need not be translated. Rule 13.2 and .3 shall apply mutatis mutandis; and

(i) insofar as the proprietor(s) of the patent (or patents) are not claimant(s) in the infringement proceedings, the information required by Rule 13.1(b) and (d) in respect of said proprietor(s).

2. Where the claimant is not the proprietor or not the only proprietor of the patent (or patents) concerned the Registry shall as soon as practicable serve a copy of the Counterclaim for revocation on the relevant proprietor(s) in accordance with Rule 13.1(e) and shall supply a copy of each document referred to in paragraph 2. Rule 271 shall apply mutatis mutandis. The proprietor(s) in question shall become a party (parties) to the revocation proceedings and shall be treated as defendant(s) in all subsequent proceedings. The proprietor(s) shall provide details pursuant to Rule 13.1(e) if not already provided by the claimant."

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Cable Germany GmbH, TV
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Grid Italy SpA

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For this reason, the defendants reiterate them in this amended Statement of
defence before the Court.

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FACTS AND PROCEEDINGS

Telecast BV and European patent N° 1 003 442

Telecast BV, a company governed by Dutch laws, alleges that it is the holder of European patent N° 1 003 442 (Telecast exhibit N° 2).

This patent was filed on 10 September 1995 by the U.S. company United Video Programs Inc, specialising in the development of electronic program guides (EPGs), claiming priority from a U.S. patent application.

The patent was granted on 12 June 2002.

Telecast BV considers that it acquired it on 24 December 2013 as well as the other patents filed under the same U.S. priority.

The assignment was entered in the German and Italian patent registers.

Telecast BV granted licences under this patent (and other patents covering functionalities relating to EPGs) to various program providers.

European patent N° 1 003 442 relates to a "*method and apparatus for accessing information about television programs*", which allegedly improves existing electronic program guides.

Blue Cable France, Blue Cable Germany, TV Grid SpA and TV Grid Switzerland

At the request of TV Grid Italy, a program guide has been developed by TV Grid Switzerland.

This electronic program guide is provided by TV Grid Italy to Blue Cable France and Blue Cable Germany which integrate them in their set-top boxes.

Electronic program guides

In the last 30 years or so, the number of television broadcasting stations has increased enormously.

The broadcasters wish the consumer to know what programs are being or are to be broadcast.

Amended statement of defence on behalf of Blue Cable France SA, Blue Cable Germany GmbH, TV Grid Switzerland SA and TV Grid Italy SpA

(28 April 2014)

Until the advent of electronic means of broadcasting, this information was disseminated principally in paper form: it took the form of a list of programs listed by channel and by broadcast time, with various possible methods of listing the starting and end time, the channel and some notes about the program.

One answer to the increase in the number of channels and programs and the size of the listings was to provide electronic lists directly available to a TV viewer on the screen.

The information on the programs can be transmitted by various means, preferably over the air by private service providers: by calling up the relevant list and looking up the relevant day, time and channel, the viewer can see what program is being broadcast at the relevant time.

In a typical case, the electronic program guide is controlled by a handle selector, which controls a selecting highlight on the screen, and a program is selected by highlighting it and pressing a selection button, at which an operation is carried out in relation to that program, for example providing more information about it.

Opposition at the European Patent Office against European patent N° 1 003 442

European patent N° 1 003 442 was opposed at the European Patent Office⁴.

The opposition division issued a preliminary opinion holding that claim 1 lacks novelty and inventive step (Blue Cable / TV Grid exhibit N° 2).

United Video Programs filed amended claims (Blue Cable / TV Grid exhibit N° 3) to reply to this preliminary opinion but the opposition was then withdrawn, so that the claims as originally filed are in force.

These proceedings

Telecast BV decided to oppose European patent N° 1 003 442 against Blue Cable and TV Grid.

In June 2013, it wrote letters to Blue Cable France and Blue Cable Germany asking them to stop implementing the method according to claim 1 of European patent N° 1 003 442 and to stop manufacturing, holding, putting on the market and offering for sale set-top boxes protected by claim 2 of the patent.

As Blue Cable considered that it was perfectly entitled to market the set-top boxes in dispute equipped with their electronic program guide, it deemed it unnecessary to reply to those warning letters.

⁴ Contrary to what the claimant alleges in its Statement of claim, the defendants to the present proceeding were not opponents within the framework of the opposition proceeding to European patent N° 1 003 442.

Amended statement of defence on behalf of Blue Cable France SA, Blue Cable Germany GmbH, TV Grid Switzerland SA and TV Grid Italy SpA

(28 April 2014)

In a Statement of claim dated 24 March 2014, Telecast BV lodged against Blue Cable France, Blue Cable Germany, TV Grid Switzerland and TV Grid Italy a claim for infringement of its European patent N° 1 003 442 before the Central division of the Unified Patent Court.

Considering the technical field of the patent concerned, the case was attributed to the Paris seat.

On 19 March 2014, Blue Cable and TV Grid raised preliminary objections in accordance with Rule 19 of the Rules of Procedure; some of these objections were dismissed and others considered inadmissible as preliminary objections in a decision of the Judge-rapporteur of 22 April 2014.

As authorised by the Judge-rapporteur in his decision of 22 April 2014, Blue Cable and TV Grid lodged an appeal against the dismissal of their preliminary objection relating to the lack of jurisdiction of the Central division of the Court in application of Article 33 § 1 a) of the Agreement.

In their Statement of 9 April 2014, they set out their arguments in defence for obtaining the invalidity of claims 1 and 2 of European patent N° 1 003 442 in all its national designations and the dismissal of the claims for infringement.

In this amended Statement of defence, Blue Cable and TV Grid reiterate their claims as set out in their Statement of 9 April 2014 and add, on a preliminary basis:

- ▶ a claim for a stay of the proceedings pending the decision of the Court of Appeal on the issue of the jurisdiction of the Central division of the Court;
- ▶ the claims for inadmissibility for lack of standing to sue that the Judge-rapporteur considered in his decision of 22 April 2014 as not falling within his competence.

In any case, the Court will record that Telecast acknowledged during the interim conference that it may not obtain a measure of injunction and compensation for the acts committed in Switzerland as this country is not a member of the Agreement on a Unified Patent Court.

DISCUSSION

Blue Cable and TV Grid request that the Court stay the proceedings pending the decision of the Court of Appeal on the issue of the jurisdiction of the Central division of the Court to hear this dispute **(1.)**.

Should the Court refuse to accede to this claim, Blue Cable and TV Grid request that Telecast's action be found inadmissible as this company does not justify that it is the holder of European patent N° 1 003 442, on which it bases its claims **(2.)**, or, in the alternative, that the action be found inadmissible regarding the facts that took place on the French territory as the assignment of the patent on the basis of which the action was brought has not been entered in the French Patent Register **(3.)**.

Should the Court consider that Telecast has standing to sue for certain territories designated by the patent, Blue Cable and TV Grid request that the Court hold claims 1 and 2 of European patent N° 1 003 442 invalid for lack of patentability, lack of novelty and, at least, lack of inventive step **(4.)**

(28 April 2014)

Finally, should claims 1 and 2 of European patent N° 1 003 442 be held valid, Blue Cable and TV Grid request that the Court hold that their set-top boxes do not implement these claims (5.).

1. Stay of the proceedings pending the decision of the Court of Appeal on the jurisdiction of the Central division of the Court

The Judge-rapporteur, in his decision of 22 April 2014, authorised the parties to lodge an appeal against the dismissal of the defendants' preliminary objection to declare that the Central division of the Court has no jurisdiction to hear this dispute.

Blue Cable and TV Grid lodged an appeal against this decision on 24 April 2014.

They request that the Court, in application of Rule 295 c) ii)⁵ of the Rules of Procedure, stay the proceedings pending the decision of the Court of Appeal.

As the Judge-rapporteur rightly emphasised in his decision of 22 April 2014, the issue of the jurisdiction of the Central division of the Court is of fundamental importance for this dispute, but also for any future dispute that would present a similar configuration as to the defendants' localisation.

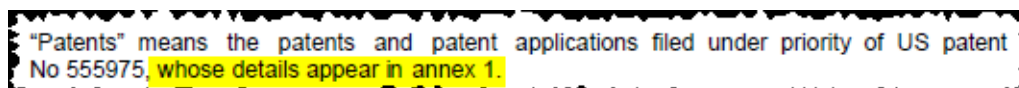
Consequently, Blue Cable and TV Grid request that the Court stay the proceedings.

Should the Court consider that there is no reason for a stay of the proceedings, it will declare Telecast's action inadmissible.

2. In the alternative, inadmissibility of Telecast's action for lack of standing to sue

Telecast contends that it became the holder of European patent N° 1 003 442 by an assignment act of 24 December 2013 and that it, accordingly, has standing to sue.

However, the assignment act that it produces (Telecast exhibit N° 1) does not refer to European patent N° 1 003 442 as it refers to an exhaustive list of rights assigned mentioned in Annexe 1 of the assignment:



"Patents" means the patents and patent applications filed under priority of US patent No 555975, whose details appear in annex 1.

Figure 1: extract from the assignment act on which Telecast bases its action

⁵ Rule 295 c) ii) indicates:
"The Court may stay proceedings:
[...] (c) where an appeal is brought before the Court of Appeal against a decision or order of the Court of First Instance :
[...] ii) disposing of an admissibility issue or a Preliminary objection;"

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But the list of Annexe 1 of this act contains no reference to European patent N° 1 003 442, as the extract from the assignment act reproduced hereinafter demonstrates it:

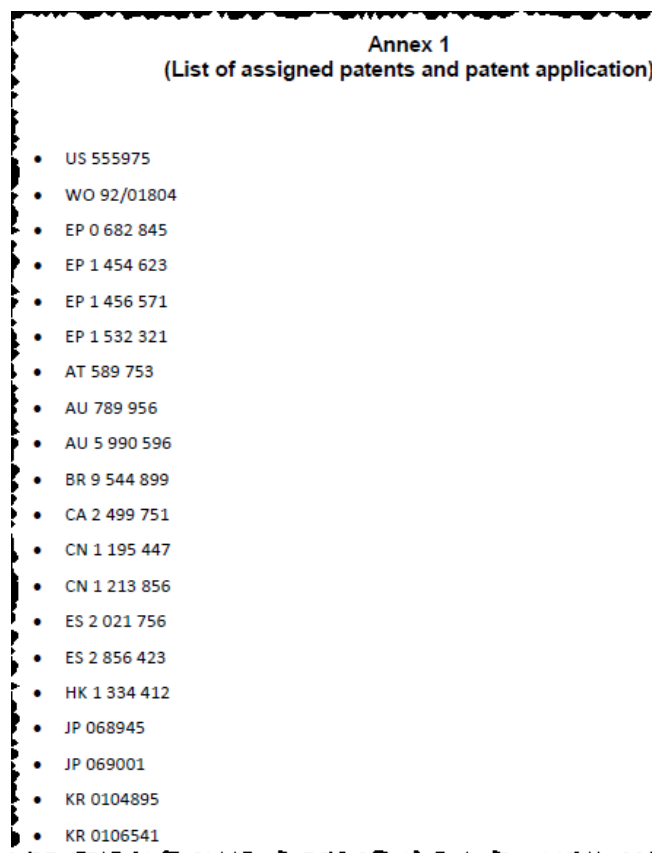


Figure 2: Annexe 1 of the assignment act of 24 December 2013

Failing to demonstrate that it became the holder of European patent N° 1 003 442, on which it bases its action, Telecast's action will be held inadmissible for lack of standing to sue.

Should the Court consider that Telecast has standing to sue, Blue Cable and TV Grid request that the action be held inadmissible regarding any fact in relation to the French territory because the assignment of the patent, the subject-matter of the dispute, has not been entered in the French Patent Register.

3. In the further alternative, inadmissibility of the action regarding the French territory because the assignment has not been entered in the French Patent Register

Telecast did not file European patent N° 1 003 442: it alleges that it acquired it from the applicant, the US company United Video Programmes Inc., on 24 December 2013.

But, to be able validly to enforce its European patent against companies established in Germany, Italy and France, Telecast should provide evidence that the corresponding national designations of its European patent are actually enforceable against third parties in these countries.

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Telecast indicates that it:

- ▶ entered the assignment of European patent № 1 003 442 in the German and Italian Patent Registers;
- ▶ takes the necessary steps to enter the assignment in the European Patent Register.

But the assignment was not entered in the French Patent Register in France.

However, pursuant to Article L. 613-9 of the French Intellectual Property Code:

"All acts transferring or modifying the rights deriving from a patent application or a patent must, to be enforceable against third parties, be entered in a register, known as the National Patent Register kept by the National Institute of Industrial Property.

However, before its registration, an act is enforceable against third parties who have acquired rights after the date the act occurred, but who were aware of it when acquiring the rights.

The licensee, party to a licence agreement, not entered in the national register of patents, is also entitled to intervene in the infringement proceedings instituted by the owner of the patent to seek compensation for the damage it has sustained."

Consequently, by application of Article 24 § 1 e) of the Agreement⁶ and Article L. 613-9 of the French Intellectual Property Code, Telecast's action is inadmissible regarding the facts alleged on the French territory because the assignment of its right is not enforceable on this territory.

4. In the very alternative, counterclaim for revocation of claims 1 and 2 of European patent № 1 003 442

Pursuant to Article 65, (1) and (2) of the Agreement:

"The Court shall decide on the validity of a patent on the basis of an action for revocation or a counterclaim for revocation.

The Court may revoke a patent, either entirely or partly, only on the grounds referred to in Articles 138(1) and 139(2) of the EPC."

Article 138, 1) of the European Patent Convention (hereinafter referred to as "EPC") mentions:

"Subject to Article 139, a European patent may be revoked with effect for a Contracting State only on the grounds that:

a) the subject-matter of the European patent is not patentable under Articles 52 to Article 57;

b) the European patent does not disclose the invention in a manner sufficiently clear and complete for it to be carried out by a person skilled in the art;

c) the subject-matter of the European patent extends beyond the content of the application as filed or, if the patent was granted on a divisional application or on a new application filed under Article 61, beyond the content of the earlier application as filed;

⁶ Article 24 § 1 e) of the Agreement indicates:

"1. In full compliance with Article 20, when hearing a case brought before it under this Agreement, the Court shall base its decisions on :

(...)

e) national law."

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- d) *the protection conferred by the European patent has been extended; or*
e) *the proprietor of the European patent is not entitled under Article 60, paragraph 1.*"

The defendants consider that European patent N° 1 003 442 must be revoked on the grounds that it constitutes a non-patentable presentation of information in accordance with Article 52 (2), d) EPC (4.1.).

Should the Court consider that the invention the subject-matter of European patent N° 1 003 442 is patentable, it will note that claims 1 and 2:

- ▶ are not new pursuant to Article 54 EPC (4.2.);
- ▶ do not involve an inventive step pursuant to Article 56 EPC (4.3.).

4.1. Lack of patentability of the invention the subject-matter of European patent N° 1 003 442 because it relates to a presentation of information

Article 52, (2) EPC states:

"The following in particular shall not be regarded as inventions within the meaning of paragraph 1:

- a) *discoveries, scientific theories and mathematical methods;*
- b) *aesthetic creations;*
- c) *schemes, rules and methods for performing mental acts, playing games or doing business, and programs for computers;*
- d) **presentations of information.**"

Claims 1 and 2 of European patent N° 1 003 442 read as follows (paragraphs added):

"1. A method for accessing information about television programs, the method comprising the steps of

- ▶ *storing in an electronic memory of a schedule controller operably connected with a monitor screen, a plurality of television program listings, each listing including title, telecast time and channel,*
- ▶ *displaying on the monitor screen an overlay providing, from the stored listings, a title of and channel information on a selected program simultaneously with the selected program upon selection of a channel change,*
- ▶ *and displaying, responsive to a user input, a further overlay containing further information on the selected program from the stored listings."*

"2. Apparatus for accessing information about television programs, the apparatus comprising

- ▶ *the means for storing in an electronic memory of a schedule controller operably connected with a monitor screen, a plurality of television program listings, each listing including title, telecast time and channel,*
- ▶ *means for displaying on the monitor screen an overlay providing, from the stored listings, a title of and channel information on a selected program simultaneously with the selected program upon selection of a channel change,*
- ▶ *and means for displaying, responsive to a user input, a further overlay containing further information on the selected program from the stored listings."*

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The invention the subject-matter of European patent N° 1 003 442 therefore relates to a method for accessing information about television programs and to an apparatus for accessing this information.

According to a first feature, the information is stored in an electronic memory of a schedule controller, this schedule controller being operably connected with a monitor screen, a plurality of television program listings, *i.e.* with a television screen, each television program listing including the title of the program, the telecast time and the channel.

According to a second feature, the method the subject-matter of the invention or the apparatus further comprises means for displaying on the monitor screen an overlay providing, from the stored listings, the information relating to the selected title.

According to a third feature, the method the subject-matter of the invention or the apparatus finally comprises means for displaying, responsive to a user input, a further overlay containing further information on the selected program from the stored listings.

In other words, in addition to the first step consisting in storing in an electronic memory various items of information about the programs, the claims of European patent N° 1 003 442 relate to a feature concerning means for obtaining a primary display that overlays the program selected on the screen and to a feature concerning means for obtaining a secondary display, appearing in response to a user input and giving access to further information.

According to the invention, the information relating to a selected title is in the form of banners.

Therefore, the invention the subject-matter of European patent N° 1 003 442 relates to how the information is displayed on a television screen and to the access to this information by the users.

In this respect, the description indicates:

"[0002] (...) When using a television set as a display for a schedule system, the size and resolution of the television display limit the amount of text that can be displayed with the grid. Improved techniques are required for conveying the most amount of information to the user in an easily understood manner within the limitations of the television display." (Telecast exhibit N° 2, page 2, column 1)

"[0003] Accordingly, it is an object of this invention to provide a television schedule system and process with a user interface that is configured to compensate for the particular nature of the television schedule information. [0004] It is another object of the invention to provide such a user interface in which supplemental schedule information is presented in overlays that obscure a minimum amount of useful other information." (Telecast exhibit N° 2, page 2, column 1)

"[0010] (...) The program note 52 overlays and hides 3 or 4 listings of a guide. To minimize concealment of the guide, an auto-rolling note is used. The program note will overlay either the top half or bottom half of the screen, as necessary to avoid masking the title of the selected listing."

It thus emerges from the description itself that it was already known from the prior art to store, extract and provide information about television programs, using a computer programme contained in a device connected to a television screen.

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The invention the subject-matter of European patent N° 1 003 442 therefore consists in providing an electronic guide for television programs and in providing additional information on a selected title by overlay, without this overlaid additional information hiding the totality of the television screen, in order for the user to be able to always see part of the program guide.

However, far from giving the technical reasons that would make it possible to visualise more information on a selected program, claims 1 and 2 merely indicate that the information on a selected program can be visualised in the form of notes overlaying the general information already displayed.

Yet the mere presentation of information cannot be patentable.

The boards of appeal of the EPO held in particular that the mere organisation of the display of information cannot have a technical character if this organisation is not structured (technical board of appeal 3.5.01, 17 March 2011, T 1235/07⁷):

“The Board is thus in this case taking a wider view of ‘presentation of information’ than just the actual information that is displayed, the so-called cognitive content, to include also structural aspects of how the information is displayed. In the Board’s view, such additional aspects can only contribute to inventive step if they have technical character.”

The description of European patent N° 1 003 442 mentions no technical contribution concerning the organisation of the claimed visualisation of the information about the programs.

Therefore, the invention the subject-matter of European patent N° 1 003 442 presents no technical character and, consequently, does not meet the patentability requirement of Article 52 (2) d) EPC.

Claims 1 and 2 of European patent N° 1 003 442 should therefore be held invalid for this first reason.

Should the Court consider that this invention is not excluded from patentability, it will note that it is not new or, at least, that it lacks an inventive step.

4.2. Lack of novelty of claims 1 and 2 of European patent N° 1 003 442

In accordance with Article 54 (1) EPC:

“An invention shall be considered to be new if it does not form part of the state of the art.”

The method for accessing information about television programs, the subject-matter of claim 1 of European patent N° 1 003 442, comprises the following steps:

- a) a step of storing in an electronic memory of a schedule controller operably connected with a monitor screen, a plurality of television program listings, each listing including title, telecast time and channel;
- b) a step of displaying on the monitor screen an overlay providing, from the stored listings, a title or channel information on a selected program simultaneously with the selected program upon selection of a channel change;

⁷ See also the decision of 1 April 2009, technical board of appeal 3.5.01, T 1143/06

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- c) a step of displaying, responsive to a user input, a further overlay containing further information on the selected program from the stored listings.

Claim 2 relates to an apparatus that can implement the steps of the method described above.

Therefore, the observations made with regard to claim 1 will apply *mutatis mutandis* to claim 2.

Claims 1 and 2 of European patent N° 1 003 442 are not new over European patent application N° 0 447 968, filed by RCA Licensing Corporation, whose inventor is Mr Bruno Hennig (hereinafter referred to as "*the Hennig patent application*", Blue Cable / TV Grid exhibit N° 1).

The Hennig patent application was filed on 14 March 1991 and relates to an "*Apparatus for providing TV program information*".

The invention the subject-matter of this patent application describes how to obtain information concerning television programs, such as the starting and end time, by means of pages called "VPT" in particular (*Videorecorder Programming by Teletext*⁸).

This patent application discloses all the features of claims 1 and 2 of European patent N° 1 003 442.

⁸ Teletext is an information retrieval service in the form of text and animations, which is transmitted within the television signal of a channel (source: Wikipedia).

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This patent application relates to television receivers incorporating teletext decoders comprising a memory storing information on the programs, such as, in particular, the title, the channel, and the starting and end time of the program (page 4, column 6, lines 1 to 6), as illustrated by figure 1a) reproduced below:

P402	402	CH-TEXT	15.02.90	14:25:03
SRG	TV-ORF	Donnerstag	15. Februar	1990
			24101	150290
			CF	
08.30	0830	Schulfernsehen: Geographie		
09.20	0920	Reise durch unseren Körper		
09.50	2500	Ende / Pause		
12.55	1255	Nachrichten		
13.00	1300	Ein Heim für Tiere		
13.55	1355	Zeitspiegel: Herrscher des goldenen Dreiecks		
14.45	1445	HTV		
15.40				

Figure 3: figure 1a of European patent application № 0 447 968 (Hennig) showing the information on the programs stored in a television receiver incorporating a teletext decoder

Therefore, feature a) of claim 1 of European patent № 1 003 442 is infringed.

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The Hennig patent application further provides for the possibility of displaying in overlays (references 540 and 540') the title or the information on the channel of a selected program simultaneously with the selected program upon selection of a channel change, as illustrated by figures 5a and 5b reproduced below:

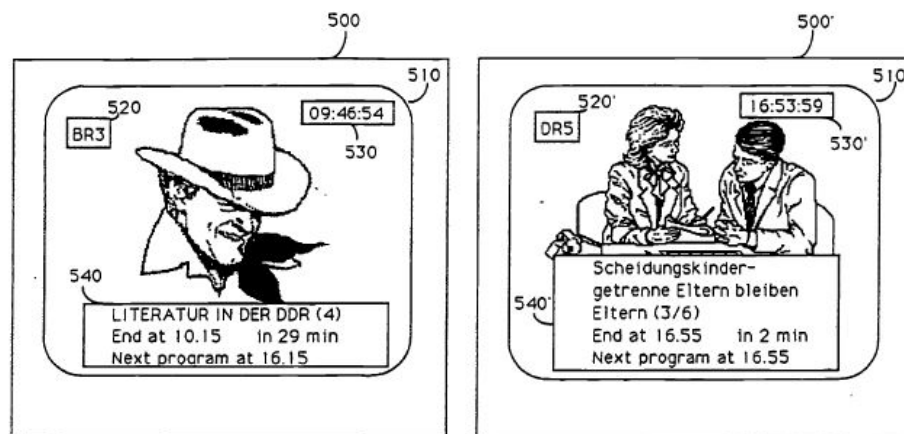


Figure 4: figures 5a and 5b of European patent application No 0 447 968 (Hennig) illustrating the overlay of information on the selected program in banners 540 and 540'

Finally, the Hennig patent application teaches a displaying step, responsive to a user input, of another overlay containing further information concerning the selected program from the stored listings.

The description of the Hennig patent application indicates in this respect:

"The display (540, 540'), indicating the remaining duration, has to be updated during the time the microcomputer waits for the next appearance of pages, and if desired, the title of the following program can also be displayed" (page 4, column 5, lines 9 to 13)

Therefore, the method the subject-matter of claim 1 and the device implementing this method, which is the subject-matter of claim 2, are not new when compared to the teachings of the Hennig patent application.

Therefore, they should be held invalid by the Court.

The defendants add in this respect that during the opposition procedure concerning European patent No 1 003 442, United Video Program Inc., the holder of the patent at that time, admitted that claims 1 and 2 of its patent were not new, in particular when compared to the teachings of the Hennig patent application.

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In reply to the opponents' arguments and to a communication from the examiner (Blue Cable / TV Grid exhibit N° 2), United Video Program Inc. accepted to amend its claims⁹ to indicate that the displaying step the subject-matter of feature c) of claim 1 differs from the displaying step the subject-matter of feature b) in that it permits to display in overlays other items of information than those already displayed:

"You will recall that the basis of the invention is to provide a method/apparatus for effectively splitting the provision of program guide information into manageable parts (see patentee's letter of 18 July 2006 under 'Main Request'). Thus, claim 1 recites the one overlay of program title and channel which appears on the screen 'simultaneously with the selected program upon selection of a channel change'. The other, supplemental, overlay is user-selected in addition to that one overlay.

The use of the phrase 'supplemental overlay' is intended to make clear that the overlay in question is not merely a repeat of the one overlay (i.e. a further showing of the same thing), but is separate and distinct from it." (Blue Cable / TV Grid exhibit N° 3, page 2)

Since the opposition was subsequently withdrawn by the opponents, European patent N° 1 003 442 was finally granted as filed, without the amendments proposed in the main request having been finally adopted.

It remains that the holder of European patent N° 1 003 442 admitted during the opposition procedure that claims 1 and 2 are not new over the teachings of the Hennig patent application.

The Court can only note that claims 1 and 2 should therefore be held invalid for lack of novelty.

In any case, these claims will be held invalid for lack of inventive step.

4.3. Lack of inventive step of claims 1 and 2 of European patent N° 1 003 442

Article 56 EPC indicates:

"An invention shall be considered as involving an inventive step if, having regard to the state of the art, it is not obvious to a person skilled in the art. If the state of the art also includes documents within the meaning of Article 54, paragraph 3, these documents shall not be considered in deciding whether there has been an inventive step."

⁹ Claims 1 and 2 the subject of United Video Program Inc.'s main claim presented during the opposition procedure read as follows (pièce Blue Cable / TV Grid n° 3) :

"1. A method for accessing information about television programs, the method comprising the steps of storing in an electronic memory of a schedule controller operably connected with a monitor screen, a plurality of television program listings, each listing including title, telecast time and channel, displaying on the monitor screen an overlay providing, from the stored listings, a title of and channel information on a selected program simultaneously with the selected program upon selection of a channel change, and displaying, responsive to a user input, a further-supplemental overlay containing further-supplemental information on the selected program from the stored listings.

2. Apparatus for accessing information about television programs, the apparatus comprising the means for storing in an electronic memory of a schedule controller operably connected with a monitor screen, a plurality of television program listings, each listing including title, telecast time and channel, means for displaying on the monitor screen an overlay providing, IO from the stored listings, a title of and channel information on a selected program simultaneously with the selected program upon selection of a channel change, and means for displaying, responsive to a user input, a further-supplemental overlay containing further-supplemental information on the selected program from the selected listings."

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According to the description of European patent N° 1 003 442, the invention solves the problem of the organisation and visualisation of the large amount of information relating to television programs.

In particular, the purpose of the invention is to allow a user to obtain information on a specific program without this information taking up too large a part of the television screen so that part of the program list remains visible.

Claims 1 and 2 of European patent N° 1 003 442 do not involve any inventive step for the skilled person, regarding both:

- ▶ the teachings of the Hennig European patent application N° 0 447 968 (4.3.1.);
- ▶ and the publication "*Personal Home TV Programming Guide*", by Peter D. Hallenbeck, presented during the *IEEE 1990, International Conference on consumer electronics* held in Chicago from 6 to 8 June 1990 (Blue Cable / TV Grid exhibits N° 4 and 5) and the information on this system available prior to European patent N° 1 003 442 (Blue Cable / TV Grid exhibit N° 6) (4.3.2.).

4.3.1. Lack of inventive step over the teachings of European patent application N° 0 447 968

It has been previously demonstrated (see paragraph 4.2) that the Hennig European patent application disclosed all the features of claims 1 and 2 of European patent N° 1 003 442.

Should the Court consider that all of the features of claims 1 and 2 are not disclosed in this document, it will note that the person skilled in the art did not need to exercise any inventive skill to arrive at the invention considering the teachings of the Hennig patent application.

The Hennig patent application already teaches the visualisation of the information about a program in the form of notes (banners) taking up only part of the television screen (see references 540 and 540' on figures 5a and 5b reproduced below):

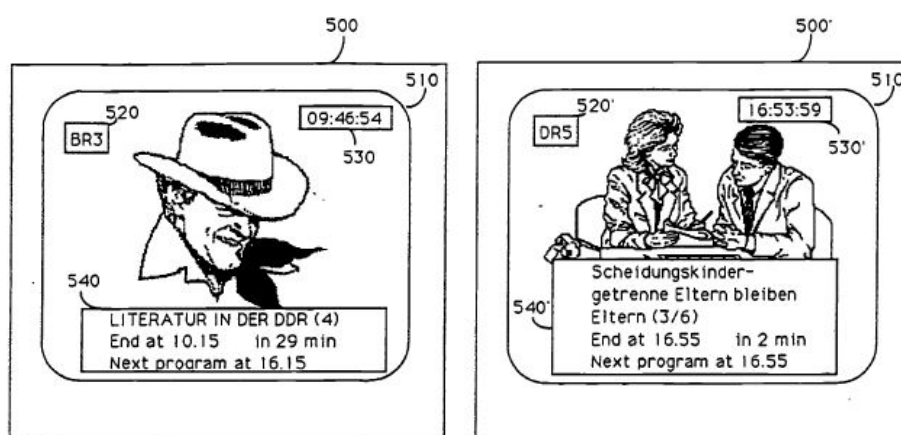


Figure 5: figures 5a and 5b of European patent application N° 0 447 968 (Hennig) illustrating the overlay of information on the selected program in program banners 540 and 540'

Therefore, the mere overlay of the banner on the list of all the programs in order that part of that list can still be read by the user merely constitutes an improved visualisation for the user that does not confer any technical advantage.

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This is only an arbitrary choice that could obviously be made by the person skilled in the art, who is an engineer specialising in audio-visual reception systems, set-top boxes in particular.

Therefore, claims 1 and 2 of European patent N° 1 003 442 should be held invalid for lack of inventive step.

They should also be held invalid having regard to the teachings of the system from the prior art named "*SuperGuide*".

4.3.2. Lack of inventive step over the publication "*Personal Home TV Programming Guide*" by Peter D. Hallenbeck and over the information available on that system prior to European patent N° 1 003 442

Peter D. Hallenbeck developed, as of 1985 (that is, nine years before Telecast's alleged invention), a system for the organisation and access to television programs called "*SuperGuide*".

This system was presented during the *IEEE 1990 International Conference on consumer electronics* held in Chicago from 6 to 8 June 1990 (Blue Cable / TV Grid exhibits N° 4 and 5).

Two versions were developed, one in 1985 and the other in 1988, taking into account the increase in memory capacity and therefore the amount of information that can be displayed on the users' television screen:

"The Original Guide loaded the listing for all services available, much as the paper guides print the listings for all available services. The listings are stored in the local box to allow for immediate response to any action taken by the viewer.

[...]

The New SuperGuide System

Design of the new system began in 1988. Keeping in mind the perils of any "second system," we out to correct the "undocumented features" in first system and incorporate many of the little things we learned people interactions with the original SuperGuide system.

[...]

The Great DRAM crunch of '88 made us determined to significantly increase how much information we could store in a given amount of memory" (Blue Cable / TV grid exhibit N° 4)

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An article from Wikipedia also details the functionalities of the SuperGuide developed by Peter D. Hallenbeck (Blue Cable / TV Grid exhibit № 6), in its first and second versions, as illustrated by the pictures reproduced below:

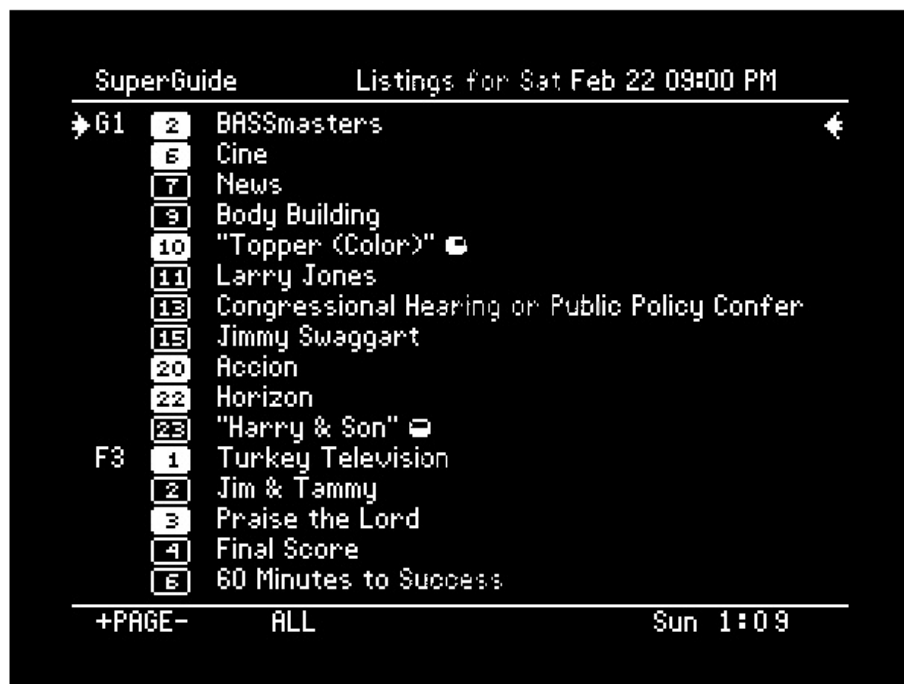


Figure 6: screen shot taken from the first version of the SuperGuide system developed by Peter D. Hallenbeck, in February 1986 http://en.wikipedia.org/wiki/File:SuperGuide_1_screen_16L.jpg (Blue Cable / TV Grid exhibit № 4)

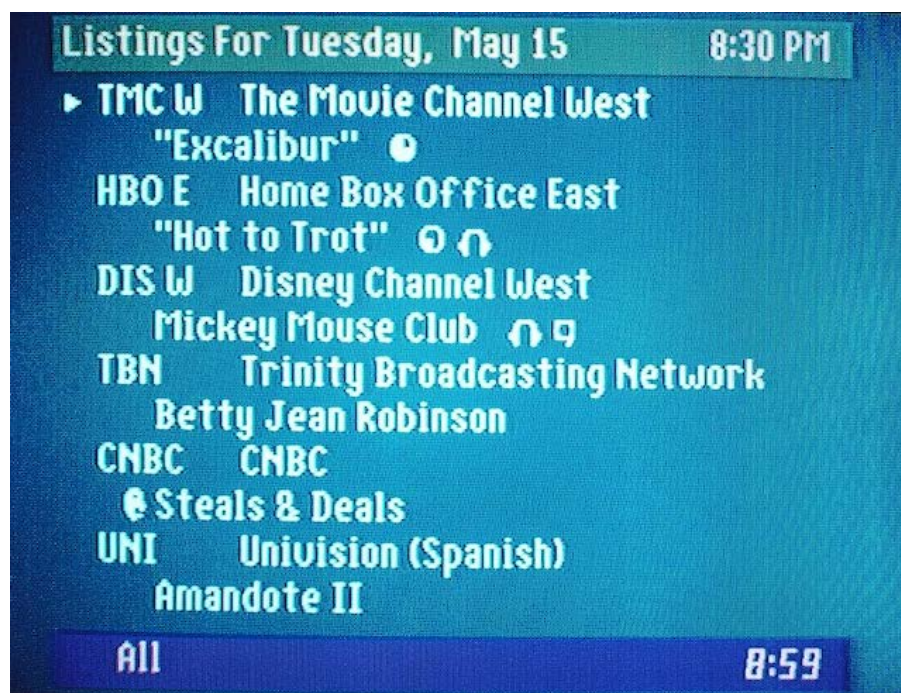


Figure 7: screen shot taken from the second version of the SuperGuide system developed by Peter D. Hallenbeck, in May 1990 (Blue Cable / TV Grid exhibit № 4)

Considering the teachings of the SuperGuide system, the person skilled in the art did not have to exercise any inventive skill to present additional information on the programs in banners that do not take up the totality of a television screen.

Amended statement of defence on behalf of Blue Cable France SA, Blue Cable Germany GmbH, TV Grid Switzerland SA and TV Grid Italy SpA

(28 April 2014)

Therefore, claims 1 and 2 of European patent N° 1 003 442 do not involve an inventive step.

In order to convince the Court, the defendants request that Peter D. Hallenbeck, who developed the SuperGuide system, be heard in these proceedings, in accordance with Rule 176 of the Rules of Procedure:

*“Subject to the orders of the Court referred to in Rules 104(e) and 112.2(b) a party seeking to offer oral witness evidence shall make an * Application for the hearing of the witness which shall set out:*

- (a) the reasons why the witness should be heard in person;*
- (b) the facts which the party expects the witness to confirm; and*
- (c) the language in which the witness shall give evidence”*

Considering the information that Peter D. Hallenbeck is likely to provide to enlighten the Court about the prior art with regard to European patent N° 1 003 442 and in order that this information can be challenged by the parties, the Court is requested to authorise the hearing of Peter D. Hallenbeck.

Peter D. Hallenbeck being a U.S. citizen, he can be heard in the language of the proceedings, namely English. The defendants therefore requested that the Judge-rapporteur accede to this request for the hearing of a witness during the interim conference of 22 April 2014: the Judge-rapporteur considered that he did not propose to summon this witness at the final oral hearing.

However, the defendants reserve the right to request that he be present at the oral hearing to offer witness evidence should the need arise.

In accordance with Rule 180, paragraph 2¹⁰, the defendants are prepared to pay a sum that the Court will consider sufficient to cover the expenses incurred by the witness.

Should the Court hold that claims 1 and 2 were valid, it can only hold that they are not reproduced by Blue Cable's set-top boxes, which incorporate the software developed by TV Grid.

¹⁰ Rule 180 of the Rules of Procedure reads as follows:

- “1. A witness shall be entitled to reimbursement of:*
- (a) expenses for travelling and stay; and*
- (b) loss of income caused by his hearing in person.*

After the witness has carried out his duties and upon his request, the Registry shall make a payment to the witness towards the expenses incurred.

2. Where a party has lodged an Application for the hearing of a witness in person, the Court shall make the summoning of the witness conditional upon the deposit of a sum sufficient to cover the expenses referred to in paragraph 1.

Where the Court orders of its own motion that a witness be heard in person, the funds necessary shall be provided by the Court.”

(28 April 2014)

5. Absence of infringement of claims 1 and 2 of European patent N° 1 003 442

Telecast alleges that claims 1 and 2 of its European patent N° 1 003 442 are infringed by Blue Cable's set-top boxes incorporating the software developed by TV Grid.

However, it has been demonstrated previously that claims 1 and 2 of European patent N° 1 003 442 are not valid.

Therefore, the request lodged by Telecast on this issue should be dismissed.

In any case, Telecast does not prove that the defendants' electronic program guide implement claims 1 and 2 of this patent.

The defendants will recall that the method for accessing information on television programs, the subject-matter of claim 1 of European patent N° 1 003 442, comprises the following steps:

- a) a step of storing in an electronic memory of a schedule controller operably connected with a monitor screen, a plurality of television program listings, each listing including title, telecast time and channel;
- b) a step of displaying on the monitor screen an overlay providing, from the stored listings, a title of and channel information on a selected program simultaneously with the selected program upon selection of a channel change;
- c) a step of displaying, responsive to a user input, a further overlay containing further information on the selected program from the stored listings.

Telecast does not prove that the additional information displayed when the title of a program is selected are overlaid on the programs guide, hiding part of the programs list to the user as required by features b) and c) of this claim.

Yet the electronic program guide provided by the Blue Cable and TV Grid's set-top boxes does not provide information overlaid over the program grid; as a matter of fact, the information about a selected program is integrated to the said program grid as shown by the photograph reproduced below:

Amended statement of defence on behalf of Blue Cable France SA, Blue Cable Germany GmbH, TV Grid Switzerland SA and TV Grid Italy SpA

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Figure 8: screen shot of Blue Cable's electronic program guide

Therefore, features b) and c) are not infringed.

Consequently, the request lodged by Telecast with respect to the alleged infringement of claims 1 and 2 of its European patent N° 1 003 442 should be dismissed.

In any case, the Court will record that Telecast acknowledged during the interim conference that it cannot obtain a measure of injunction and compensation for the acts committed in Switzerland as this country is not a member of the Agreement on the Unified Patent Court.

(28 April 2014)

ON THESE GROUNDS

Mainly,

Having regard to Rule 295 c) ii) of the Rules of Procedure,

- ▶ Stay the proceedings pending the decision of the Court of Appeal on the appeal lodged by Blue Cable and TV Grid on the issue of the jurisdiction of the Central division of the Court;

In the alternative,

- ▶ Hold Telecast's action inadmissible for lack of standing to sue as Telecast does not justify that it is the holder of European patent N° 1 003 442;

In the further alternative,

Having regard to Article L. 613-9 of the French Intellectual Property Code,

- ▶ Hold Telecast's action inadmissible regarding the French territory because the assignment has not been entered in the French Patent Register;

In the very alternative,

Having regard to Article 65, (1) and (2) of the Agreement and Article 138, 1) of the European Patent Convention:

- ▶ Hold claims 1 and 2 of European patent N° 1 003 442 invalid for lack of patentability, lack of novelty or at least for lack of inventive step, for all the national designations concerned;
- ▶ In any case, dismiss all the requests lodged by Telecast with respect to the infringement and the compensation for the damage it alleges it has suffered;
- ▶ Record that Telecast no longer lodges a claim regarding the Swiss territory designated by European patent N° 1 003 442 as the Swiss Confederation is not a member of the Agreement on the Unified Patent Court;
- ▶ Order Telecast to pay for the expenses incurred by Blue Cable and TV Grid for their defence, in accordance with Article 69 of the Agreement.

EXHIBITS PRODUCED IN COURT

No	Designation
1.	European patent application N° 0 447 968
2.	Communication of the observations of the opposition division dated 9 February 2007
3.	Letter dated 10 August 2007 from United Video Program Inc.'s European representative in reply to the observations of the opposition division, with claims 1 and 2 as filed in annex
4.	Article entitled " <i>Personal Home TV Programming Guide</i> "
5.	List of the speakers at the <i>IEEE 1990 International Conference on consumer electronics</i> held in Chicago from 6 to 8 June 1990
6.	<i>Electronic program guide</i> , Wikipedia, the free encyclopaedia

Amended statement of
defence on behalf of Blue
Cable France SA, Blue
Cable Germany GmbH, TV
Grid Switzerland SA and TV
Grid Italy SpA

(28 April 2014)

WITH ALL RESERVES

MÉMOIRE EN DÉFENSE RECTIFIÉ

POUR

1. **Blue Cable France SA**, société de droit français, inscrite au registre du commerce de Paris sous le n° B 345 724 631, dont le siège est 55, rue du Faubourg Saint-Honoré, 75008 Paris, France
2. **Blue Cable Germany GmbH**, société de droit allemand, dont le siège est Spreeweg 1, 10557 Berlin, Allemagne
3. **TV Grid Switzerland SA**, société de droit suisse, dont le siège est Bundesplatz, 3000 Bern, Suisse
4. **TV Grid Italy SpA**, société de droit italien, dont le siège est Piazza del Quirinale, 1, 00187 Roma, Italie

Défendeurs

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CONTRE

1. **Telecast BV**, dont le siège est Pompstationsweg 32, Den Haag, Pays-Bas

Demandeur

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Olswang LLP

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Mémoire en défense rectifié
pour le compte des sociétés
Blue Cable France SA, Blue
Cable Germany GmbH, TV
Grid Switzerland SA et TV
Grid Italy SpA

(Avril 2014)

PAR CES MOTIFS

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PIÈCES VERSÉES AUX DÉBATS

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(Avril 2014)

PLAISE AU TRIBUNAL

Par mémoire en demande du 24 mars 2014, la société Telecast BV (ci-après « société Telecast ») a engagé une procédure en contrefaçon des revendications n° 1 et 2 de son brevet européen n° 1 003 442 à l'encontre des sociétés Blue Cable France, Blue Cable Germany (ci-après « les sociétés Blue Cable »), TV Grid Switzerland et TV Grid Italy SpA (ci-après « les sociétés TV Grid ») (collectivement « les défendeurs »).

Le 31 mars 2014, les défendeurs ont déposé des objections préliminaires en application de la règle 19 du Règlement de procédure¹, relativement à :

- ▶ la compétence de la division centrale de la Juridiction unifiée du brevet pour connaître de la présente procédure ;
- ▶ la recevabilité de la demande de la société Telecast qui ne justifie pas être propriétaire du brevet européen n° 1 003 442 et qui, en tout cas, ne justifie pas avoir inscrit l'acquisition de ce titre au registre national des brevets français ;
- ▶ la fourniture de traductions des documents de la procédure.

¹ Règle 19 du Règlement de procédure :

« 1. Dans un délai d'un mois à compter de la signification du mémoire en demande, le défendeur peut déposer une objection préliminaire concernant :

- (a) la compétence de la Juridiction
- (b) la compétence de la division indiquée par le demandeur [règle 13, § 1, point i)] ;
- (c) la langue du mémoire en demande [règle 14].

2. Une *objection préliminaire contient :

- (a) les informations prévues à la règle 24, § 1, points a) à c) ;
- (b) la décision sollicitée par le défendeur ;
- (c) les motifs fondant l'objection préliminaire ;
- (d) le cas échéant, les faits et preuves invoqués.

3. L'objection préliminaire est établie:

- (a) dans la langue de procédure [règle 14, § 2] ; ou
- (b) dans une langue officielle de l'Etat membre contractant dans lequel le défendeur a son domicile ou son principal établissement ou, en l'absence de domicile ou de principal établissement, son établissement.

4. Si l'action a été engagée devant une division régionale, le défendeur peut, par une objection préliminaire, demander un transfert de l'action vers la division centrale en vertu de l'article 33, § 2, de l'Accord. L'objection préliminaire contient, dans ce cas, tous les faits et preuves étayant l'existence de la même contrefaçon dans au moins trois divisions régionales.

5. Le greffe invite, dès que possible, le demandeur à faire part de ses observations sur l'objection préliminaire. Le cas échéant, le demandeur peut, de sa propre initiative, remédier à toute insuffisance [règle 19, § 1, point b) ou c)], dans un délai de 14 jours à compter de la signification de la notification de l'objection préliminaire.

Alternativement, le demandeur peut soumettre des observations écrites dans le même délai. Le juge-rapporteur est informé de toute correction apportée ou de toute observation écrite soumise par le demandeur.

6. Le dépôt d'une objection préliminaire n'a pas d'incidence sur le délai pour déposer le mémoire en défense [règle 23], sauf décision contraire du juge-rapporteur.

7. Le défaut de dépôt par le défendeur d'une objection préliminaire dans le délai visé à la règle 19, § 1 est considéré comme une acceptation de la compétence de la Juridiction et de la division choisie par le demandeur. »

(Avril 2014)

En application des règles 24² et 25³ du Règlement de procédure, les défendeurs ont, par leur mémoire en défense en date du 9 avril 2014, demandé au tribunal d'annuler les revendications n° 1 et 2 du brevet européen n° 1 003 442 ou, à tout le moins, de juger que les appareils incriminés (*set-top boxes*) Blue Cable ne mettent pas en œuvre ces revendications.

Par décision du 22 avril 2014, le Juge-rapporteur a statué sur les objections préliminaires des sociétés Blue Cable et TV Grid.

Il a écarté l'objection relative à l'incompétence de la division centrale de la Juridiction unifiée du brevet, mais a autorisé les parties à interjeter appel de cette question ; ce que les sociétés Blue Cable et TV Grid ont fait le 24 avril 2014.

Les sociétés Blue Cable et TV Grid demandent un sursis à statuer dans l'attente de la décision de la Cour d'appel sur cette question.

² La règle 24 du Règlement de procédure se lit ainsi :

« Le *mémoire en défense contient :

(a) les noms du défendeur et du représentant du défendeur ;

(b) les adresses postale et électronique pour les significations au défendeur et les noms et adresses des personnes habilitées à recevoir signification ;

(c) le numéro d'affaire du dossier ;

(d) l'indication, le cas échéant, que le défendeur a déposé une objection préliminaire [règle 19] ;

(e) une indication des faits invoqués, y compris toute contestation des faits invoqués par le demandeur ;

(f) la preuve invoquée [règle 170.1], lorsqu'elle est disponible, et une indication de toute autre preuve qui sera présentée à l'appui ;

(g) les raisons pour lesquelles l'action doit être rejetée, les arguments de droit et tout argument tiré des dispositions de l'article 28 de l'Accord et, le cas échéant, toute contestation de l'interprétation des revendications proposée par le demandeur ;

(h) une indication de toute mesure que le défendeur sollicitera au sujet de l'action en contrefaçon, au cours de la procédure de mise en état [règle 104 (e)] ;

(i) l'indication le cas échéant, que le défendeur conteste l'estimation par le demandeur de la valeur de l'action en contrefaçon et les motifs de cette contestation ; et

(j) une liste des documents, y compris les attestations de témoin, visés au mémoire en défense ainsi que toute requête selon laquelle la traduction intégrale ou partielle de ces documents n'est pas nécessaire ou toute demande en vertu de la règle 262.2. Les règles 13.2 et 13.3 s'appliquent mutatis mutandis. »

³ La règle 25 du Règlement de procédure indique :

« 1. S'il est prétendu, dans le mémoire en défense, que les brevets prétendument contrefaits sont nuls, le mémoire en défense doit inclure une *demande reconventionnelle en nullité desdits brevets à l'encontre des titulaires des brevets conformément à la règle 43. La demande reconventionnelle en nullité contient :

(a) une indication de la portée de la nullité des brevets sollicitée ;

(b) un ou plusieurs motifs de nullité, qui sont étayés, autant que possible, par des arguments de droit, et, le cas échéant, une explication de l'interprétation des revendications proposée par le défendeur ;

(c) une indication des faits invoqués ;

(d) les preuves invoquées, lorsqu'elles sont disponibles, et une indication de toutes autres preuves qui seront présentées à l'appui ;

(e) une indication de toute mesure que le défendeur sollicitera au cours de la procédure de mise en état [règle 104 (e)] ;

(f) si le défendeur estime que la valeur du litige, y compris la demande reconventionnelle, excède la valeur de l'action en contrefaçon de plus de [EUR***], une indication de la valeur du litige incluant la demande reconventionnelle ;

(g) une déclaration de sa position, le cas échéant, sur les options prévues à l'article 33, § 3, points a), b) ou c) de l'Accord et à la règle 37.4 ;

(h) une liste des documents, y compris les attestations de témoin, visés à la demande reconventionnelle en nullité ainsi que toute requête selon laquelle la traduction intégrale ou partielle de ces documents n'est pas nécessaire. Les règles 13.2 et 13.3 s'appliquent mutatis mutandis, et ;

(i) dans la mesure où les titulaires des brevets ne sont pas demandeurs à la procédure en contrefaçon, les informations requises par la règle 13.1 (b) et (d) concernant lesdits titulaires.

2. Lorsque le demandeur n'est pas le titulaire ou n'est pas le seul titulaire du brevet ou des brevets concernés, le greffe signifie, dès que possible, une copie de la demande reconventionnelle en nullité au titulaire ou aux titulaires concernés, conformément à la règle 13.1 (e), et fournit une copie de chaque document visé au § 2. La règle 271 s'applique mutatis mutandis. Les titulaires concernés deviennent parties à la procédure en nullité et sont considérés défendeurs dans toutes les procédures ultérieures. Les titulaires fournissent les informations en vertu de la règle 13.1 (e) si elles n'ont pas déjà été fournies par le demandeur. »

Mémoire en défense rectifié
pour le compte des sociétés
Blue Cable France SA, Blue
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Grid Switzerland SA et TV
Grid Italy SpA

(Avril 2014)

En outre, le juge-rapporteur a estimé que les objections des défendeurs tendant à déclarer irrecevables les demandes de la société Telecast, en raison de son défaut de qualité à agir, à tout le moins pour ce qui concerne le territoire français, ne constituaient pas des objections préliminaires au sens de la règle 19 (1) et (4) du Règlement de procédure et qu'elles ne pouvaient permettre un rejet sommaire du mémoire en demande en application de la règle 334 (h) du Règlement de procédure.

Ainsi, le juge-rapporteur a estimé que ces demandes n'entraient pas dans sa compétence pour statuer sur des objections préliminaires ou pour permettre un rejet sommaire.

Mais il n'a pas jugé que ces demandes étaient mal fondées.

C'est pourquoi les défendeurs les reprennent par le présent mémoire en défense rectifié devant le Tribunal.

(Avril 2014)

FAITS ET PROCÉDURE

La société Telecast BV et le brevet européen n° 1 003 442

La société de droit néerlandais Telecast BV prétend être titulaire du brevet européen n° 1 003 442 (pièce Telecast n° 2).

Ce brevet a été déposé le 10 septembre 1995 par la société américaine United Video Programmes Inc, spécialisée dans le développement de guides de programmes électroniques (EPG) sous priorité d'une demande de brevet des États-Unis d'Amérique.

Le brevet a été délivré le 12 juin 2002.

La société Telecast BV considère qu'elle l'a acquis le 24 décembre 2013 au même titre que les autres brevets déposés sous la même priorité américaine.

La cession a été inscrite au registre national des brevets en Allemagne et en Italie.

La société Telecast BV a accordé des licences d'exploitation de ce brevet (ainsi que pour d'autres brevets portant sur des fonctionnalités liées aux EPG) à différents fournisseurs de programmes.

Le brevet européen n° 1 003 442 porte sur une « *méthode et un appareil pour obtenir des informations sur des programmes de télévision* », qui prétend améliorer les guides de programmes électroniques connus.

Les sociétés Blue Cable France, Blue Cable Germany, TV Grid SpA et TV Grid Switzerland

À la demande de la société TV Grid Italy, un guide des programmes a été développé par la société TV Grid Switzerland.

Ce guide électronique des programmes est fourni par la société TV Grid Italy aux sociétés Blue Cable France et Blue Cable Germany qui les insèrent dans leur boîtiers décodeurs (« ci-après *set-top boxes* »).

Les guides de programmes électroniques

Au cours des trois dernières décennies, le nombre de chaînes de télévision disponibles a très fortement augmenté.

Les exploitants de chaînes ont intérêt à ce que les téléspectateurs puissent avoir connaissance des programmes en cours de diffusion ou à venir.

(Avril 2014)

Jusqu'à l'apparition des moyens de communication électroniques, ces informations étaient essentiellement diffusées sous format papier : elles étaient présentées sous forme d'une liste de programmes organisée par chaîne et par heure de diffusion, avec des variantes pouvant porter sur l'heure de début et de fin du programme, la chaîne de diffusion ou encore intégrer des commentaires sur les programmes.

Face à cet accroissement du nombre de chaînes disponibles et à l'allongement consécutif des grilles de programmes, la solution a été d'offrir des grilles électroniques accessibles au téléspectateur directement sur son écran de télévision.

Les informations relatives aux programmes peuvent être transmises par différents moyens, de préférence par les ondes *via* les services de prestataires privés : le téléspectateur peut savoir quel programme est diffusé à une heure donnée en sélectionnant une grille et en recherchant une heure, un horaire et une chaîne déterminés.

Typiquement, la navigation dans le guide de programmes électronique se fait au moyen d'une télécommande, laquelle contrôle un marqueur de sélection sur l'écran, et la sélection d'un programme est réalisée en pointant le marqueur sur le programme puis en pressant le bouton de sélection sur la télécommande, après quoi une opération relative à ce programme est lancée, telle que l'obtention d'informations complémentaires sur celui-ci.

Opposition au brevet européen n° 1 003 442 devant l'Office européen des brevets

Le brevet européen n° 1 003 442 a fait l'objet d'une opposition devant l'Office européen des brevets.

La division d'opposition a émis un avis préliminaire concluant à l'absence de nouveauté et d'activité inventive de la revendication 1 (pièce Blue Cable / TV Grid n° 2).

La société United Video Programmes a soumis des revendications modifiées (pièce Blue Cable / TV Grid n° 3) en réponse à cet avis préliminaire mais l'opposition a ensuite été retirée, de sorte que seules les revendications telles que initialement déposées sont en vigueur.

La présente procédure

La société Telecast BV a imaginé d'opposer le brevet européen n° 1 003 442 aux sociétés Blue Cable et TV Grid.

En juin 2013, elle a cru pouvoir mettre en demeure les sociétés Blue Cable France et Blue Cable Germany de cesser de mettre en œuvre la méthode protégée par la revendication 1 du brevet européen n° 1 003 442 et de cesser de fabriquer, détenir, mettre dans le commerce et offrir à la vente des *set-top boxes* protégées par la revendication 2 dudit brevet.

Les sociétés Blue Cable, considérant qu'elles sont parfaitement en droit de commercialiser les *set-top boxes* litigieuses munies de leur guide électronique des programmes, ont estimé inutile de répondre à ces lettres de menace.

(Avril 2014)

Par mémoire en demande du 24 mars 2014, la société Telecast BV a formé contre les sociétés Blue Cable France, Blue Cable Germany, TV Grid Switzerland et TV Grid Italy une demande en contrefaçon de son brevet européen n° 1 003 442 devant la division centrale de la Juridiction unifiée du brevet.

Compte-tenu du domaine technique du brevet concerné, l'affaire a été attribuée au siège de Paris.

Les sociétés Blue Cable et TV Grid ont formulé, le 19 mars 2014, des objections préliminaires en application de la règle 19 du Règlement de procédure ; ces objections ont été rejetées ou estimées irrecevables en tant qu'objections préliminaires par décision du juge-rapporteur du 22 avril 2014

Comme autorisé par le juge-rapporteur dans sa décision du 22 avril 2014, les sociétés Blue Cable et TV Grid ont interjeté appel du rejet de leur objection préliminaire portant sur l'incompétence de la division centrale du tribunal en application de l'article 33 § 1 a) de l'Accord.

Elles ont exposé, dans leur mémoire du 9 avril 2014, leur défense tendant à obtenir l'annulation des revendications n° 1 et 2 du brevet européen n° 1 003 442 dans toutes ses désignations nationales et le rejet des demandes en contrefaçon.

Par le présent mémoire en défense rectifié, les sociétés Blue Cable et TV Grid réitèrent leurs demandes telles qu'exposées dans leur mémoire du 9 avril 2014 en y ajoutant, à titre préliminaire :

- ▶ une demande de sursis à statuer dans l'attente de la décision de la Cour d'appel sur la question de la compétence de la division centrale du tribunal ;
- ▶ les demandes d'irrecevabilité pour défaut de droit à agir que le juge-rapporteur, dans sa décision du 22 avril 2014, a estimé ne pas relever de sa compétence.

En tout état de cause, le tribunal prendra acte de ce que la société Telecast a admis, lors de la conférence de mise en état, qu'elle ne pourrait pas obtenir une mesure d'interdiction et de réparation pour les actes commis en Suisse, ce pays n'étant pas membre de l'Accord relatif à la Juridiction unifiée du brevet.

DISCUSSION

Les sociétés Blue Cable et TV Grid demandent au tribunal de sursoir à statuer dans l'attente de la décision de la Cour d'appel sur la question de la compétence de la division centrale du tribunal pour connaître du présent litige (1.).

Si le tribunal refuse de faire droit à cette demande, les sociétés Blue Cable et TV Grid demandent en outre de juger irrecevable l'action de la société Telecast puisque cette société ne justifie pas être propriétaire du brevet européen n° 1 003 442 sur lequel elle fonde ses demandes (2.) ; ou, à titre subsidiaire, de déclarer l'action irrecevable en ce qui concerne les faits qui se sont déroulés sur le territoire français, en raison de l'absence d'inscription au registre national des brevets français de la cession du brevet sur le fondement duquel l'action a été engagée (3.).

(Avril 2014)

Si le tribunal considère que la société Telecast est recevable à agir, pour certains des territoires désignés par le brevet, les sociétés Blue Cable et TV Grid demandent au tribunal d'annuler les revendications n° 1 et 2 du brevet européen n° 1 003 442 pour absence de brevetabilité, défaut de nouveauté ou à tout le moins manque d'activité inventive (4.)

Enfin, dans l'hypothèse où la validité des revendications n° 1 et 2 du brevet européen n° 1 003 442 serait reconnue, les sociétés Blue Cable et TV Grid demandent au Tribunal de juger que leurs *set top boxes* ne les mettent pas en œuvre (5.).

1. Sursis à statuer dans l'attente de la décision de la Cour d'appel sur la compétence de la division centrale du tribunal

Le juge-rapporteur, dans sa décision du 22 avril 2014, a autorisé les parties à faire appel du rejet de l'objection préliminaire des défendeurs tendant à déclarer la division centrale du tribunal incompétente pour connaître du présent litige.

Les sociétés Blue Cable et TV Grid ont interjeté appel de cette décision le 24 avril 2014.

Elles demandent au tribunal, en application de la règle 295 c) ii)⁴ du Règlement de procédure, de surseoir à statuer dans l'attente de la décision de la cour d'appel.

Comme l'a souligné le juge-rapporteur dans sa décision du 22 avril 2014, la question de la compétence de la division centrale du tribunal est d'une importance fondamentale pour le présent litige mais aussi pour tout futur litige qui présenterait une configuration similaire quant à la localisation des défendeurs.

Les sociétés Blue Cable et TV Grid prient donc le tribunal d'ordonner le sursis à statuer.

Dans l'hypothèse où le tribunal considère qu'il n'y a pas lieu de surseoir à statuer, il déclarera l'action de la société Telecast irrecevable.

2. À titre subsidiaire, Irrecevabilité de l'action de la société Telecast pour défaut de qualité à agir

La société Telecast affirme qu'elle est devenue titulaire du brevet européen n° 1 003 442, par acte de cession du 24 décembre 2013 et qu'elle est, de ce fait, recevable à agir de ce fait.

⁴ L'article 295 c) ii) indique :
« La Juridiction peut surseoir à statuer :
[...] (c) lorsqu'un appel est formé devant la Cour d'appel contre une décision ou une ordonnance du Tribunal de première instance :
[...] (ii) tranchant une question de recevabilité ou une objection préliminaire ; »

(Avril 2014)

Toutefois, l'acte de cession qu'elle produit (pièce Telecast n° 1) ne vise pas le brevet européen n° 1 003 442, puisqu'il se réfère à une liste exhaustive de droits cédés figurant en annexe 1 de la cession :

"Patents" means the patents and patent applications filed under priority of US patent No 555975, whose details appear in annex 1.

Figure 1: extrait de l'acte de cession sur lequel la société Telecast se fonde pour agir

Or la liste de l'annexe 1 de cet acte ne comporte aucune référence au brevet européen n° 1 003 442, comme le démontre l'extrait de l'acte de cession reproduit ci-après :

- Annex 1**
(List of assigned patents and patent application)
- US 555975
 - WO 92/01804
 - EP 0 682 845
 - EP 1 454 623
 - EP 1 456 571
 - EP 1 532 321
 - AT 589 753
 - AU 789 956
 - AU 5 990 596
 - BR 9 544 899
 - CA 2 499 751
 - CN 1 195 447
 - CN 1 213 856
 - ES 2 021 756
 - ES 2 856 423
 - HK 1 334 412
 - JP 068945
 - JP 069001
 - KR 0104895
 - KR 0106541

Figure 2: annexe 1 de l'acte de cession du 24 décembre 2013

À défaut de démontrer qu'elle est devenue le propriétaire du brevet européen n° 1 003 442 sur lequel elle fonde son action, la société Telecast sera déclarée irrecevable pour défaut de qualité à agir.

Si, par impossible, le tribunal estime que la société Telecast est recevable à agir, les sociétés Blue Cable et TV Grid demandent que l'action soit déclarée irrecevable en ce qui concerne tout fait en relation avec le territoire français, en raison de l'absence d'inscription de la cession du brevet objet du litige, au registre national des brevets français.

(Avril 2014)

3. À titre **plus** subsidiaire, irrecevabilité de l'action en ce qui concerne le territoire français en raison du défaut d'inscription de la cession au registre national des brevets français

La société Telecast n'a pas déposé le brevet européen n° 1 003 442 : elle prétend l'avoir acquis auprès de son déposant, la société américaine United Video Programmes Inc., le 24 décembre 2013.

Or, pour pouvoir valablement opposer son brevet européen à l'égard de sociétés établies en Allemagne, Italie et France, la société Telecast doit rapporter la preuve que les désignations nationales correspondantes de son brevet européen sont effectivement opposables aux tiers dans ces pays.

La société Telecast BV indique :

- ▶ avoir enregistré la cession du brevet européen n° 1 003 442 auprès des registres nationaux allemand et italien ;
- ▶ entreprendre d'inscrire la cession au Registre européen des brevets.

Mais la cession n'a pas été enregistrée en France au sein du registre national des brevets.

Or, en vertu de l'article L. 613-9 du code de la propriété intellectuelle français :

« Tous les actes transmettant ou modifiant les droits attachés à une demande de brevet ou à un brevet doivent, pour être opposables aux tiers, être inscrits sur un registre, dit registre national des brevets, tenu par l'Institut national de la propriété industrielle.

Toutefois, avant son inscription, un acte est opposable aux tiers qui ont acquis des droits après la date de cet acte, mais qui avaient connaissance de celui-ci lors de l'acquisition de ces droits.

Le licencié, partie à un contrat de licence non inscrit sur le registre national des brevets, est également recevable à intervenir dans l'instance en contrefaçon engagée par le propriétaire du brevet afin d'obtenir la réparation du préjudice qui lui est propre. »

Dès lors, par application de l'article 24 § 1 e) de l'Accord⁵ et de l'article L. 613-9 du code de la propriété intellectuelle français, l'action de la société Telecast est irrecevable en ce qui concerne les faits allégués sur le territoire français, en raison de l'inopposabilité de la cession de son droit sur ce territoire.

4. À titre **infiniment** subsidiaire, demande reconventionnelle en nullité des revendications n° 1 et 2 du brevet européen n° 1 003 442

Selon l'article 65, 1) et 2) de l'Accord :

« La Juridiction statue sur la validité d'un brevet sur la base d'une action en nullité ou d'une demande reconventionnelle en nullité.

La Juridiction ne peut annuler un brevet, en tout ou en partie, que pour les motifs visés à l'article 138, paragraphe 1, et à l'article 139, paragraphe 2, de la CBE. »

⁵ L'article 24 §1 e) de l'Accord indique :
« 1. En parfaite conformité avec l'article 20, lorsqu'elle a à connaître d'une affaire dont elle est saisie en vertu du présent accord, la Juridiction fonde ses décisions sur :
(...)
e) les droits nationaux. »

(Avril 2014)

L'article 138, 1) de la Convention sur le brevet européen (ci-après « *la CBE* ») indique :

« *Sous réserve de l'article 139, le brevet européen ne peut être déclaré nul, avec effet pour un État contractant, que si :*

a) l'objet du brevet européen n'est pas brevetable en vertu des articles 52 à 57 ;

b) le brevet européen n'expose pas l'invention de façon suffisamment claire et complète pour qu'un homme du métier puisse l'exécuter ;

c) l'objet du brevet européen s'étend au-delà du contenu de la demande telle qu'elle a été déposée ou, lorsque le brevet a été délivré sur la base d'une demande divisionnaire ou d'une nouvelle demande déposée en vertu de l'article 61, si l'objet du brevet s'étend au-delà du contenu de la demande antérieure telle qu'elle a été déposée ;

d) la protection conférée par le brevet européen a été étendue ; ou

e) le titulaire du brevet européen n'avait pas le droit de l'obtenir en vertu de l'article 60, paragraphe 1. »

Les défendeurs estiment que le brevet européen n° 1 003 442 doit être déclaré nul au motif qu'il constitue une présentation d'informations non-brevetables en application de l'article 52 (2), d) de la CBE (**1.1.**).

Si le Tribunal estime que l'invention objet du brevet européen n° 1 003 442 est brevetable, alors il ne pourra que constater que les revendications n° 1 et 2 :

- ▶ ne sont pas nouvelles au sens de l'article 54 de la CBE (**1.2.**) ;
- ▶ n'impliquent pas une activité inventive au sens de l'article 56 de la CBE (**1.3.**).

4.1. Absence de brevetabilité de l'invention objet du brevet européen n° 1 003 442 comme portant sur une présentation d'informations

L'article 52, (2) de la CBE indique :

« *Ne sont pas considérés comme des inventions au sens du paragraphe 1 notamment :*

a) les découvertes, les théories scientifiques et les méthodes mathématiques ;

b) les créations esthétiques ;

c) les plans, principes et méthodes dans l'exercice d'activités intellectuelles, en matière de jeu ou dans le domaine des activités économiques, ainsi que les programmes d'ordinateur ;

d) les présentations d'informations. »

Les revendications n° 1 et 2 du brevet européen n° 1 003 442 se lisent comme suit (alinéas ajoutés) :

« 1. Procédé permettant d'accéder à des informations concernant des programmes de télévision, le procédé comprenant les étapes

▶ de stockage dans une mémoire électronique d'un dispositif de commande de grilles connecté en fonctionnement à un écran de contrôle d'une pluralité d'intitulés de programmes de télévision, chaque intitulé comprenant le titre, l'heure de diffusion et le canal,

▶ d'affichage d'une superposition sur l'écran de contrôle fournissant, parmi les intitulés stockés, le titre ou des informations sur le canal d'un programme sélectionné simultanément au programme sélectionné lors de la sélection d'un changement de canal,

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- ▶ *et d'affichage, en réponse à une entrée de l'utilisateur, d'une autre superposition contenant d'autres informations concernant le programme sélectionné parmi les intitulés stockés. »*

« 2. Appareil permettant d'accéder à des informations concernant des programmes de télévision, l'appareil comprenant

- ▶ *un moyen pour stocker dans une mémoire électronique d'un dispositif de commande de grilles connecte en fonctionnement à un écran de contrôle une pluralité d'intitulés de programmes de télévision, chaque intitulé comprenant le titre, l'heure de diffusion et le canal,*
- ▶ *un moyen pour afficher une superposition sur l'écran de contrôle fournissant, parmi les intitulés stockés, le titre ou des informations sur le canal d'un programme sélectionné simultanément au programme sélectionné lors de la sélection d'un changement de canal,*
- ▶ *et un moyen pour afficher, en réponse à une entrée de l'utilisateur, une autre superposition contenant d'autres informations concernant le programme sélectionné parmi les intitulés stockés. »*

L'invention objet du brevet européen n° 1 003 442 est donc relative à un procédé permettant d'accéder à des informations relatives à des programmes de télévision et à un appareil permettant d'accéder à ces informations.

Selon une première caractéristique, les informations sont stockées dans une mémoire électronique d'un dispositif de commande de grilles, ledit dispositif étant connecté en fonctionnement à un écran de contrôle d'une pluralité d'intitulés de programmes de télévision, soit à un écran de télévision, chaque intitulé de programme de télévision comprenant le titre du programme, l'heure de diffusion et le canal.

Selon une deuxième caractéristique, le procédé objet de l'invention ou l'appareil comprend, en outre, des moyens pour afficher une superposition sur l'écran de contrôle fournissant, parmi les intitulés stockés, les informations relatives au titre sélectionné.

Selon une troisième caractéristique, le procédé objet de l'invention ou l'appareil comprend, enfin, des moyens pour afficher, en réponse à une entrée de l'utilisateur, une autre superposition contenant d'autres informations concernant le programme sélectionné parmi les intitulés stockés.

En d'autres termes, outre l'étape préalable de stockage dans une mémoire électronique de différentes informations sur les programmes, les revendications du brevet européen n° 1 003 442 portent sur une caractéristique relative à des moyens pour obtenir un affichage primaire qui se superpose sur le programme sélectionné à l'écran et sur une caractéristique relative à des moyens pour obtenir un affichage secondaire, qui apparaît en réponse à une entrée de l'utilisateur et donne accès à d'autres informations.

Selon l'invention, les informations relatives à un titre sélectionné se présentent notamment sous la forme de bandeaux.

L'invention objet du brevet européen n° 1 003 442 porte donc sur la manière dont sont présentées les informations sur un écran de télévision et leur accès par les utilisateurs.

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À cet égard, la description indique :

"[0002] (...) When using a television set as a display for a schedule system, the size and resolution of the television display limit the amount of text that can be displayed with the grid. Improved techniques are required for conveying the most amount of information to the user in an easily understood manner within the limitations of the television display." (pièce Telecast n° 2, page 2, colonne 1)

"[0003] Accordingly, it is an object of this invention to provide a television schedule system and process with a user interface that is configured to compensate for the particular nature of the television schedule information. [0004] It is another object of the invention to provide such a user interface in which supplemental schedule information is presented in overlays that obscure a minimum amount of useful other information." (pièce Telecast n° 2, page 2, colonne 1)

"[0010] (...) The program note 52 overlays and hides 3 or 4 listings of a guide. To minimize concealment of the guide, an auto-rolling note is used.

The program note will overlay either the top half or bottom half of the screen, as necessary to avoid masking the title of the selected listing."

Ainsi, il ressort de la description même qu'il était déjà connu de stocker, extraire et fournir des informations sur les programmes de télévision dans l'art antérieur, au moyen d'un programme d'ordinateur contenu dans un dispositif relié à un écran de télévision.

L'invention objet du brevet européen n° 1 003 442 consiste donc à proposer un guide électronique des programmes de télévision et à fournir des informations additionnelles sur un titre sélectionné par superposition, sans toutefois que ces informations additionnelles superposées n'occultent la totalité de l'écran de télévision, afin que l'utilisateur puisse toujours voir une partie du guide des programmes.

Mais loin de donner les raisons techniques qui permettraient de visualiser plus d'informations sur un programme sélectionné, les revendications n° 1 et 2 se contentent d'indiquer que les informations sur un programme sélectionné peuvent être visualisées sous forme de bandeaux venant se superposer aux informations générales déjà affichées.

Or, la simple présentation d'informations ne saurait être brevetable.

Les chambres de recours de l'OEB ont notamment jugé que la simple organisation de la projection d'informations ne saurait revêtir un caractère technique si cette organisation n'est pas structurée (chambre de recours technique 3.5.01, 17 mars 2011, T 1235/07⁶) :

« The Board is thus in this case taking a wider view of "presentation of information" than just the actual information that is displayed, the so-called cognitive content, to include also structural aspects of how the information is displayed. In the Board's view, such additional aspects can only contribute to inventive step if they have technical character. »

La description du brevet européen n° 1 003 442 ne fait état d'aucun apport technique quant à l'organisation de la visualisation des informations des programmes revendiquée.

Dès lors, l'invention objet du brevet européen n° 1 003 442 ne présente aucun caractère technique et ne répond donc pas à la condition de brevetabilité de l'article 52 (2) d) de la CBE.

⁶ Voir également la décision du 1^{er} avril 2009, chambre de recours technique 3.5.01, T 1143/06

(Avril 2014)

Les revendications n° 1 et 2 du brevet européen n° 1 003 442 seront donc annulées pour cette première raison.

Dans l'hypothèse où le Tribunal considérerait que cette invention n'est pas exclue de la brevetabilité, il ne pourra que constater qu'elle ne fait pas preuve de nouveauté ou, à tout le moins, d'activité inventive.

4.2. Absence de nouveauté des revendications n° 1 et 2 du brevet européen n° 1 003 442

En vertu de l'article 54 (1) de la CBE :

« Une invention est considérée comme nouvelle si elle n'est pas comprise dans l'état de la technique. »

Le procédé permettant d'accéder à des informations concernant des programmes de télévision, objet de la revendication n° 1 du brevet européen n° 1 003 442, comporte les étapes suivantes :

- a) une étape de stockage dans une mémoire électronique d'un dispositif de commande de grilles connecté à un écran de contrôle d'une pluralité d'intitulés de programmes de télévision, chaque intitulé comprenant le titre, l'heure de diffusion et le canal ;
- b) une étape d'affichage d'une superposition sur l'écran de contrôle fournissant, parmi les intitulés stockés, le titre ou des informations sur le canal d'un programme sélectionné simultanément au programme sélectionné lors de la sélection d'un changement de canal ;
- c) une étape d'affichage, en réponse à une entrée de l'utilisateur, d'une autre superposition contenant d'autres informations concernant le programme sélectionné parmi les intitulés stockés.

La revendication n° 2 porte sur un appareil susceptible de mettre en œuvre les étapes du procédé précédemment décrit.

Les observations faites à l'égard de la revendication n° 1 s'appliqueront donc *mutatis mutandis* à la revendication n° 2.

Les revendications n° 1 et 2 du brevet européen n° 1 003 442 ne font pas preuve de nouveauté au regard de la demande de brevet européen n° 0 447 968, déposée par la société RCA Licensing Corporation, dont l'inventeur est Monsieur Bruno Hennig (ci-après « la demande de brevet Hennig », pièce Blue Cable / TV Grid n° 1).

La demande de brevet Hennig a été déposée le 14 mars 1991 et concerne un « *Apparatus for providing TV program information* ».

L'invention objet de cette demande de brevet décrit comment obtenir des informations, comme l'heure du début et de fin, sur les programmes de télévision notamment au moyen des pages dites « VPT » (*Videorecorder Programming by Teletext* ou « *enregistrement vidéo au moyen de la programmation par télétexte*⁷).

⁷ Le télétexte est un service permettant de délivrer des informations sous format texte et animations, retransmis dans les signaux de télédiffusion d'une chaîne (source : Wikipédia).

(Avril 2014)

Cette demande de brevet divulgue toutes les caractéristiques des revendications n° 1 et 2 du brevet européen n° 1 003 442.

En effet, cette demande de brevet concerne des récepteurs de télévision incorporant des décodeurs télétexte comportant une mémoire stockant des informations sur les programmes, comme notamment le titre des programmes, le canal et l'heure de début et de fin (page 4, colonne 6, lignes 1 à 6), comme l'illustre la figure 1a) reproduite ci-après :

P402	402	CH-TEXT	15.02.90	14:25:03
SRG	TV-DAS	Donnerstag	15. Februar	1990
			24101	150290
			CF	
08.30	0830	Schulfernsehen: Geographie		
09.20	0920	Reise durch unseren Körper		
09.50	2500	Ende / Pause		
12.55	1255	Nachrichten		
13.00	1300	Ein Heim für Tiere		
13.55	1355	Zeitspiegel: Herrscher des goldenen Dreiecks		
14.45	1445	MTV		
15.40				

Figure 3 : figure 1a de la demande de brevet européen n° 0 447 968 (Hennig) montrant les informations des programmes stockés dans un récepteur de télévision incorporant un décodeur télétexte

La caractéristique a) de la revendication n° 1 du brevet européen n° 1 003 442 est donc dépourvue de nouveauté.

(Avril 2014)

La demande de brevet Hennig offre, en outre, la possibilité d'afficher par superposition (références 540 et 540') le titre ou des informations sur le canal d'un programme sélectionné simultanément au programme sélectionné lors de la sélection d'un changement de canal, comme l'illustrent les figures 5a et 5b reproduites ci-après :

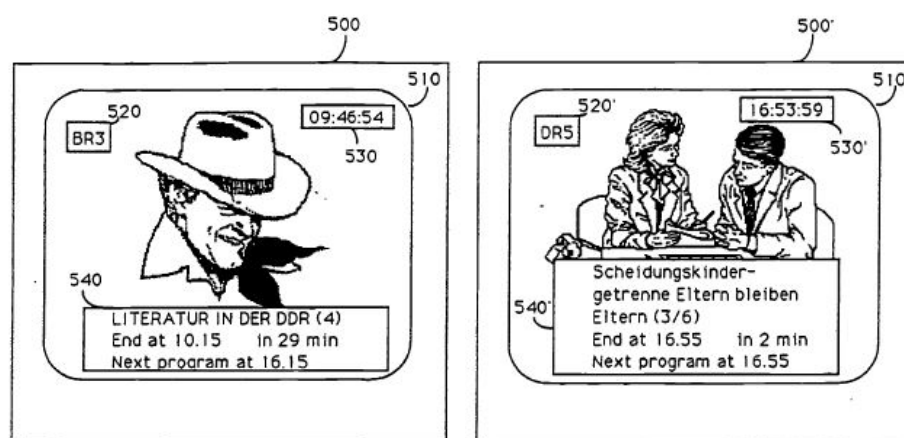


Figure 4 : figures 5a et 5b de la demande de brevet européen n° 0 447 968 (Hennig) illustrant la superposition d'informations sur le programme sélectionné dans des bandeaux 540 et 540'

Enfin, la demande de brevet Hennig enseigne une étape d'affichage, en réponse à une entrée de l'utilisateur, d'une autre superposition contenant d'autres informations concernant le programme sélectionné parmi les intitulés stockés.

En effet, la description de la demande de brevet Hennig indique à cet égard :

« The display (540, 540'), indicating the remaining duration, has to be updated during the time the microcomputer waits for the next appearance of pages, and if desired, the title of the following program can also be displayed" (page 4, colonne 5, lignes 9 à 13)

Le procédé objet de la revendication n° 1 et le dispositif mettant en œuvre ce procédé, objet de la revendication n° 2 ne sont donc pas nouveaux au regard des enseignements de la demande de brevet Hennig.

Elles seront donc annulées par le Tribunal.

Les défendeurs précisent à cet égard que dans le cadre de la procédure d'opposition relative au brevet européen n° 1 003 442, la société United Video Programme Inc., alors titulaire du brevet, a admis que les revendications n° 1 et 2 de son brevet ne faisaient pas preuve de nouveauté, notamment au regard des enseignements de la demande de brevet Hennig.

(Avril 2014)

En effet, en réponse aux arguments des opposants et à une notification de l'examinateur (pièce Blue Cable / TV Grid n° 2), la société United Video Programme Inc. a accepté de modifier ses revendications⁸ afin d'indiquer que l'étape d'affichage objet de la caractéristique c) de la revendication n° 1 se distingue de l'étape d'affichage objet de la caractéristique b) en ce qu'elle permet d'afficher en superposition d'autres informations que celles qui sont déjà affichées :

« You will recall that the basis of the invention is to provide a method/apparatus for effectively splitting the provision of program guide information into manageable parts (see patentee's letter of 18 July 2006 under 'Main Request'). Thus, claim 1 recites the one overlay of program title and channel which appears on the screen 'simultaneously with the selected program upon selection of a channel change'. The other, supplemental, overlay is user-selected in addition to that one overlay.

The use of the phrase 'supplemental overlay' is intended to make clear that the overlay in question is not merely a repeat of the one overlay (i.e. a further showing of the same thing), but is separate and distinct from it.»
(pièce Blue Cable / TV Grid n° 3, page 2)

L'opposition ayant par la suite été retirée par les opposants, le brevet européen n° 1 003 442 a finalement été délivré tel que déposé, sans que les modifications proposées dans la requête principale du titulaire aient été finalement adoptées.

Il n'en demeure pas moins que le titulaire du brevet européen n° 1 003 442, dans le cadre de l'opposition, a admis que les revendications n° 1 et 2 ne sont pas nouvelles au regard des enseignements de la demande de brevet Hennig.

Le Tribunal ne pourra que constater que les revendications n° 1 et 2 doivent donc être annulées pour absence de nouveauté.

À tout le moins, ces revendications seront déclarées nulles pour défaut d'activité inventive.

4.3. Absence d'activité inventive des revendications n° 1 et 2 du brevet européen n° 1 003 442

L'article 56 de la CBE indique :

« Une invention est considérée comme impliquant une activité inventive si, pour un homme du métier, elle ne découle pas d'une manière évidente de l'état de la technique. Si l'état de la technique comprend également des documents visés à l'article 54, paragraphe 3, ils ne sont pas pris en considération pour l'appréciation de l'activité inventive. »

⁸ Les revendications n° 1 et 2 objet de la requête principale de la société United Video Programme Inc. présentée dans le cadre de l'opposition se lisaient comme suit (pièce Blue Cable / TV Grid n° 3) :

« 1. A method for accessing information about television programs, the method comprising the steps of storing in an electronic memory of a schedule controller operably connected with a monitor screen, a plurality of television program listings, each listing including title, telecast time and channel, displaying on the monitor screen an overlay providing, from the stored listings, a title of and channel information on a selected program simultaneously with the selected program upon selection of a channel change, and displaying, responsive to a user input, a further-supplemental overlay containing further-supplemental information on the selected program from the stored listings.

2. Apparatus for accessing information about television programs, the apparatus comprising the means for storing in an electronic memory of a schedule controller operably connected with a monitor screen, a plurality of television program listings, each listing including title, telecast time and channel, means for displaying on the monitor screen an overlay providing, from the stored listings, a title of and channel information on a selected program simultaneously with the selected program upon selection of a channel change, and means for displaying, responsive to a user input, a further-supplemental overlay containing further-supplemental information on the selected program from the selected listings.»

(Avril 2014)

Selon la description du brevet européen n° 1 003 442, l'invention répond au problème de l'organisation de la visualisation d'un nombre important d'informations relatives aux programmes de télévision.

En particulier, l'invention a pour but de permettre à un utilisateur d'obtenir des informations sur un programme particulier sans que ces informations occupent une partie trop importante de l'écran de télévision afin qu'une partie de la liste des programmes soit toujours visible.

Les revendications n° 1 et 2 du brevet européen n° 1 003 442 ne font preuve d'aucune activité inventive pour l'homme du métier que ce soit :

- ▶ au regard des enseignements de la demande de brevet européen Hennig n° 0 447 968 (1.3.1.) ;
- ▶ ou au regard de la publication « *Personal Home TV Programming Guide* », de Peter D. Hallenbeck, exposée lors de la conférence "IEEE 1990, International Conference on consumer electronics" qui s'est tenue à Chicago du 6 au 8 juin 1990 (pièces Blue Cable / TV Grid n° 4 et 5) et des informations disponibles sur ce système antérieurement au brevet européen n° 1 003 442 (pièce Blue Cable / TV Grid n° 6) (1.3.2.).

4.3.1. Absence d'activité inventive au regard des enseignements de la demande de brevet européen n° 0 447 968

Il a été précédemment démontré (voir paragraphe 1.2) que la demande de brevet européen Hennig divulguait l'ensemble des caractéristiques des revendications n° 1 et 2 du brevet européen n° 1 003 442.

Si le tribunal considère que l'ensemble des caractéristiques des revendications n° 1 et 2 ne sont pas divulguées par ce document, il ne pourra que constater que l'homme du métier n'avait à déployer aucune activité inventive pour parvenir à l'invention au regard des enseignements de la demande de brevet Hennig.

En effet, la demande de brevet Hennig enseigne déjà la visualisation des informations d'un programme sous forme de notes (bandeaux) n'occupant qu'une partie de l'écran de télévision (voir les références 540 et 540' sur les figures 5a et 5b reproduites ci-après) :

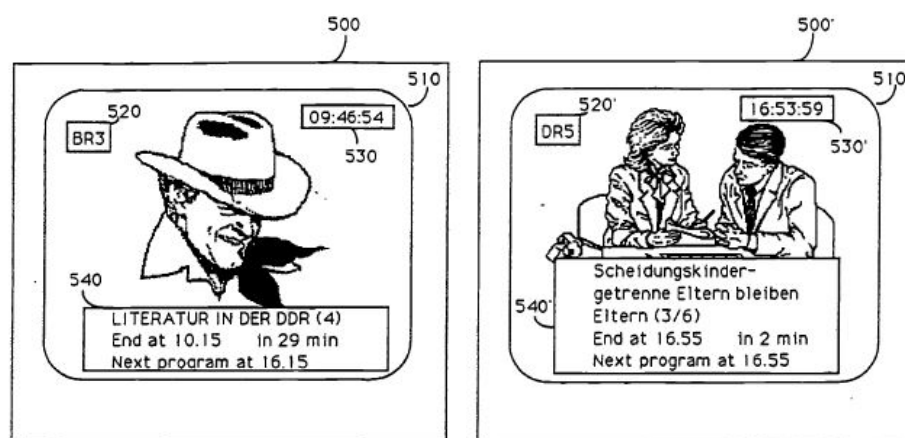


Figure 5 : figures 5a et 5b de la demande de brevet européen n° 0 447 968 (Hennig) illustrant la superposition d'informations sur le programme sélectionné dans des bandeaux 540 et 540'

(Avril 2014)

Dès lors, le simple fait de superposer le bandeau sur la liste de tous les programmes afin qu'une partie de cette liste soit toujours consultable par l'utilisateur ne constitue qu'un simple confort de visualisation pour l'utilisateur qui ne confère aucun avantage technique.

Il ne s'agit que d'un choix arbitraire qui s'offrait à l'évidence à l'homme du métier, qui est un ingénieur spécialisé dans les systèmes de réception audiovisuelle, en particulier les *set-top boxes*.

Les revendications n° 1 et 2 du brevet européen n° 1 003 442 seront donc annulées pour absence d'activité inventive.

Elles le seront également au regard des enseignements du système antérieur dénommé « *SuperGuide* ».

4.3.2. Absence d'activité inventive au regard de la publication « *Personal Home TV Programming Guide* » de Peter D. Hallenbeck et des informations disponibles sur ce système antérieurement au brevet européen n° 1 003 442

Peter D. Hallenbeck a mis au point dès 1985 (soit neuf années avant la prétendue invention de la société Telecast) un système d'organisation et d'accès aux programmes de télévision intitulé « *SuperGuide* ».

Ce système a été présentée lors de la conférence "*IEEE 1990 International Conference on consumer electronics*" qui s'est tenue à Chicago du 6 au 8 juin 1990 (pièces Blue Cable / TV Grid n° 4 et 5).

Deux versions furent développées, l'une en 1985 et l'autre en 1988, prenant en considération l'augmentation de la capacité des mémoires et donc le nombre d'informations pouvant être délivrées sur les écrans de télévision des utilisateurs :

« The Original Guide loaded the listing for all services available, much as the paper guides print the listings for all available services. The listing are stored in the local box to allow for immediate response to any action taken by the viewer.

[...]

The New SuperGuide System

Design of the new system began in 1988. Keeping in mind the perils of any "second system," we out to correct the "undocumented features" in first system and incorporate many of the little things we learned people interactions with the original SuperGuide system.

[...]

The Great DRAM crunch of '88 made us determined to significantly increase how much information we could store in a given amount of memory" (pièce Blue Cable / TV grid n° 4)

Mémoire en défense rectifié
pour le compte des sociétés
Blue Cable France SA, Blue
Cable Germany GmbH, TV
Grid Switzerland SA et TV
Grid Italy SpA

(Avril 2014)

Un article issu de Wikipédia détaille également les fonctionnalités du SuperGuide mis au point par Peter D. Hallenbeck (pièce Blue Cable / TV Grid n° 6), dans sa première et sa deuxième versions, comme l'illustrent les images reproduites ci-après :



Figure 6: capture d'écran issue de la première version du système SuperGuide mis au point par Peter D. Hallenbeck, en

février 1986 http://en.wikipedia.org/wiki/File:SuperGuide_1_screen_16L.jpg (pièce Blue Cable / TV Grid n° 4)

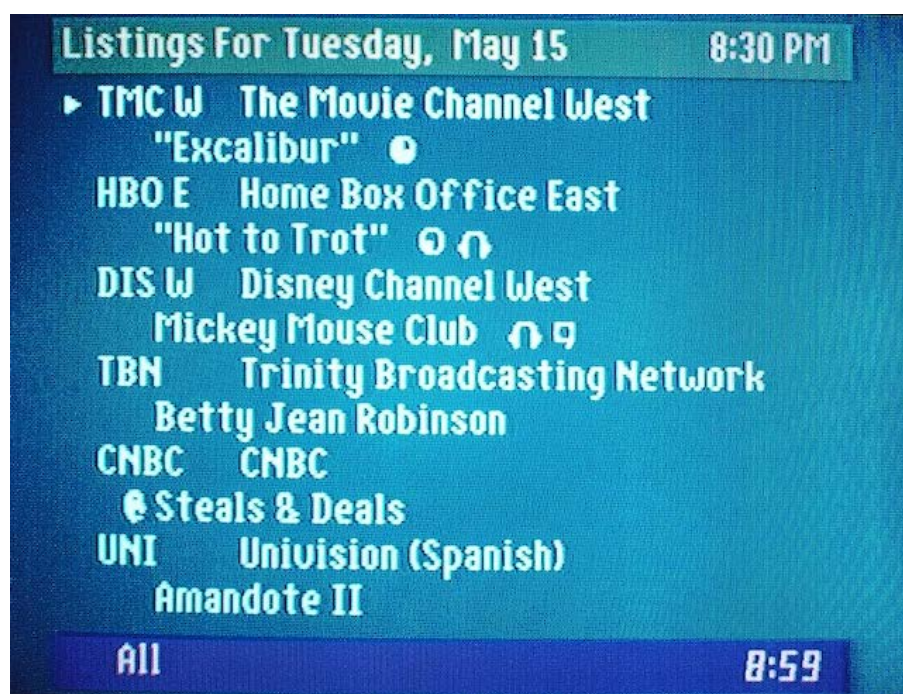


Figure 7: capture d'écran issue de la seconde version du système SuperGuide mis au point par Peter D. Hallenbeck, en mai 1990 (pièce Blue Cable / TV Grid n° 4)

(Avril 2014)

Au regard des enseignements du système SuperGuide, l'homme du métier n'avait à mettre en œuvre aucune activité inventive pour présenter des informations additionnelles sur les programmes dans des bandeaux ne couvrant pas la totalité d'un écran de télévision.

Les revendications n° 1 et 2 du brevet européen n° 1 003 442 ne font donc pas preuve d'activité inventive.

Afin d'en convaincre le Tribunal, les défendeurs demandent à ce que Peter D. Hallenbeck, développeur du système SuperGuide, soit entendu dans le cadre de la présente affaire, par application de la Règle 176 du Règlement de procédure :

*« Sous réserve des décisions de la Juridiction visées aux règles 104 (e) et 112, paragraphe 2, b), une partie souhaitant fournir un témoignage oral dépose une *demande d'audition du témoin en personne qui expose :*

(a) les raisons pour lesquelles le témoin devrait être entendu en personne ;

(b) les faits dont la partie s'attend à ce qu'ils soient confirmés par le témoin ; et

(c) la langue dans laquelle le témoin déposera. »

Au regard des informations que Peter D. Hallenbeck est susceptible de fournir pour éclairer le Tribunal sur l'art antérieur au brevet européen n° 1 003 442 et afin que ces informations puissent être soumises à la contradiction, il est demandé au Tribunal d'autoriser l'audition de Peter D. Hellenbeck à l'audience.

Peter D. Hallenbeck étant de nationalité américaine, il pourra être auditionné dans la langue de la procédure, à savoir l'anglais.

Les défendeurs ont donc prié le juge-rapporteur de bien vouloir accéder à la présente demande d'audition de témoin lors de la conférence de mise en état du 22 avril 2014 : le juge-rapporteur a estimé qu'il ne se proposait pas de convoquer ce témoin à l'audience finale.

Les défendeurs se réservent toutefois de le prier d'être présent à l'audience pour apporter son témoignage si la nécessité s'en fait sentir.

En application de la règle 180, paragraphe 2¹⁰, les défendeurs sont prêts à verser une somme que le Tribunal jugera suffisante pour couvrir les frais que le témoin aura engagés.

Si le tribunal venait à juger que les revendications n° 1 et 2 étaient valables, alors il ne pourra que juger qu'elles ne sont pas reproduites par les *set-top boxes* des sociétés Blue Cable incorporant le logiciel mis au point par les sociétés TV Grid.

¹⁰ La règle 180 des Règles de procédure se lit ainsi :

« 1. Un témoin a droit au remboursement :

(a) des frais de déplacement et de séjour ; et

(b) de la perte de revenu causée par son audition en personne.

Une fois que le témoin a rempli ses obligations et à sa demande, le greffe rembourse à ce témoin les frais qu'il a engagés.

2. Lorsqu'une partie a déposé une demande d'audition d'un témoin en personne, la Juridiction subordonne la citation du témoin au dépôt d'une somme suffisante pour couvrir les frais visés au paragraphe 1.

Lorsque la Juridiction, de sa propre initiative, ordonne qu'un témoin soit entendu en personne, les fonds nécessaires sont fournis par la Juridiction. »

(Avril 2014)

5. Absence de contrefaçon des revendications n° 1 et 2 du brevet européen n° 1 003 442

La société Telecast prétend que les revendications n° 1 et 2 de son brevet européen n° 1 003 442 seraient reproduites par les *set-top boxes* des sociétés Blue Cable incorporant le logiciel mis au point par les sociétés TV Grid.

Or, il a été précédemment démontré que les revendications n° 1 et 2 du brevet européen n° 1 003 442 ne sont pas valables.

La demande formée par la société Telecast sur ce point sera donc rejetée.

En tout état de cause, la société Telecast ne prouve pas que le guide électronique des programmes des défendeurs met en œuvre les revendications n° 1 et 2 de ce brevet.

Les défendeurs rappelleront que le procédé permettant d'accéder à des informations concernant des programmes de télévision, objet de la revendication n° 1 du brevet européen n° 1 003 442, comporte les étapes suivantes :

- a) une étape de stockage dans une mémoire électronique d'un dispositif de commande de grilles connecté à un écran de contrôle d'une pluralité d'intitulés de programmes de télévision, chaque intitulé comprenant le titre, l'heure de diffusion et le canal ;
- b) une étape d'affichage d'une superposition sur l'écran de contrôle fournissant, parmi les intitulés stockés, le titre ou des informations sur le canal d'un programme sélectionné simultanément au programme sélectionné lors de la sélection d'un changement de canal ;
- c) une étape d'affichage, en réponse à une entrée de l'utilisateur, d'une autre superposition contenant d'autres informations concernant le programme sélectionné parmi les intitulés stockés.

La société Telecast ne prouve pas que les informations additionnelles s'affichant lors de la sélection du titre d'un programme sont affichées par superposition sur le guide des programmes, cachant, aux yeux de l'utilisateur une partie de la liste des programmes, comme le requièrent les caractéristiques b) et c) de la revendication n° 1.

Mémoire en défense rectifié
pour le compte des sociétés
Blue Cable France SA, Blue
Cable Germany GmbH, TV
Grid Switzerland SA et TV
Grid Italy SpA

(Avril 2014)

Et pour cause, le guide électronique des programmes offert par les *set-top boxes* des sociétés Blue Cable et TV Grid n'offre pas d'informations superposées à la grille de programme ; en effet, les informations portant sur un programme sélectionné sont intégrées à ladite grille de programme comme le montre la photographie reproduite ci-après :



Figure 8 : capture écran du guide électronique des programmes Blue Cable

Les caractéristiques b) et c) ne sont donc pas reproduites.

La demande formée par la société Telecast au titre de la prétendue reproduction des revendications n° 1 et 2 de son brevet européen n° 1 003 442 sera donc rejetée.

En tout état de cause, le tribunal prendra acte de ce que la société Telecast a admis, lors de la conférence de mise en état, qu'elle ne pourrait pas obtenir une mesure d'interdiction et de réparation pour les actes commis en Suisse, ce pays n'étant pas membre de l'Accord relatif à la juridiction unifiée du brevet.

(Avril 2014)

PAR CES MOTIFS

À titre principal,

Vu la règle 295 c) ii) du Règlement de procédure,

- ▶ Surseoir à statuer dans l'attente de la décision de la Cour d'appel sur l'appel interjeté par les sociétés Blue Cable et TV Grid sur la question de la compétence de la division centrale du tribunal ;

À titre subsidiaire,

- ▶ Déclarer irrecevable, pour défaut de qualité, l'action de la société Telecast, qui ne justifie pas être propriétaire du brevet européen n° 1 003 442;

À titre plus subsidiaire,

Vu l'article L. 613-9 du code de la propriété intellectuelle français,

- ▶ Déclarer l'action de la société Telecast irrecevable en ce qui concerne le territoire français pour défaut d'inscription de la cession au registre national des brevets français ;

À titre infiniment subsidiaire,

Vu l'article 65, 1) et 2) de l'Accord et l'article 138, 1) de la Convention sur le brevet européen :

- ▶ Déclarer nulles les revendications n° 1 et 2 du brevet européen n° 1 003 442 pour défaut de brevetabilité, absence de nouveauté ou à tout le moins défaut d'activité inventive, pour toutes les désignations nationales concernées ;
- ▶ Rejeter en tout état de cause les demandes formées par la société Telecast au titre de la contrefaçon et de l'indemnisation du préjudice qu'elle prétend avoir subi ;
- ▶ Prendre acte que la société Telecast ne forme plus aucune demande en ce qui concerne le territoire suisse désigné par le brevet européen n° 1 003 442, puisque la Confédération suisse n'est pas membre de l'Accord sur la Juridiction unifiée du brevet ;
- ▶ Ordonner à la société Telecast le paiement des frais engagés par les sociétés Blue Cable et TV Grid pour se défendre, en application de l'article 69 de l'Accord.

PIÈCES VERSÉES AUX DÉBATS

N°	Désignation
1.	Demande de brevet européen n° 0 447 968
2.	Notification des observations de la division d'opposition en date du 9 février 2007
3.	Lettre datée du 10 août 2007 du mandataire européen de la société United Video Programme Inc. en réponse aux observations de la division d'opposition, comportant en annexe les revendications n° 1 et 2 telles que proposées
4.	Article intitulé " <i>Personal Home TV Programming Guide</i> "
5.	Liste des interventions à la conférence " <i>IEEE 1990 International Conference on consumer electronics</i> " qui s'est tenue à Chicago du 6 au 8 juin 1990
6.	<i>Electronic program guide</i> , Wikipedia, the free encyclopaedia

Docket No 2014/01

UNIFIED PATENT COURT

CENTRAL DIVISION

(Paris Seat)

Telecast BV

(a company with its registered office located in the Netherlands)

v

(1) Blue Cable France SA

(a company with its registered office located in France)

(2) Blue Cable Germany GmbH

(a company with its registered office located in Germany)

(3) TV Grid Switzerland SA

(a company with its registered office located in Switzerland)

(4) TV Grid Italy SPA

(a company with its registered office located in Italy)

CLAIMANT'S REPLY AND DEFENCE TO COUNTERCLAIM

Claimant's Address for Service:

Mr Michael Burdon, partner of Olswang LLP, is authorised to accept service in relation to these proceedings

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Defendants' Address for Service:

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Introduction

1. It appears from the Defence and Counterclaim, and in the light of the Interim hearing on 22 May 2014, that there is no dispute about the commercial acts of the Defendants and the operation of the equipment designed and supplied by the Defendants. The Defendants argue that one feature of the claims is not present in their system (“the superimposed overlays point”). The Defendants’ interpretation has no basis in the wording of the claims and is incorrect. The non-infringement argument is not factually correct in any event. The main dispute, such as it is a dispute, is whether the invention should have been excluded from patentability as a mere presentation of information under EPC Article 51(2)(d) and whether the invention is novel and obvious in the light of one patent application (“Hennig”) and obvious over an industry publication (“Hallenbeck”).
2. The Claimant has registered the Assignment of the Patent at the French Patent Office, and all other relevant CMS, as requested by the Judge Rapporteur at the Interim Hearing. The Claimant has established its entitlement to the Patent and to bring these proceedings.
3. The Claimant will use the same nomenclature and abbreviations which are used in previous pleadings.
4. The matters in dispute are –
 - 4.1 The meaning and scope of the claims and in particular the meaning of “overlay” and “further overlay” and whether the Defendants’ system has, on the Defendants’ interpretation of the claims, a “superimposed overlay”.
 - 4.2 Whether the invention is a mere presentation of information.
 - 4.3 Whether the invention is novel and inventive over the Hennig patent application.
 - 4.4 Whether the invention is inventive over the Hallenbeck article presented at the IEEE 1990 International Conference (“the Hallenbeck article”) including two related screen shots.
5. The Defendants allege, on pages 12-13 of their Defence and Counterclaim, that the Claimant admitted during the Opposition procedure in the EPO that the Patent as granted was invalid. This allegation is a preposterous misrepresentation. The Claimant explained to the EPO that the invention as claimed in the granted Patent was different from the prior art which had been cited by the various opponents (including the publications and arguments which the Defendants now resurrect in these proceedings). The Claimant offered to amend the Patent in two different ways if the EPO considered that those amendments would make the claims more clearly distinctive over the prior art. The EPO did not require the amendments. All the opponents withdrew their futile oppositions. The Patent was maintained in the form in which it was granted.
6. The Claimant maintains the position that neither amendment to the claims is necessary. However, if this Court considers either amendment would help to clarify the claimed invention and distinguish it from the prior art, the Claimant will amend the Patent pursuant

to Rule 30 of the Rules of Procedure. The amendments are set out and explained in further detail below in the section on Meaning of Claims.

7. The Claimant will set out its position on the scope of, and technical background to, the Patent, before addressing the issue of infringement and validity of the Patent.

The Patent

8. The Patent describes a new and innovative system and process that, with the use of suitably configured equipment, allows a TV broadcaster to provide, and a viewer to access and view on a TV screen, information about TV programs.
9. Claim 1 is about the method and claim 2 is about the apparatus. Both the method and apparatus have 3 major technical components which need to interact:
 - 9.1 *[A] means for storing in an electronic memory of a schedule controller operably connected with a monitor screen, a plurality of television program listings, each listing including title, telecast time and channel,*
 - 9.2 *[B] means for displaying on the monitor screen an overlay providing, from the stored listings, a title of and channel information on a selected program simultaneously with the selected program upon selection of a channel change, and*
 - 9.3 *[C] means for displaying, responsive to a user input, a further overlay containing further information on the selected program from the stored listings."*
10. There is no material difference between the method and apparatus claims and they can be considered together without distinction in these proceedings.
11. It is clear from the Patent and its claims and the prior art that there were various technical constraints and problems which had to be solved in a technical way in the invention of the Claimant's system.
12. The Claimant has made a real and significant technical contribution over and above the earlier systems described in the prior art.
13. In particular, those skilled in this area will appreciate, as is described in the Patent, that the nature of the information about the TV programs which needs to be processed is that it is of a considerable volume and is text intensive while at the same time there is limited text capacity on TV displays (paragraph 9 of the Patent).
14. There is a technical problem which needs to be solved in order to enable users to access and view the information which they wish to consider (paragraph 10 of the Patent).
15. The discrepancy between the vast number of channels and amount of program information of interest to users and the limited text capacity of the TV and its screen mean that a solution needs to be found which enables the user to view detailed information about a program without obscuring the program information about the station to which the TV is currently tuned.

Background to Invention

16. The technical constraints within which those skilled in the field must operate is apparent from the prior art cited by the Defendants. Hallenbeck states:

“The increase in the numbers and types of television programming available is a small part of today’s information explosion. Television has grown from three networks and PBS to over 100 services. In addition to video overchoice, “tier-ing” and marketing have muddied the waters by allowing customers to subscribe to bits, pieces, and packages of programming. When deciding what to view, customary paper programming guides must show all possibilities. The viewer must wade through all of this information, selecting from descriptions of shows in packages to which he has subscribed. Then, by memory or little pieces of paper which are often lost in the dimly lit confines of the video viewing emporium, the viewer must translate the service (e.g. CBS network programming) to a channel and set the TV to that channel.

17. Hallenbeck discloses an interactive, electronic, on-screen programming guide which can be integrated with a TV tuner and a remote control. The authors describe an original and an improved “SuperGuide”. The article describes the technical constraints such as the availability of memory, the low transmission rate, the size and luminance bandwidth of the TV screen. It describes the considerable technical obstacles the authors encountered in devising and making their device. It states:

“The technical challenges of the system are immense. The hardware, which costs less than (sic) \$40, has about as much power as the first Macintosh system. The broadcast database, the equivalent of a weekly programming guide, must be electronically “laid up” formatted, and transmitted at least twice a day. The subscription price has to be less than a paper guide. The system must be secure or subscription revenue will be lost. Five years from now the system should cost about \$10 to add to a TV or cable converter box.”

18. The Hennig patent application describes in considerable technical detail over several pages the steps required to derive, calculate and display information about the start and end times of TV programs from VPS and teletext signals and to check that such information is current.

Meaning of Claims

19. The Defendants’ interpretation of the Patent is not entirely clear. The Defendants have not used a claim chart or referred to claim integers in a consistent way in describing the infringement and validity attacks. The Defendants seem to be construing the claims to require two different overlays with the second overlay superimposed over the first overlay. The Claimant cannot understand the basis in the Patent for the Defendants’ requirement of superimposed overlays. However, the Claimant will address the Defendants’ “superimposed overlays” argument and show that the Patent is valid and infringed on the Defendants’ interpretation (as well as the Claimants’ interpretation).
20. The plain and natural meaning of the claims is that the system is designed and configured in such a way that it will enable the user to observe two overlays. The first

overlay is displayed automatically on selection of a channel and contains basic information about the identity of the channel and the title of the program which has been selected and is being broadcast. The second overlay is displayed when the user requests additional information about that program. The claims do not specify the location of either overlay on the TV screen nor do they require any particular positional relationship between the overlays.

21. The first optional claim amendment proposed by the Claimant in the EPO, and in these proceedings pursuant to Rule 30, is to change “*a further overlay containing further information*” to “*a supplemental overlay containing supplemental information*” as follows:

MAIN REQUEST

Claims

5

1. A method for accessing information about television programs, the method comprising the steps of storing in an electronic memory of a schedule controller operably connected with a monitor screen, a plurality of television program listings, each listing including title, telecast time and channel, displaying on the monitor screen an overlay providing, from the stored listings, a title of and channel information on a selected program simultaneously with the selected program upon selection of a channel change, and displaying, responsive to a user input, a ~~further~~supplemental overlay containing ~~further~~supplemental information on the selected program from the stored listings.
- 10
- 15

22. The Claimant believes the meaning is clear without the amendment. The type of information generated by the equipment at the request of the user in the second overlay is different to the type of information generated simultaneously with channel selection by the equipment in the first overlay. However if the Court considers the meaning is clearer if “*a further overlay containing further information*” is replaced with “*a supplemental overlay containing supplemental information*”, then the Claimant requests permission to amend both claims in the Patent in this way.

23. The second optional claim amendment proposed by the Claimant in the EPO, and in these proceedings pursuant to Rule 30, is to provide a more detailed description of the generation of the second overlay in response to the user request, as follows:

FIRST AUXILIARY REQUEST

Claims

5

1. A method for accessing information about television programs, the method comprising the steps of storing in an electronic memory of a schedule controller operably connected with a monitor screen, a plurality of television program listings, each listing including title, telecast time and channel, displaying on the monitor screen an overlay providing, from the stored listings, a title of and channel information on a selected program simultaneously with the selected program upon selection of a channel change, and displaying, responsive to a user input, a ~~further~~supplemental overlay containing ~~further~~supplemental information on the selected program from the stored listings such supplemental information in said supplemental overlay containing a program note selected by way of a select key on a user-actuated remote control device, the program note containing information pertinent to a program currently being broadcast on the selected channel.

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24. The Claimant believes the meaning is clear without the amendment. It seems clear to the Claimant that the information which is generated by the equipment in the second overlay is generated as a result of the intervention of the user. The generation of the second overlay is different to the generation of the first overlay which is generated simultaneously with tuning of the channel which has been selected. However if the Court considers the meaning is clearer if this more detailed description is added, then the Claimant requests permission to amend both claims in the Patent in the form described.
25. The Claimant's position is that these amendments are merely clarificatory and as such the Patent as granted and the proposed amended claims are valid and infringed.

REPLY TO DEFENCE

Acts of Infringement

26. There is no dispute about the acts of infringement. The Defendants have admitted that there is a close commercial relationship between the Defendants and they are all intimately connected in the sale, supply, promotion and distribution of the Defendants' EPG. The Defendants have admitted on page 4 of their Statement of Defence:
- 26.1 *"At the request of TV Grid Italy, a program guide has been developed by TV Grid Switzerland"* as alleged in paragraph 18 and paragraph 23.1 of the Statement of Claim; and
- 26.2 *"This electronic program guide is provided by TV Grid Italy to Blue Cable France and Blue Cable Germany which integrate them in their set-top boxes."* as alleged in paragraph 19 and paragraph 23.2 of the Statement of Claim.

27. The equipment designed and supplied by the Defendants throughout Europe is, in all material details, identical. The Claimants seek remedies in all CMS where the Patent has been validated.

Infringement

28. There is no dispute that the TV information management and display systems developed and supplied by the Defendants comply with all the features of the Patent. The Defendants have not disputed the analysis in paragraphs 24 and 25 of the Statement of Claim that demonstrates that all features of the Patent are present in the Defendants' system, at least on the Claimant's interpretation.
29. The Defendants seem to argue that the Defendants' system, provided through their set-top boxes, does not infringe the Patent because the second panel of user-selected information is not superimposed on the first overlay. As well as not being a requirement of the claims, this point is simply not correct, even on the Defendants' own interpretation of the Patent claims.
30. The Defendants allege that the user-generated additional information about a selected program is "integrated in the programme grid" and does not constitute an overlay. However, "an overlay" means "*Something that is laid over or covers something else*". Paragraph 3 of the Patent also uses "overlays" in this way to mean those "*that obscure a minimum amount of useful other information*". The further information in the Defendants' EPG is laid over and obscures (a small) part of the Defendants' EPG. It thus constitutes an overlay. If the further information in the panel is not present, the viewer will not see a blank space; the viewer will see the EPG information which was previously obscured. The panel of further information is an overlay on any interpretation.

DEFENCE TO COUNTERCLAIM

Article 52(2)(d) EPC: "presentations of information"

31. The Defendants rely on the decision of the EPO Board of Appeal in T1235/07 in support of the proposition that structural aspects of how information is displayed can only contribute to inventive step if they have technical character. They allege that the Patent mentions no technical contribution concerning the organisation of the claimed visualisation of the information about the programs. The Claimant disagrees.
- 31.1 The Patent claims an apparatus for, and method of, managing information about TV programs which require:
- 31.2 *[A] means for storing in an electronic memory of a schedule controller operably connected with a monitor screen, a plurality of television program listings, each listing including title, telecast time and channel,*

- 31.3 *[B] means for displaying on the monitor screen an overlay providing, from the stored listings, a title of and channel information on a selected program simultaneously with the selected program upon selection of a channel change, and*
- 31.4 *[C] means for displaying, responsive to a user input, a further overlay containing further information on the selected program from the stored listings.”*
32. Paragraph 3 of the Patent states, *“It is an object of this invention to provide a television schedule system and process with a user interface that is configured to compensate for the particular nature of the television schedule information.”*
33. Paragraph 4 of the Patent states, *“It is another object of the invention to provide such a user interface in which supplemental schedule information is presented in overlays that obscure a minimum amount of useful other information.”*
34. The Patent describes and claims a clever technical system for managing and displaying information. It does not claim the information or the presentation of that information. The Defendants seem to suggest that the Patent merely describes and claims the display of the EPG information in a grid form. The Patent does not merely claim the form in which TV program information is displayed on a screen. The technical contribution or achievement of the Patent builds on the previous technical innovation by third parties such as Hallenbeck by providing a system which enables the TV program information to be processed and displayed in manageable parts and provides a different user interface. The program information is downloaded and stored in a schedule controller. Part of the program information is retrieved from the memory and displayed automatically when the user selects a TV channel. The new system enables other more detailed program information, which prior art systems could not manage and display, to be retrieved and displayed as a result of user input. The user experiences the result of the technical contribution in the form of the availability, on request, of more detailed program information in a second overlay.
35. It is clear from the EPO Guidelines that methods of processing and presenting information are not excluded from patentability provided the information content itself is not claimed. Paragraph 2.3.7 of the current (April 2010) EPO Guidelines state:

“2.3.7 Presentations of information

A representation of information defined solely by the content of the information is not patentable. This applies whether the claim is directed to the presentation of the information per se (e.g. by acoustical signals, spoken words, visual displays, books defined by their subject, gramophone records defined by the musical piece recorded, traffic signs defined by the warning thereon) or to processes and apparatus for presenting information (e.g. indicators or recorders defined solely by the information indicated or recorded). If, however, the presentation of information has new technical features, there could be patentable subject-matter in the information carrier or in the process or apparatus for presenting the information. The arrangement or manner of representation, as distinct from the information content, may well constitute a patentable technical feature. Examples in which such a technical feature may be present are: a telegraph

apparatus or communication system using a particular code to represent the characters (e.g. pulse code modulation); a measuring instrument designed to produce a particular form of graph for representing the measured information; a gramophone record having a particular groove form to allow stereo recordings; a computer data structure (see T 1194/97, OJ 12/2000, 525) defined in terms which inherently comprise the technical features of the program which operates on said data structure (assuming the program itself, in the particular case, to be patentable); and a diapositive with a soundtrack arranged at the side of it.”

36. The subject matter claimed in the Patent is of a technical character and not the mere presentation of information. It is patentable subject matter and not excluded under EPC Article 52(2)(d).

Novelty over the Hennig patent application

37. Claim 1 of the Patent may be divided into the following features: “A method for accessing information about television programs, the method comprising the steps of:

37.1 *[A] storing in an electronic memory of a schedule controller operably connected with a monitor screen, a plurality of television program listings, each listing including title, telecast time and channel,*

37.2 *[B] displaying on the monitor screen an overlay providing, from the stored listings, a title of and channel information on a selected program simultaneously with the selected program upon selection of a channel change,*

37.3 *[C] and displaying, responsive to a user input, a further overlay containing further information on the selected program from the stored listings.”*

38. The Hennig patent application discloses an earlier system of deriving information about channel identity and program titles from VPS and Teletext signals when a new channel is selected. Hennig discloses and claims an enhancement to that Teletext-based system in which the end time and/or remaining duration of the current programme, as well as the starting time of the next programme, is derived from the Teletext information and displayed on-screen. It is unclear if this information is available on request or simply when a new channel is selected, so it is not clear if feature B above is clearly disclosed.

39. The Hennig patent application is about a system for deriving information from VPS and Teletext signals. The system disclosed in the Patent provides for the storage of TV program information. Thus feature A above is not disclosed.

40. The Hennig patent application only discloses a single overlay. There is no disclosure of a feature which enables the display of a further overlay containing further information on the selected program in response to a user input. As such, feature C above is not disclosed. The Defendants argue that the Hennig application suggests that the single overlay may be updated (column 5, lines 9 -13). The Claimant submits that any update of a single overlay is not equivalent to a further overlay containing further information on the selected program.

Inventive over the Hennig patent application

41. There is no suggestion in Hennig that the apparatus includes a device for storing data nor is it obvious to consider making such a modification. The Hennig device works by deriving information from the live Teletext feed.
42. Hennig discloses the derivation and display of channel identity, the TV program title, and information about the time and duration of the program. There is no disclosure in Hennig of a system which derives and displays more detailed information about the TV program, nor how that additional information can be managed and displayed, taking into account the technical constraints of the TV display. Hennig implicitly supports the contention that it would not be obvious to do so, by claiming invention in the addition of relatively modest timing information.

Inventive over “Personal Home TV Programming Guide” by Peter D. Hallenbeck

43. Hallenbeck discloses an interactive, electronic, on-screen programming guide which can be integrated with a TV tuner and a remote control. The authors describe an original and an improved “SuperGuide”. The article describes the technical constraints such as the availability of memory, the low transmission rate, the size and luminance bandwidth of the TV screen. It describes the considerable technical obstacles the authors encountered in devising and making their device. It states, “*The technical challenges of the system are immense.*” (column 4, first full paragraph). The interaction between this program guide and a recording device is stated to be a desirable feature for the future when the right hardware is available. The improvements to the SuperGuide system focused on the addition of colour in the display, the data modem and a secure encryption system.
44. We have been provided with screen shots which show the information which was displayed on a TV screen with the original and improved SuperGuide, which the parties agree are incorporated in the prior art article.
45. The SuperGuide system is only capable of managing and displaying basic information about the TV channel and program titles and possibly the time and duration of the programs. The panel of information occupies the entire screen. There is no suggestion that the panel or the information is superimposed over the program which is being displayed in the background. This panel is not an “overlay” in the sense used in the Patent. It is not automatically generated and displayed as a small panel superimposed over the TV program which is being broadcast when a TV channel is selected. There is no second overlay with further information about a selected program. The Hallenbeck articles makes this clear, “*Hierarchical menus are used throughout the Guide*” (column 4, third paragraph).
46. It is reasonable to conclude from the lack of any disclosure or suggestion in the text of the article and the basic nature of the screen displays that the SuperGuide system does not support the automatic generation and display of the first overlay of station and program information superimposed on the TV program nor the storage and management of more detailed TV program information and the ability to display that more detailed information in a second overlay in response to a user request.

47. There is no suggestion of either development or improvement, let alone the combination of the two in such a way that more detailed program information can be made available to the user. The Patent discloses a more detailed and sophisticated management and presentation of program information than is disclosed in Hallenbeck. There is no suggestion that such detailed program information can be managed and displayed. It is not obvious to move from the basic display of basic information in full screen panels to the management and display of program information in separate overlays.

Defendants' Interpretation of the Claims

48. The Defendants' position (particularly on infringement) appears to be that the first and second overlays must be superimposed. As the Claimant has addressed above, neither the Hennig patent application nor Hallenbeck disclose or suggest the presence of a second overlay. Thus the Patent is valid over both of the alleged prior art publications even on the Defendant's interpretation of the claims.

CONCLUSION

49. In summary, the Claimant requests that:
- 49.1 its claim for infringement succeeds;
 - 49.2 the Defendants' counterclaim for invalidity of the Patent is dismissed; and
 - 49.3 its costs of the action.

FILED AND SERVED 1 MAY 2014

By

MICHAEL BURDON

OLSWANG LLP

COUNSEL FOR THE CLAIMANT

REJOINDER TO THE REPLY AND REPLY TO THE DEFENCE TO THE COUNTERCLAIM

ON BEHALF OF

1. **Blue Cable France SA**, a company governed by the French laws, entered in the trade register of Paris under N° B 345 724 631, with its registered office located 55, rue du Faubourg Saint-Honoré, 75008 Paris, France
2. **Blue Cable Germany GmbH**, a company governed by the laws of Germany, with its registered office located Spreeweg 1, 10557 Berlin, Germany
3. **TV Grid Switzerland SA**, a company governed by the laws of Switzerland, with its registered office located Bundesplatz, 3000 Bern, Switzerland
4. **TV Grid Italy SpA**, a company governed by the laws of Italy, with its registered office located Piazza del Quirinale 1, 00187 Roma, Italy

Defendants

represented by **Mr Pierre Véron** and **M^e Amandine Métier**,
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AGAINST

1. **Telecast BV**, with its registered office located Pompstationsweg 32, Den Haag, the Netherlands

Claimant

Mr Michael Burdon,
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Olswang LLP

Rejoinder to the Reply and
Reply to the Defence to the
Counterclaim on behalf of
Blue Cable France SA, Blue
Cable Germany GmbH, TV
Grid Switzerland SA and TV
Grid Italy SpA

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MAY IT PLEASE THE COURT

By way of a Statement of claim dated 24 March 2014, Telecast BV (hereinafter referred to as "*Telecast*") initiated proceedings for infringement of claims 1 and 2 of its European patent N° 1 003 442 against Blue Cable France, Blue Cable Germany (hereinafter referred to as "*Blue Cable*"), TV Grid Switzerland and TV Grid Italy SpA (hereinafter referred to as "*TV Grid*") (collectively "*the defendants*").

On 31 March 2014, the defendants filed preliminary objections in accordance with Rule 19 of the Rules of Procedure ¹, which relate to:

- ▶ the jurisdiction of the Central division of the Unified Patent Court to hear these proceedings;
- ▶ the admissibility of Telecast's claim, which does not justify that it is the holder of European patent N° 1 003 442 and, in any case, that it has entered the acquisition of this right in the French Patent Register;
- ▶ the provision of translations of the procedural documents.

¹ Rule 19 of the Rules of Procedure:

"1. Within one month of service of the Statement of claim, the defendant may lodge a Preliminary objection concerning:

- (a) the jurisdiction and competence of the Court
- (b) the competence of the division indicated by the claimant [Rule 13.1(i)];
- (c) the language of the Statement of claim [Rule 14].

2. A *Preliminary objection shall contain:

- (a) particulars in accordance with Rule 24.1(a) to (c);
- (b) the decision or order sought by the defendant;
- (c) the grounds upon which the Preliminary objection is based; and
- (d) where appropriate the facts and evidence relied on.

3. The Preliminary objection shall be drawn up:

- (a) in the language of the proceedings [Rule 14.3]; or
- (b) in one of the official languages of the European Patent Office.

4. If the action has been commenced before a regional division the defendant may by a Preliminary objection request a transfer of the action to the central division pursuant to Article 33(2) of the Agreement. The Preliminary objection shall in such a case contain all facts and evidence supporting the existence of the same infringement in three or more regional divisions.

5. The Registry shall as soon as practicable invite the claimant to comment on the Preliminary objection. Where applicable, the claimant may of his own motion correct any deficiency [Rule 19.1(b) or (c)], within 14 days of service of notification of the Preliminary objection. Alternatively the claimant may submit written comments within the same period. The judge-rapporteur shall be informed of any correction made or written comments submitted by the claimant. If the deficiency referred to in Rule 19.1(b) is corrected and the claimant has indicated another division, which is competent, the judge-rapporteur shall refer the action to the division indicated by the claimant.

6. The period for lodging the Statement of defence [Rule 23] shall not be affected by the lodging of a Preliminary objection, unless the judge-rapporteur decides otherwise.

7. The defendant's failure to lodge a Preliminary objection within the time period referred to in Rule 19.1 shall be treated as a submission to the jurisdiction and competence of the Court and the competence of the division chosen by the claimant."

Rejoinder to the Reply and Reply to the Defence to the Counterclaim on behalf of Blue Cable France SA, Blue Cable Germany GmbH, TV Grid Switzerland SA and TV Grid Italy SpA

(May 2014)

In accordance with Rules 24² and 25³ of the Rules of Procedure, the defendants, by way of their Statement of defence of 9 April 2014, requested that the Court hold that claims 1 and 2 of European patent N° 1 003 442 are invalid or, at least, hold that the Blue Cable apparatuses at issue (set-top boxes) do not implement these claims.

By way of a decision of 22 April 2014, the Judge-rapporteur ruled on the preliminary objections lodged by Blue Cable and TV Grid.

He dismissed the objection relating to the lack of jurisdiction of the Central division of the Unified Patent Court, but authorised the parties to lodge an appeal on this issue, what Blue Cable and TV Grid made on 24 April 2014.

Blue Cable and TV Grid request that the Court stay the proceedings pending the decision of the Court of Appeal on this issue.

² Rule 24 of the Rules of Procedure reads as follows:

*"The *Statement of defence shall contain:*

- (a) the names of the defendant and of the defendant's representative;*
- (b) postal and electronic addresses for service on the defendant and the names and addresses of the persons authorised to accept service;*
- (c) the action number of the file;*
- (d) an indication whether the defendant has lodged a Preliminary objection [Rule 19];*
- (e) an indication of the facts relied on, including any challenge to the facts relied on by the claimant;*
- (f) the evidence relied on [Rule 170.1], where available, and an indication of any further evidence which will be offered in support;*
- (g) the reasons why the action shall fail, arguments of law and any argument arising from the provisions of Article 28 of the Agreement and where appropriate any challenge to the claimant's proposed claim interpretation;*
- (h) an indication of any order the defendant will seek in respect of the infringement action during the interim procedure [Rule 104(e)];*
- (i) a statement whether the defendant disputes the claimant's assessment of the value of the infringement action and the grounds for such dispute; and*
- (j) a list of the documents, including any witness statements, referred to in the Statement of defence together with any request that all or part of any such document need not be translated and/or any Application pursuant to Rule 262.2. Rule 13.2 and .3 shall apply mutatis mutandis."*

³ Rule 25 of the Rules of Procedure indicates:

*"1. If the Statement of defence includes an assertion that the patent (or patents) alleged to be infringed is (are) invalid the Statement of defence shall include a *Counterclaim against the proprietor(s) of the patent (or patents) for revocation of said patent (or patents.) in accordance with Rule 43. The Counterclaim for revocation shall contain:*

- (a) an indication of the extent to which revocation of the patent (or patents) is requested;*
- (b) one or more grounds for revocation, which shall as far as possible be supported by arguments of law, and where appropriate an explanation of the defendant's proposed claim construction;*
- (c) an indication of the facts relied on;*
- (d) the evidence relied on, where available, and an indication of any further evidence which will be offered in support;*
- (e) an indication of any order the defendant will seek during the interim procedure [Rule 104(e)];*
- (f) where the defendant assesses that the value of the dispute including the Counterclaim exceeds the value of the infringement action by more than [EUR***] an indication of the value of the dispute including the Counterclaim;*
- (g) a statement of his position, if any, on the options provided for in Article 33(3)(a), (b) or (c) of the Agreement and Rule 37.4;*
- (h) a list of the documents, including any witness statements, referred to in the Counterclaim for revocation together with any request that all or part of any such documents need not be translated. Rule 13.2 and .3 shall apply mutatis mutandis; and*
- (i) insofar as the proprietor(s) of the patent (or patents) are not claimant(s) in the infringement proceedings, the information required by Rule 13.1(b) and (d) in respect of said proprietor(s).*

2. Where the claimant is not the proprietor or not the only proprietor of the patent (or patents) concerned the Registry shall as soon as practicable serve a copy of the Counterclaim for revocation on the relevant proprietor(s) in accordance with Rule 13.1(e) and shall supply a copy of each document referred to in paragraph 2. Rule 271 shall apply mutatis mutandis. The proprietor(s) in question shall become a party (parties) to the revocation proceedings and shall be treated as defendant(s) in all subsequent proceedings. The proprietor(s) shall provide details pursuant to Rule 13.1(e) if not already provided by the claimant."

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Moreover, the Judge-rapporteur considered that the defendants' objections to find Telecast's claims inadmissible because it has no standing to sue, at least regarding the French territory, did not constitute preliminary objections within the meaning of Rule 19(1) and (4) of the Rules of Procedure and that they could not allow the summary dismissal of the Statement of claim in application of Rule 334 (h) of the Rules of Procedure.

The judge-rapporteur thus considered that these claims did not fall within his competence to rule on preliminary objections or to allow a summary dismissal.

But he did not judge that these claims were ill-founded.

Therefore, on 28 April 2014, in order to formally refer the matter to the Court, Blue Cable and TV Grid filed an amended Statement of defence.

On 1 May 2014, the claimant filed its Reply.

In this Rejoinder, the defendants reply to the claimant's arguments.

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FACTS AND PROCEEDINGS

Telecast BV and European patent N° 1 003 442

Telecast BV, a company governed by Dutch laws, alleges that it is the holder of European patent N° 1 003 442 (Telecast exhibit N° 2).

This patent was filed on 10 September 1995 by the U.S. company United Video Programs Inc, specialising in the development of electronic program guides (EPGs), claiming priority from a U.S. patent application.

The patent was granted on 12 June 2002.

Telecast BV considers that it acquired it on 24 December 2013 as well as the other patents filed under the same U.S. priority.

The assignment was entered in the German and Italian patent registers.

Telecast BV granted licences under this patent (and other patents covering functionalities relating to EPGs) to various program providers.

European patent N° 1 003 442 relates to a "*method and apparatus for accessing information about television programs*", which allegedly improves existing electronic program guides.

Blue Cable France, Blue Cable Germany, TV Grid SpA and TV Grid Switzerland

At the request of TV Grid Italy, a program guide has been developed by TV Grid Switzerland.

This electronic program guide is provided by TV Grid Italy to Blue Cable France and Blue Cable Germany which integrate them in their set-top boxes.

Electronic program guides

In the last 30 years or so, the number of television broadcasting stations has increased enormously.

The broadcasters wish the consumer to know what programs are being or are to be broadcast.

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Until the advent of electronic means of broadcasting, this information was disseminated principally in paper form: it took the form of a list of programs listed by channel and by broadcast time, with various possible methods of listing the starting and end time, the channel and some notes about the program.

One answer to the increase in the number of channels and programs and the size of the listings was to provide electronic lists directly available to a TV viewer on the screen.

The information on the programs can be transmitted by various means, preferably over the air by private service providers: by calling up the relevant list and looking up the relevant day, time and channel, the viewer can see what program is being broadcast at the relevant time.

In a typical case, the electronic program guide is controlled by a handle selector, which controls a selecting highlight on the screen, and a program is selected by highlighting it and pressing a selection button, at which an operation is carried out in relation to that program, for example providing more information about it.

Opposition at the European Patent Office against European patent N° 1 003 442

European patent N° 1 003 442 was opposed at the European Patent Office .

The opposition division issued a preliminary opinion holding that claim 1 lacks novelty and inventive step (Blue Cable / TV Grid exhibit N° 2).

United Video Programs filed amended claims (Blue Cable / TV Grid exhibit N° 3) to reply to this preliminary opinion but the opposition was then withdrawn, so that the claims as originally filed are in force.

These proceedings

Telecast BV decided to oppose European patent N° 1 003 442 against Blue Cable and TV Grid.

In June 2013, it wrote letters to Blue Cable France and Blue Cable Germany asking them to stop implementing the method according to claim 1 of European patent N° 1 003 442 and to stop manufacturing, holding, putting on the market and offering for sale set-top boxes protected by claim 2 of the patent.

As Blue Cable considered that it was perfectly entitled to market the set-top boxes in dispute equipped with their electronic program guide, it deemed it unnecessary to reply to those warning letters.

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In a Statement of claim dated 24 March 2014, Telecast BV lodged against Blue Cable France, Blue Cable Germany, TV Grid Switzerland and TV Grid Italy a claim for infringement of its European patent N° 1 003 442 before the Central division of the Court of First Instance of the Unified Patent Court.

Considering the technical field of the patent concerned, the case was attributed to the Paris seat.

On 19 March 2014, Blue Cable and TV Grid raised preliminary objections in accordance with Rule 19 of the Rules of Procedure; these objections were dismissed or considered inadmissible as preliminary objections in a decision of the Judge-rapporteur of 22 April 2014.

As authorised by the Judge-rapporteur in his decision of 22 April 2014, Blue Cable and TV Grid lodged an appeal against the dismissal of their preliminary objection relating to the lack of jurisdiction of the Central division of the Court in application of Article 33 § 1 a) of the Agreement⁴.

In their Statement of 9 April 2014, they set out their arguments in defence for obtaining the invalidity of claims 1 and 2 of European patent N° 1 003 442 in all its national designations and the dismissal of the claims for infringement.

In their Statement of defence amended on 28 April 2014, Blue Cable and TV Grid reiterated their claims as set out in their Statement of 9 April 2014 and included, on a preliminary basis:

- ▶ a claim for a stay of the proceedings pending the decision of the Court of Appeal on the issue of the jurisdiction of the Central division of the Court;
- ▶ the plea of non-admissibility for lack of standing to sue of Telecast, which does not justify that it is the holder of European patent N° 1 003 442, which plea of non-admissibility the judge-rapporteur considered in his decision of 22 April 2014 that it does not fall within his competence;
- ▶ the plea of non-admissibility concerning any claim relating the French territory since, in any case, Telecast does not justify that it has entered the acquisition of this right in the French Patent Register.

In any case, the Court will record that Telecast acknowledged during the interim conference that it will not obtain a measure of injunction and compensation for the acts committed in Switzerland as this country is not a member of the Agreement on a Unified Patent Court.

On 1 May 2014, Telecast filed a Reply.

Blue Cable and TV Grid respond to it in this Rejoinder.

⁴ Blue Cable and TV Grid reiterated their Statement of appeal on 30 April 2014, that is, the day after the service of the decision of the Judge-rapporteur dated 22 April 2014, in accordance with Rule 224 of the Rules of Procedure.

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DISCUSSION

Blue Cable and TV Grid request that the Court stay the proceedings pending the decision of the Court of Appeal on the issue of the jurisdiction of the Central division of the Court to hear this dispute (**1.**).

Should the Court refuse to accede to this claim, Blue Cable and TV Grid request that Telecast's action be found inadmissible as this company does not justify that it is the holder of European patent N° 1 003 442, on which it bases its claims (**2.**); in the alternative, they request that the action be found inadmissible regarding the facts that took place on the French territory as the assignment of the patent, on the basis of which the action was brought, has not been entered in the French Patent Register (**3.**).

Should the Court consider that Telecast has standing to sue for certain territories designated by the patent, Blue Cable and TV Grid request that it hold claims 1 and 2 of European patent N° 1 003 442 invalid for lack of patentability (on the grounds that it is based on the presentation of information), and in any case, for lack of novelty and, at least, lack of inventive step (**4.**)

Finally, should claims 1 and 2 of European patent N° 1 003 442 be held valid – which is highly unlikely –, Blue Cable and TV Grid request that the Court hold that their set-top boxes do not implement these claims (**5.**).

1. Stay of the proceedings pending the decision of the Court of Appeal on the jurisdiction of the Central division of the Court

The Judge-rapporteur, in his decision of 22 April 2014, authorised the parties to lodge an appeal against the dismissal of the defendants' preliminary objection to declare that the Central division of the Court has no jurisdiction to hear this dispute.

Blue Cable and TV Grid lodged an appeal against this decision on 24 April 2014; this request was reiterated on 30 April 2014.

They request that the Court, in application of Rule 295 c) ii)⁵ of the Rules of Procedure, stay the proceedings pending the decision of the Court of Appeal.

As the Judge-rapporteur emphasised in his decision of 22 April 2014, the issue of the jurisdiction of the Central division of the Court is of fundamental importance for this dispute, but also for any future dispute that would present a similar configuration as to the defendants' localisation.

Consequently, Blue Cable and TV Grid request that the Court stay the proceedings.

Should the Court consider that there is no reason for a stay of the proceedings, it would declare Telecast's action inadmissible.

⁵ Rule 295 c) ii) indicates:
"The Court may stay proceedings:
 [...] (c) where an appeal is brought before the Court of Appeal against a decision or order of the Court of First Instance :
 [...] ii) disposing of an admissibility issue or a Preliminary objection;"

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2. In the alternative, inadmissibility of Telecast's action for lack of standing to sue

Telecast contends that it became the holder of European patent N° 1 003 442 by an assignment act of 24 December 2013 and that it, accordingly, has standing to sue.

However, the assignment act that it produces (Telecast exhibit N° 1) does not refer to European patent N° 1 003 442 as it refers to an exhaustive list of rights assigned mentioned in Annexe 1 of the assignment:

"Patents" means the patents and patent applications filed under priority of US patent No 555975, whose details appear in annex 1.

Figure 1: extract from the assignment act on which Telecast bases its action

But the list of Annexe 1 of this act contains no reference to European patent N° 1 003 442, as the extract from the assignment act reproduced hereinafter demonstrates it:

Annex 1
(List of assigned patents and patent application)

- US 555975
- WO 92/01804
- EP 0 682 845
- EP 1 454 623
- EP 1 456 571
- EP 1 532 321
- AT 589 753
- AU 789 956
- AU 5 990 596
- BR 9 544 899
- CA 2 499 751
- CN 1 195 447
- CN 1 213 856
- ES 2 021 756
- ES 2 856 423
- HK 1 334 412
- JP 068945
- JP 069001
- KR 0104895
- KR 0106541

Figure 2: Annexe 1 of the assignment act of 24 December 2013

Failing to demonstrate that it became the holder of European patent N° 1 003 442, on which it bases its action, Telecast's action will be held inadmissible for lack of standing to sue.

The Court will acknowledge the absence of reply from Telecast on this point in its 1 May 2014 Statement and will hold its claim inadmissible.

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Should the Court consider that Telecast has standing to sue, Blue Cable and TV Grid request that the action be held inadmissible regarding any fact in relation to the French territory because the assignment of the patent, the subject-matter of the dispute, has not been entered in the French Patent Register.

3. In the very alternative, inadmissibility of the action regarding the French territory because the assignment has not been entered in the French Patent Register

Telecast did not file European patent N° 1 003 442: it alleges that it acquired it from the applicant, the US company United Video Programmes Inc., on 24 December 2013.

But, to be able validly to enforce its European patent against companies established in Germany, Italy and France, Telecast should provide evidence that the corresponding national designations of its European patent are actually enforceable against third parties in these countries.

Telecast indicates that it:

- ▶ entered the assignment of European patent N° 1 003 442 in the German and Italian Patent Registers;
- ▶ took the necessary steps to enter the assignment in the European Patent Register.

But the assignment was not entered in the French Patent Register in France.

However, pursuant to Article L. 613-9 of the French Intellectual Property Code:

"All acts transferring or modifying the rights deriving from a patent application or a patent must, to be enforceable against third parties, be entered in a register, known as the National Patent Register kept by the National Institute of Industrial Property.

However, before its registration, an act is enforceable against third parties who have acquired rights after the date the act occurred, but who were aware of it when acquiring the rights.

The licensee, party to a licence agreement, not entered in the national register of patents, is also entitled to intervene in the infringement proceedings instituted by the owner of the patent to seek compensation for the damage it has sustained."

During the interim procedure, the Judge-rapporteur invited Telecast to comply as soon as possible with the requirements of Article L. 613-9 of the French Intellectual Property Code.

However, in its 1 May 2014 Statement, Telecast does not demonstrate having taken any step to have the assignment of the French designation of its European patent N° 1 003 442 registered.

Moreover, even if Telecast — finally — regularised its situation, its action would not, retroactively, become admissible.

It is a principle in French law that the entry of patents in the French National Register renders the assignment of a patent enforceable only as of the day of that entry.

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In other words, the claimants' action for infringement could only relate to the facts subsequent to the entry and not to the earlier facts.

However, no fact prior to the entry (of which it is not known whether it was regularised or not) is put forward.

Consequently, by application of Article 24 § 1 e) of the Agreement⁶ and Article L. 613–9 of the French Intellectual Property Code, the Court will have no other choice but to hold Telecast's action inadmissible regarding the facts alleged on the French territory because the acquisition of its right is not enforceable on this territory.

4. In the very alternative, counterclaim for revocation of claims 1 and 2 of European patent № 1 003 442

Pursuant to Article 65, (1) and (2) of the Agreement:

"The Court shall decide on the validity of a patent on the basis of an action for revocation or a counterclaim for revocation.

The Court may revoke a patent, either entirely or partly, only on the grounds referred to in Articles 138(1) and 139(2) of the EPC."

Article 138(1) of the European Patent Convention (hereinafter referred to as "EPC") mentions:

"Subject to Article 139, a European patent may be revoked with effect for a Contracting State only on the grounds that:

(a) the subject-matter of the European patent is not patentable under Articles 52 to Article 57;

(b) the European patent does not disclose the invention in a manner sufficiently clear and complete for it to be carried out by a person skilled in the art;

(c) the subject-matter of the European patent extends beyond the content of the application as filed or, if the patent was granted on a divisional application or on a new application filed under Article 61, beyond the content of the earlier application as filed;

(d) the protection conferred by the European patent has been extended; or

(e) the proprietor of the European patent is not entitled under Article 60, paragraph 1."

The defendants will set out the subject-matter of Telecast's European patent № 1 003 442, as granted or as proposed to be amended pursuant to Rule 30 of the Rules of Procedure (**4.1.**).

Then, they will demonstrate that European patent № 1 003 442 must be revoked on the grounds that it constitutes a non-patentable presentation of information in accordance with Article 52 (2), (d) EPC (**4.2.**).

⁶ Article 24 § 1 e) of the Agreement indicates:
 "1. In full compliance with Article 20, when hearing a case brought before it under this Agreement, the Court shall base its decisions on :
 (...)
 e) national law."

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Should the Court consider that the invention the subject-matter of European patent N° 1 003 442 is patentable, it will note that claims 1 and 2:

- ▶ are not new pursuant to Article 54 EPC (**4.3.**);
- ▶ do not involve an inventive step pursuant to Article 56 EPC (**4.4.**).

4.1. The subject-matter of the claims 1 and 2 of European patent N° 1 003 442 as granted and as proposed to be amended

It emerges from European patent N° 1 003 442 that the object of the alleged invention, the subject-matter of this patent, is to provide a method for accessing information about television programs with a user interface that is configured to take into account the particular nature of the television schedule information (Telecast exhibit N° 2, paragraph [0003] of the description).

Furthermore, according to the description of this patent, it is another object of the invention to provide such a user interface in which supplemental schedule information is presented in overlays that obscure a minimum amount of useful other information (Telecast exhibit N° 2, paragraph [0004] of the description).

The claims of European patent N° 1 003 442 as granted (**4.1.1.**), then the amendments which Telecast proposed to make pursuant to Rule 30 of the Rules of Procedure (**4.1.2.**) will be presented.

4.1.1. Claims 1 and 2 of European patent N° 1 003 442 as granted

Claims 1 and 2 of European patent N° 1 003 442, as granted relate to:

"1. A method for accessing information about television programs, the method comprising the steps of

- ▶ *storing in an electronic memory of a schedule controller operably connected with a monitor screen, a plurality of television program listings, each listing including title, telecast time and channel,*
- ▶ *displaying on the monitor screen an overlay providing, from the stored listings, a title of and channel information on a selected program simultaneously with the selected program upon selection of a channel change,*
- ▶ *and displaying, responsive to a user input, a further overlay containing further information on the selected program from the stored listings."*

"2. Apparatus for accessing information about television programs, the apparatus comprising

- ▶ *the means for storing in an electronic memory of a schedule controller operably connected with a monitor screen, a plurality of television program listings, each listing including title, telecast time and channel,*
- ▶ *means for displaying on the monitor screen an overlay providing, from the stored listings, a title of and channel information on a selected program simultaneously with the selected program upon selection of a channel change,*
- ▶ *and means for displaying, responsive to a user input, a further overlay containing further information on the selected program from the stored listings."*

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The invention the subject-matter of European patent N° 1 003 442 therefore relates to a method for accessing information about television programs and to an apparatus for accessing this information which has three features.

According to a first feature, the information is stored in an electronic memory of a schedule controller, this schedule controller being operably connected with a monitor screen, a plurality of television program listings, *i.e.* with a television screen, each television program listing including the title of the program, the telecast time and the channel.

According to a second feature, the method the subject-matter of the invention or the apparatus further comprises means for displaying on the monitor screen an overlay providing, from the stored listings, the information relating to the selected title.

In its 1 May 2014 Statement, Telecast contends that the first provision of program guide information, the subject-matter of the second feature of claim 1, is automatically displayed upon the selection of a television channel on the electronic program guide.

Basic information, such as the channel name and the program title would be provided.

According to a third feature, the method the subject-matter of the invention or the apparatus finally comprises means for displaying, responsive to a user input, a further overlay containing further information on the selected program from the stored listings.

In other words, in addition to the first step consisting in storing in an electronic memory various items of information about the programs, the claims of European patent N° 1 003 442 relate to a feature concerning means for obtaining a primary display that overlays the program selected on the screen and to a feature concerning means for obtaining a secondary display, appearing in response to a user input and giving access to further information.

According to the invention, the information relating to a selected title is in the form of banners.

Therefore, the invention the subject-matter of European patent N° 1 003 442 relates to how the information about the programs is displayed on a television screen and to the access to this information by the users.

In its 1 May 2014 Statement, Telecast, aware of the weakness of the claims of its patent, suggests to the Court that claims 1 and 2 be amended in the same way proposed before the European Patent Office during opposition proceedings.

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4.1.2. Amendments of claims 1 and 2 of European patent N° 1 003 442 proposed by Telecast

According to Rule 30 of the Rules of Procedure ⁷, the defendant to the counterclaim for revocation (that is, the patent holder) may suggest amending the claims of the patent concerned.

In this instance, in its 1 May 2014 Statement, Telecast submitted two proposals to amend its claims corresponding to the main request and the first subsidiary request, submitted by United Video Programme in the context of the opposition filed against its patent, before this opposition was withdrawn.

According to the first amendment proposal, claims 1 and 2 of European patent N° 1 003 442 should be amended as follows (the added words are in blue and the suppressed are crossed):

"1. A method for accessing information about television programs, the method comprising the steps of storing in an electronic memory of a schedule controller operably connected with a monitor screen, a plurality of television program listings, each listing including title, telecast time and channel, displaying on the monitor screen an overlay providing, from the stored listings, a title of and channel information on a selected program simultaneously with the selected program upon selection of a channel change, and displaying, responsive to a user input, a ~~further~~ supplemental overlay containing ~~further~~ supplemental information on the selected program from the stored listings.

2. Apparatus for accessing information about television programs, the apparatus comprising the means for storing in an electronic memory of a schedule controller operably connected with a monitor screen, a plurality of television program listings, each listing including title, telecast time and channel, means for displaying on the monitor screen an overlay providing, from the stored listings, a title of and channel information on a selected program simultaneously with the selected program upon selection of a channel change, and means for displaying, responsive to a user input, a ~~further~~ supplemental overlay containing ~~further~~ supplemental information on the selected program from the selected listings."

Telecast argues that the claims of its patent are perfectly clear even without this amendment.

⁷ Rule 30 of the Rules of Procedure indicates:
"1. The Defence to the Counterclaim for revocation may include an *Application by the proprietor of the patent to amend the patent which shall contain:

a) the proposed amendments of the claims of the patent concerned and/or specification, including where applicable and appropriate one or more alternative sets of claims (auxiliary requests), in the language in which the patent was granted; where the language of the proceedings [Rule 14.3] is not the language in which the patent was granted, the proprietor shall lodge a translation of the proposed amendments in the language of the proceedings, and where the patent is a European patent with unitary effect in the language of the defendant's domicile in a Contracting Member State or of the place of the alleged infringement or threatened infringement in a Contracting Member State if so requested by the defendant;

b) an explanation as to why the amendments satisfy the requirement of Articles 84 and 123(2) and (3) EPC and why the proposed amended claims are valid and infringed; and

c) an indication whether the proposals are conditional or unconditional; the proposed amendments, if conditional, must be reasonable in number in the circumstances of the case.

2. Any subsequent request to amend the patent may only be admitted into the proceedings with the permission of the Court.

3. Where other proceedings involving the patent subject to an Application pursuant to Rule 30.1 are on-going, the claimant shall notify the Court in question that such an Application has been made and provide the information required in Rule 30.1(a)."

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However, it mentions that, should the Court consider it to be necessary, it is willing to indicate in a clearer way that the second information provision must contain information different from the first information provision, which is displayed automatically upon the selection of a television channel on an electronic program guide.

In reality, it is in response to the opponents' arguments and a notification from the examiner (Blue Cable/TV Grid exhibit N° 2) that United Video Programme Inc. accepted to amend its claims so as to indicate that the displaying step, the subject-matter of feature c) of claim 1 is distinct from the displaying step, the subject-matter of feature b) in that it is possible to display an overlay of information other than the information already displayed:

"You will recall that the basis of the invention is to provide a method/apparatus for effectively splitting the provision of program guide information into manageable parts (see patentee's letter of 18 July 2006 under 'Main Request'). Thus, claim 1 recites the one overlay of program title and channel which appears on the screen 'simultaneously with the selected program upon selection of a channel change'. The other, supplemental, overlay is user-selected in addition to that one overlay.

The use of the phrase 'supplemental overlay' is intended to make clear that the overlay in question is not merely a repeat of the one overlay (i.e. a further showing of the same thing), but is separate and distinct from it." (Blue Cable/TV Grid exhibit N° 3, page 2).

The second proposal to amend claims 1 and 2 of European patent N° 1 003 442 reads as follows:

"1. A method for accessing information about television programs, the method comprising the steps of storing in an electronic memory of a schedule controller operably connected with a monitor screen, a plurality of television program listings, each listing including title, telecast time and channel, displaying on the monitor screen an overlay providing, from the stored listings, a title of and channel information on a selected program simultaneously with the selected program upon selection of a channel change, and displaying, responsive to a user input, a ~~further~~ supplemental overlay containing ~~further~~ supplemental information on the selected program from the stored listings such supplemental information in said supplemental overlay containing a program note selected by way of a select key on a user-actuated remote control device, the program note containing information pertinent to a program currently being broadcast on the selected channel.

2. Apparatus for accessing information about television programs, the apparatus comprising the means for storing in an electronic memory of a schedule controller operably connected with a monitor screen, a plurality of television program listings, each listing including title, telecast time and channel, means for displaying on the monitor screen an overlay providing, from the stored listings, a title of and channel information on a selected program simultaneously with the selected program upon selection of a channel change, and means for displaying, responsive to a user input, a ~~further~~ supplemental overlay containing ~~further~~ supplemental information on the selected program from the selected listings such supplemental information in said supplemental overlay containing a program note selected by way of a select key on a user-actuated remote control device, the program note containing information pertinent to a program currently being broadcast on the selected channel." (the added words are in blue and the suppressed words are crossed).

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Once more, Telecast contends that claims 1 and 2 of its patent are perfectly clear without this amendment, but that, should the Court consider it to be necessary, it is willing to amend them as proposed.

Yet the Court will simply find that Telecast's proposal to amend the claims do not satisfy the requirements of Rule 30(1b) of the Rules of Procedure, which provides that the request for amendment should contain:

"an explanation as to why the amendments satisfy the requirement of Articles 84 and 123(2) and (3) EPC and why the proposed amended claims are valid and infringed;"

In its 1 May 2014 Statement, Telecast refrains from demonstrating how the proposed amendments satisfy the requirements of Article 84⁸ and 123(2) and (3)⁹ EPC.

Therefore, this request for amendment will be dismissed by the Court.

In any case, Blue Cable and TV Grid will demonstrate that these claims as granted or as proposed to be amended are invalid.

4.2. Lack of patentability of the invention the subject-matter of European patent N° 1 003 442 because it relates to a presentation of information

Article 52, (2) EPC states:

"The following in particular shall not be regarded as inventions within the meaning of paragraph 1:

- a) discoveries, scientific theories and mathematical methods;*
- b) aesthetic creations;*
- c) schemes, rules and methods for performing mental acts, playing games or doing business, and programs for computers;*
- d) **presentations of information.**"*

It has previously been demonstrated that, in addition to the first step consisting in storing in an electronic memory various items of information about the programs, the claims of European patent N° 1 003 442 relate to a feature concerning means for obtaining an automatic primary display that overlays the program selected on the screen and to a feature concerning means for obtaining a secondary display, appearing in response to a user input and giving access to further information.

The information relating to a selected title is in the form of banners.

Therefore, the invention the subject-matter of European patent N° 1 003 442 relates to how the information about the programs is displayed on a television screen and to the access to this information by the users.

⁸ Article 84 EPC reads as follows:
"The claims shall define the matter for which protection is sought. They shall be clear and concise and be supported by the description."

⁹ Article 123(2) and (3) EPC indicates:
*"2. The European patent application or European patent may not be amended in such a way that it contains subject-matter which extends beyond the content of the application as filed.
3. The European patent may not be amended in such a way as to extend the protection it confers."*

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In this respect, the description indicates:

"[0002] (...) When using a television set as a display for a schedule system, the size and resolution of the television display limit the amount of text that can be displayed with the grid. Improved techniques are required for conveying the most amount of information to the user in an easily understood manner within the limitations of the television display." (Telecast exhibit N° 2, page 2, column 1)

"[0003] Accordingly, it is an object of this invention to provide a television schedule system and process with a user interface that is configured to compensate for the particular nature of the television schedule information. [0004] It is another object of the invention to provide such a user interface in which supplemental schedule information is presented in overlays that obscure a minimum amount of useful other information." (Telecast exhibit N° 2, page 2, column 1)

"[0010] (...) The program note 52 overlays and hides 3 or 4 listings of a guide. To minimize concealment of the guide, an auto-rolling note is used.

The program note will overlay either the top half or bottom half of the screen, as necessary to avoid masking the title of the selected listing."

It thus emerges from the description itself that it was already known from the prior art to store, extract and provide information about television programs, using a computer programme contained in a device connected to a television screen.

The invention the subject-matter of European patent N° 1 003 442 therefore allegedly consists in providing an electronic guide for television programs and in providing additional information on a selected title by overlay, without this overlaid additional information hiding the totality of the television screen, in order for the user to be able to always see part of the program guide.

However, far from indicating the technical features that would make it possible to display more information on a selected program, claims 1 and 2 merely indicate that the information on a selected program can be visualised in the form of notes overlaying the basic information already displayed.

Yet the mere presentation of information cannot be patentable.

The boards of appeal of the EPO held in particular that the mere organisation of the display of information cannot have a technical character if this organisation is not structured (technical board of appeal 3.5.01, 17 March 2011, T 1235/07¹⁰):

"The Board is thus in this case taking a wider view of 'presentation of information' than just the actual information that is displayed, the so-called cognitive content, to include also structural aspects of how the information is displayed. In the Board's view, such additional aspects can only contribute to inventive step if they have technical character."

¹⁰ See also the decision of 1 April 2009, technical board of appeal 3.5.01, T 1143/06

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The description of European patent N° 1 003 442 mentions no technical contribution concerning the organisation of the claimed visualisation of the information about the programs.

Therefore, the invention the subject-matter of European patent N° 1 003 442 presents no technical character and, consequently, does not meet the patentability requirement of Article 52 (2) d) EPC.

In its 1 May 2014 Statement, Telecast contends that the invention, the subject-matter of claims 1 and 2, relates to a "*clever technical system for managing and displaying information.*"

In particular, Telecast indicates:

"The Patent does not merely claim the form in which TV program information is displayed on a screen. The technical contribution or achievement of the Patent builds on the previous technical innovation by third parties such as Hallenbeck by providing a system which enables the TV program information to be processed and displayed in manageable parts and provides a different user interface. The program information is downloaded and stored in a schedule controller. Part of the program information is retrieved from the memory and displayed automatically when the user selects a TV channel. The new system enables other more detailed program information, which prior art systems could not manage and display, to be retrieved and displayed as a result of user input. The user experiences the result of the technical contribution in the form of the availability, on request, of more detailed program information in a second overlay."
(Page 9, paragraph 34 of Telecast's 1 May 2014 Statement).

Although it is well understood that the object of the alleged invention, the subject-matter of European patent N° 1 003 442, is to provide more information to the user concerning a selected program, in particular by overlaying, the Court will find that Telecast's patent provides no technical element able to ensure the presentation of the requested information.

The description of European patent N° 1 003 442 merely indicates that it is preferable to provide information on the programs, in particular by way of notes about the program overlaying on the displayed television grid, **but it provides no technical detail as to how to display the said program notes.**

Paragraph [0010] of the patent description merely indicates:

"Program notes for a selected program are overlaid over the grid guide upon request. The program note can be toggled off/on using a SELECT command. The program note 52 overlays and hides 3 or 4 listings of a guide. To minimize concealment of the guide, an auto-rolling note is used.

The program note will overlay either the top half or bottom half of the screen, as necessary to avoid masking the title of the selected listing. If the cursor 32 is in the upper half of the screen, the note will appear in the bottom half, and vice versa.

If the cursor 32 is moved to the lower half of the screen, the note will automatically position itself in the upper half of the screen."

Therefore, since "*the novel technical features*" enabling information to be presented, as required by the EPC directives mentioned by the claimant, are not provided, the Court will find that claims 1 and 2 of European patent N° 1 003 442 are not patentable.

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And the amendments of the claims proposed by Telecast in its 1 May 2014 Statement change in no way this conclusion since they do not add any novel technical detail.

Claims 1 and 2 of European patent N° 1 003 442 as granted or the claims as proposed to be amended, should therefore be held invalid for this first reason.

Should the Court consider that this invention is not excluded from patentability, it will note that it is not new or, at least, that it lacks an inventive step.

4.3. Lack of novelty of claims 1 and 2 of European patent N° 1 003 442

In accordance with Article 54 (1) EPC:

"An invention shall be considered to be new if it does not form part of the state of the art."

The method for accessing information about television programs, the subject-matter of claim 1 of European patent N° 1 003 442, comprises the following steps:

- a) a step of storing in an electronic memory of a schedule controller operably connected with a monitor screen, a plurality of television program listings, each listing including title, telecast time and channel;
- b) a step of displaying on the monitor screen an overlay providing, from the stored listings, a title or channel information on a selected program simultaneously with the selected program upon selection of a channel change;
- c) a step of displaying, responsive to a user input, a further overlay containing further information on the selected program from the stored listings.

Claim 2 relates to an apparatus that can implement the steps of the method described above.

Therefore, the observations made with regard to claim 1 will apply *mutatis mutandis* to claim 2.

Claims 1 and 2 of European patent N° 1 003 442 are not new over European patent application N° 0 447 968, filed by RCA Licensing Corporation, whose inventor is Mr Bruno Hennig (hereinafter referred to as "*the Hennig patent application*", Blue Cable / TV Grid exhibit N° 1).

The Hennig patent application was filed on 14 March 1991 and relates to an "*Apparatus for providing TV program information*".

Rejoinder to the Reply and Reply to the Defence to the Counterclaim on behalf of Blue Cable France SA, Blue Cable Germany GmbH, TV Grid Switzerland SA and TV Grid Italy SpA

(May 2014)

The invention the subject-matter of this patent application describes how to obtain information concerning television programs, such as the starting and end time, by means of pages called "VPT" in particular (*Videorecorder Programming by Teletext*¹¹).

This patent application discloses all the features of claims 1 and 2 of European patent N° 1 003 442.

This patent application relates to television receivers incorporating teletext decoders comprising a memory storing information on the programs, such as, in particular, the title, the channel, and the starting and end time of the program (page 4, column 6, lines 1 to 6), as illustrated by figure 1a) reproduced below:

P402	402	CH-TEXT	15.02.90	14:25:03
SRG	TV-DRS	Donnerstag	15. Februar	1990
			24101	150290
			CF	
08.30	0830	Schulfernsehen: Geographie		
09.20	0920	Reise durch unseren Körper		
09.50	2500	Ende / Pause		
12.55	1255	Nachrichten		
13.00	1300	Ein Heim für Tiere		
13.55	1355	Zeitspiegel: Herrscher des goldenen Dreiecks		
14.45	1445	MTV		
15.40				

Figure 3: figure 1a of European patent application N° 0 447 968 (Hennig) showing the information on the programs stored in a television receiver incorporating a teletext decoder

Telecast alleges that feature a) of claim^o 1 of European patent N° 1 003 442 is not disclosed by the Hennig patent because the information on the television program are not stored in the same electronic memory of a schedule controller operably connected with a monitor screen, but is only obtained via teletext signals or using a video programming server.

This assertion is totally erroneous.

¹¹ Teletext is an information retrieval service in the form of text and animations, which is transmitted within the television signal of a channel (source: Wikipedia).

Rejoinder to the Reply and Reply to the Defence to the Counterclaim on behalf of Blue Cable France SA, Blue Cable Germany GmbH, TV Grid Switzerland SA and TV Grid Italy SpA

(May 2014)

While the Hennig patent application provides for obtaining the information on the television programmes using teletext signals or video programming server code, information *is* then recorded in the system memory in order to be transmitted to the user via the television screen.

This information is then regularly updated by the system (as required by any electronic program guide).

The system described in the Hennig patent application does include a memory to store and extract the title of a program, its starting time and the starting time of the following programme:

*"signal processing apparatus comprising :
[...]*

memory means for storing and retrieving at least said program title information and included starting time information for the current program and starting time information for the next program decoded by said first signal decoder means;" (Blue Cable / TV Grid exhibit N° 1, column 6, lines 1 to 6)

Figure 2 of the Hennig patent application also mentions the presence of a memory in the decoder connected with the television.

Therefore, feature a) of claim 1 of European patent N° 1 003 442 is infringed.

The Hennig patent application further provides for the possibility of displaying in overlays (references 540 and 540') the title or the information on the channel of a selected program simultaneously with the selected program upon selection of a channel change, as illustrated by figures 5a and 5b reproduced below:

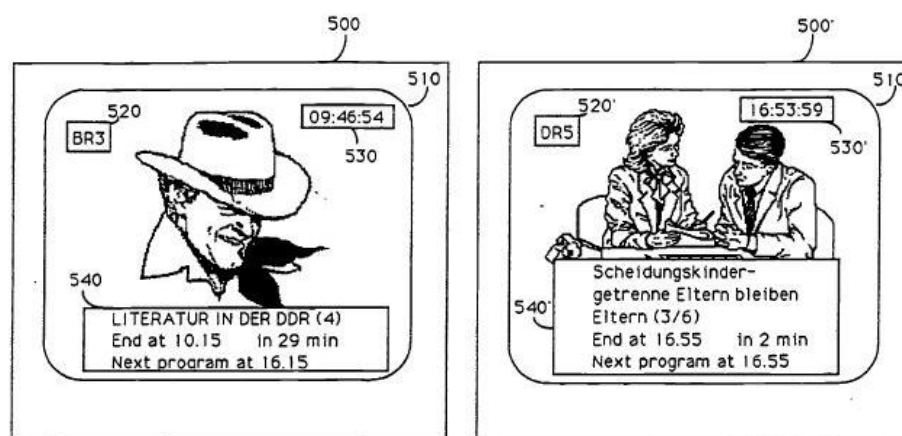


Figure 4: figures 5a and 5b of European patent application N° 0 447 968 (Hennig) illustrating the overlay of information on the selected program in banners 540 and 540'

Rejoinder to the Reply and Reply to the Defence to the Counterclaim on behalf of Blue Cable France SA, Blue Cable Germany GmbH, TV Grid Switzerland SA and TV Grid Italy SpA

(May 2014)

Finally, the Hennig patent application teaches a displaying step, responsive to a user input, of another overlay containing further information concerning the selected program from the stored listings.

The description of the Hennig patent application indicates in this respect:

"The display (540, 540'), indicating the remaining duration, has to be updated during the time the microcomputer waits for the next appearance of pages, and if desired, the title of the following program can also be displayed" (page 4, column 5, lines 9 to 13)

Therefore, the method the subject-matter of claim 1 and the device implementing this method, which is the subject-matter of claim 2, are not new when compared to the teachings of the Hennig patent application.

In its Reply of 1 May 2014, Telecast alleges that it is not possible, in the Hennig patent application, to know whether the displayed information is displayed automatically, upon choosing a channel, or at a user's request. In the context of an electronic program guide, the user obviously has to choose the guide using his remote control in order to obtain information about it.

Therefore, this argument should be dismissed.

Moreover, Telecast alleges that the Hennig patent application does not disclose the display of additional information, as required by feature c) of claim 1 of European patent application N° 1 003 442.

Yet the Hennig patent application indicates that any updating of the information displayed concerning a programme is taken into account, so that different information can be displayed (such as a program change or a change in the starting time of a program for example).

Therefore, claims 1 and 2 of European patent N° 1 003 442 as granted should be held invalid by the Court.

Telecast, which is aware that the claims of its patent are not new, proposed to amend these claims in the same way as United Video Program Inc., the holder of the patent at that time, had proposed to do during the opposition procedure.

This company had admitted that claims 1 and 2 of its patent were not new, in particular when compared to the teachings of the Hennig patent application (see page 17 of this statement).

Since the opposition was subsequently withdrawn by the opponents, European patent N° 1 003 442 was finally granted as filed, without the amendments proposed in the main request having been adopted.

It remains that the holder of European patent N° 1 003 442 admitted during the opposition procedure that claims 1 and 2 are not new over the teachings of the Hennig patent application.

Rejoinder to the Reply and
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Grid Switzerland SA and TV
Grid Italy SpA

(May 2014)

This is also the case concerning claims 1 and 2 as amended by Telecast, pursuant to Rule 30 of the Rules of Procedure.

The suggested amendments which, as the claimant admitted, do not add any technical detail concerning the contribution of the invention, are also disclosed in the Hennig patent application.

The additional information that can be obtained is obtained using a remote control in particular.

The Court can only note that claims 1 and 2, as granted or as amended, should therefore be held invalid for lack of novelty.

In any case, these claims will be held invalid for lack of inventive step.

4.4. Lack of inventive step of claims 1 and 2 of European patent N° 1 003 442

Article 56 EPC indicates:

"An invention shall be considered as involving an inventive step if, having regard to the state of the art, it is not obvious to a person skilled in the art. If the state of the art also includes documents within the meaning of Article 54, paragraph 3, these documents shall not be considered in deciding whether there has been an inventive step."

According to the description of European patent N° 1 003 442, the invention solves the problem of the organisation and visualisation of the large amount of information relating to television programs.

In particular, the purpose of the invention is to allow a user to obtain information on a specific program without this information taking up too large a part of the television screen so that part of the program list remains visible.

Claims 1 and 2 of European patent N° 1 003 442 do not involve any inventive step for the skilled person, regarding both:

- ▶ the teachings of the Hennig European patent application N° 0 447 968 (**4.4.1.**);
- ▶ and the publication "*Personal Home TV Programming Guide*", by Peter D. Hallenbeck, presented during the *IEEE 1990, International Conference on consumer electronics* held in Chicago from 6 to 8 June 1990 (Blue Cable / TV Grid exhibits N° 4 and 5) and the information on this system available prior to European patent N° 1 003 442 (Blue Cable / TV Grid exhibit N° 6) (**4.4.2.**).

4.4.1. Lack of inventive step over the teachings of European patent application N° 0 447 968

It has been previously demonstrated (see section 4.3) that the Hennig European patent application disclosed all the features of claims 1 and 2 of European patent N° 1 003 442 (as granted or as amended).

Rejoinder to the Reply and Reply to the Defence to the Counterclaim on behalf of Blue Cable France SA, Blue Cable Germany GmbH, TV Grid Switzerland SA and TV Grid Italy SpA

(May 2014)

Should the Court consider that all of the features of claims 1 and 2 are not disclosed in this document, it will note that the person skilled in the art did not need to exercise any inventive skill to arrive at the invention considering the teachings of the Hennig patent application.

The Hennig patent application already teaches the visualisation of the information about a program in the form of notes (banners) taking up only part of the television screen (see references 540 and 540' on figures 5a and 5b reproduced below):

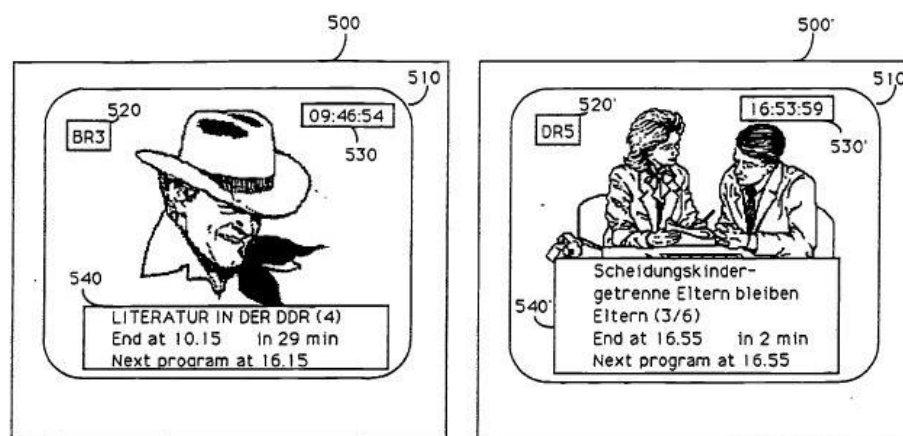


Figure 5: figures 5a and 5b of European patent application No 0 447 968 (Hennig) illustrating the overlay of information on the selected program in program banners 540 and 540'

Therefore, the mere overlay of the banner on the list of all the programs in order that part of that list can still be read by the user merely constitutes an improved visualisation for the user that does not confer any technical advantage.

This is only an arbitrary choice that could obviously be made by the person skilled in the art, who is an engineer specialising in audio-visual reception systems, set-top boxes in particular.

Telecast alleges that it was not obvious to the skilled person to provide for the display of additional information in program notes appearing on a part of the television screen upon a user's selection.

Yet the technical problem that the invention seeks to solve is to provide a certain amount of information on a television program within the limitations of the television display (paragraph [0002] of European patent No 1 003 442).

The person skilled in the art who already know how to use program notes to provide information on the titles of the programs, their starting and end times, with regard to the teachings of the Hennig patent application can, without exercising any inventive step, provide for displaying other program notes containing additional information in response to a user's choice.

Therefore, claims 1 and 2 of European patent No 1 003 442, as granted or as amended, should be held invalid for lack of inventive step.

They should also be held invalid having regard to the teachings of the system from the prior art named "SuperGuide".

Rejoinder to the Reply and
Reply to the Defence to the
Counterclaim on behalf of
Blue Cable France SA, Blue
Cable Germany GmbH, TV
Grid Switzerland SA and TV
Grid Italy SpA

(May 2014)

4.4.2. Lack of inventive step over the publication "*Personal Home TV Programming Guide*" by Peter D. Hallenbeck and over the information available on that system prior to European patent N° 1 003 442

Peter D. Hallenbeck developed, as of 1985 (that is, nine years before Telecast's alleged invention), a system for the organisation and access to television programs called "*SuperGuide*".

This system was presented during the *IEEE 1990 International Conference on consumer electronics* held in Chicago from 6 to 8 June 1990 (Blue Cable / TV Grid exhibits N° 4 and 5).

Two versions were developed, one in 1985 and the other in 1988, taking into account the increase in memory capacity and therefore the amount of information that can be displayed on the users' television screen:

"The Original Guide loaded the listing for all services available, much as the paper guides print the listings for all available services. The listings are stored in the local box to allow for immediate response to any action taken by the viewer.

[...]

The New SuperGuide System

Design of the new system began in 1988. Keeping in mind the perils of any "second system," we set out to correct the "undocumented features" in first system and incorporate many of the little things we learned about people interactions with the original SuperGuide system.

[...]

The Great DRAM crunch of '88 made us determined to significantly increase how much information we could store in a given amount of memory" (Blue Cable / TV grid exhibit N° 4)

Rejoinder to the Reply and Reply to the Defence to the Counterclaim on behalf of Blue Cable France SA, Blue Cable Germany GmbH, TV Grid Switzerland SA and TV Grid Italy SpA

(May 2014)

An article from Wikipedia also details the functionalities of the SuperGuide developed by Peter D. Hallenbeck (Blue Cable / TV Grid exhibit N° 6), in its first and second versions¹², as illustrated by the pictures reproduced below:

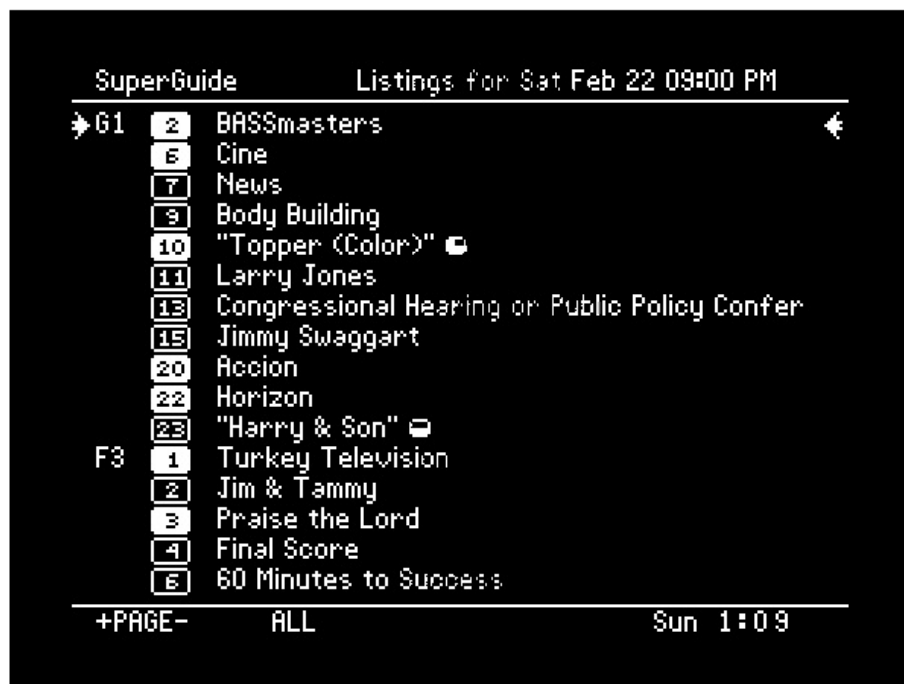


Figure 6: screen shot taken from the first version of the SuperGuide system developed by Peter D. Hallenbeck, in February 1986 http://en.wikipedia.org/wiki/File:SuperGuide_1_screen_16L.jpg (Blue Cable / TV Grid exhibit N° 4)

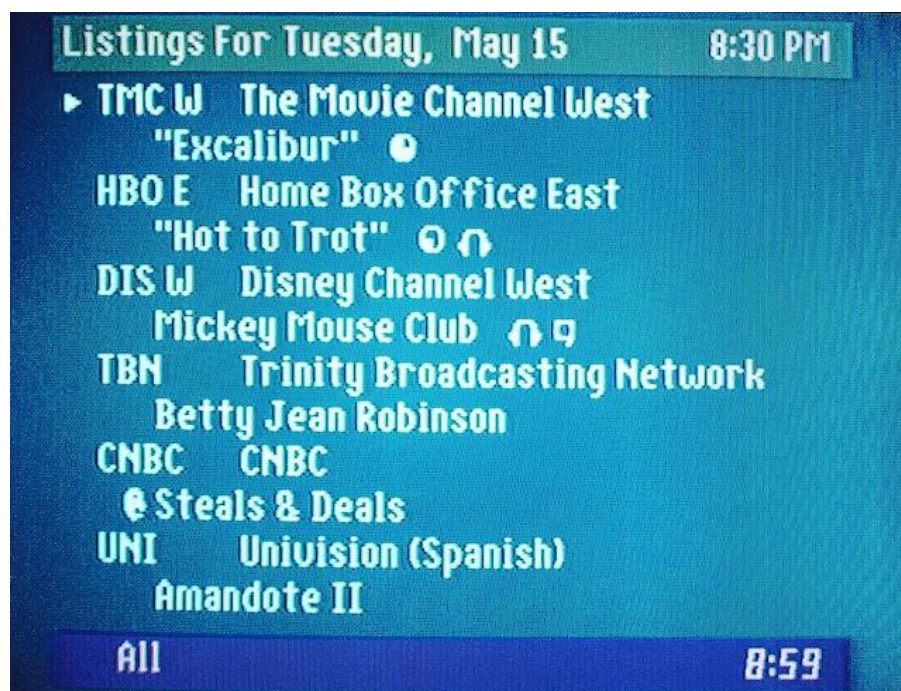


Figure 7: screen shot taken from the second version of the SuperGuide system developed by Peter D. Hallenbeck, in May 1990 (Blue Cable / TV Grid exhibit N° 4)

¹² The claimant admitted, during the interim procedure of 22 April 2014 that the photographs from the Wikipedia article date back to long before the priority date of European patent N° 1 003 442.

Rejoinder to the Reply and Reply to the Defence to the Counterclaim on behalf of Blue Cable France SA, Blue Cable Germany GmbH, TV Grid Switzerland SA and TV Grid Italy SpA

(May 2014)

Considering the teachings of the SuperGuide system, the person skilled in the art did not have to exercise any inventive skill to present additional information on the programs in banners that do not take up the totality of a television screen.

Telecast alleges that the person skilled in the art was not directed towards presenting the information on the programs in overlaid program notes.

However, the Court will note that the person skilled in the art knew of such program notes from the Hennig patent application.

The teachings of the SuperGuide system and the Hennig patent application demonstrate that, therefore, claims 1 and 2 of European patent N° 1 003 442 do not involve an inventive step.

This is also the case of claims 1 and 2 as Telecast proposes to amend them, since the use of a remote control to select the title of a program and obtain information about it was already widely known.

In order to convince the Court, the defendants request that Peter D. Hallenbeck, who developed the SuperGuide system, be heard in these proceedings, in accordance with Rule 176 of the Rules of Procedure:

*"Subject to the orders of the Court referred to in Rules 104(e) and 112.2(b) a party seeking to offer oral witness evidence shall make an * Application for the hearing of the witness which shall set out:*

- (a) the reasons why the witness should be heard in person;*
- (b) the facts which the party expects the witness to confirm; and*
- (c) the language in which the witness shall give evidence"*

Considering the information that Peter D. Hallenbeck is likely to provide to enlighten the Court about the prior art with regard to European patent N° 1 003 442 and in order that this information can be challenged by the parties, the Court is requested to authorise the hearing of Peter D. Hallenbeck.

Peter D. Hallenbeck being a U.S. citizen, he can be heard in the language of the proceedings, namely English.

The defendants therefore requested that the Judge-rapporteur accede to this request for the hearing of a witness during the interim conference of 22 April 2014: the Judge-rapporteur considered that he did not propose to summon this witness at the final oral hearing.

However, the defendants reserve the right to request that he be present at the oral hearing to offer witness evidence should the need arise.

In accordance with Rule 180, paragraph 2¹³, the defendants are prepared to pay a sum that the Court will consider sufficient to cover the expenses incurred by the witness.

¹³ Rule 180 of the Rules of Procedure reads as follows:

- "1. A witness shall be entitled to reimbursement of:*
- (a) expenses for travelling and stay; and*
 - (b) loss of income caused by his hearing in person.*

Rejoinder to the Reply and Reply to the Defence to the Counterclaim on behalf of Blue Cable France SA, Blue Cable Germany GmbH, TV Grid Switzerland SA and TV Grid Italy SpA

(May 2014)

Should the Court hold that claims 1 and 2 were valid, it can only hold that they are not reproduced by Blue Cable's set-top boxes, which incorporate the software developed by TV Grid.

5. Absence of infringement of claims 1 and 2 of European patent № 1 003 442

Telecast alleges that claims 1 and 2 of its European patent № 1 003 442 are infringed by Blue Cable's set-top boxes incorporating the software developed by TV Grid.

However, it has been demonstrated previously that claims 1 and 2 of European patent № 1 003 442 are not valid.

Therefore, the request lodged by Telecast on this issue should be dismissed.

In any case, Telecast does not prove that the defendants' electronic program guide implement claims 1 and 2 of this patent.

The method for accessing information on television programs, the subject-matter of claim 1 of European patent № 1 003 442, comprises the following steps:

- a) a step of storing in an electronic memory of a schedule controller operably connected with a monitor screen, a plurality of television program listings, each listing including title, telecast time and channel;
- b) a step of displaying on the monitor screen an overlay providing, from the stored listings, a title of and channel information on a selected program simultaneously with the selected program upon selection of a channel change;
- c) a step of displaying, responsive to a user input, a further overlay containing further information on the selected program from the stored listings.

Telecast does not prove that the additional information displayed when the title of a program is selected are overlaid on the programs guide, hiding part of the programs list to the user as required by features b) and c) of this claim.

After the witness has carried out his duties and upon his request, the Registry shall make a payment to the witness towards the expenses incurred.

2. Where a party has lodged an Application for the hearing of a witness in person, the Court shall make the summoning of the witness conditional upon the deposit of a sum sufficient to cover the expenses referred to in paragraph 1.

Where the Court orders of its own motion that a witness be heard in person, the funds necessary shall be provided by the Court."

Rejoinder to the Reply and Reply to the Defence to the Counterclaim on behalf of Blue Cable France SA, Blue Cable Germany GmbH, TV Grid Switzerland SA and TV Grid Italy SpA

(May 2014)

Yet the electronic program guide provided by the Blue Cable and TV Grid's set-top boxes does not provide information overlaid over the program grid; as a matter of fact, the information about a selected program is integrated to the said program grid as shown by the photograph reproduced below:



Figure 8: screen shot of Blue Cable's electronic program guide

As shown by the image above, upon the selection of the program named "The Shadow" on channel 112, the information on this program is displayed in the lower part of the screen.

This entails reducing the height of each line corresponding with each channel in the TV guide.

Therefore, the information provided upon the selection by a user is not overlaid over the information displayed in the grid: it is the grid which is reduced in height so that the user accedes to the requested information.

Therefore, features b) and c) are not infringed.

Consequently, the request lodged by Telecast with respect to the alleged infringement of claims 1 and 2 of its European patent N° 1 003 442, as granted or as amended, should be dismissed.

In any case, the Court will record that Telecast acknowledged during the interim conference that it cannot obtain a measure of injunction and compensation for the acts committed in Switzerland as this country is not a member of the Agreement on the Unified Patent Court.

(May 2014)

ON THESE GROUNDS

Mainly,

Having regard to Rule 295 c) ii) of the Rules of Procedure,

- ▶ Stay the proceedings pending the decision of the Court of Appeal on the appeal lodged by Blue Cable and TV Grid on the issue of the jurisdiction of the Central division of the Court;

In the alternative,

- ▶ Hold Telecast's action inadmissible for lack of standing to sue as Telecast does not justify that it is the holder of European patent N° 1 003 442;

In the very alternative,

Having regard to Article L. 613-9 of the French Intellectual Property Code,

- ▶ Hold Telecast's action inadmissible regarding the French territory because the assignment has not been entered in the French Patent Register;

In the very alternative,

Having regard to Rule 30 of the Rules of Procedure:

- ▶ Dismiss the requests for amending claims 1 and 2 of European patent N° 1 003 442 for non-observance of the provisions of that rule;

Having regard to Article 65, (1) and (2) of the Agreement and Article 138, 1) of the European Patent Convention:

- ▶ Hold claims 1 and 2 of European patent N° 1 003 442 invalid for lack of patentability, lack of novelty or at least for lack of inventive step, for all the national designations concerned;
- ▶ In any case, dismiss all the requests lodged by Telecast with respect to the infringement and the compensation for the damage it alleges it has suffered;
- ▶ Record that Telecast no longer lodges a claim regarding the Swiss territory designated by European patent N° 1 003 442 as the Swiss Confederation is not a member of the Agreement on the Unified Patent Court;
- ▶ Order Telecast to pay for the expenses incurred by Blue Cable and TV Grid for their defence, in accordance with Article 69 of the Agreement.

Rejoinder to the Reply and
Reply to the Defence to the
Counterclaim on behalf of
Blue Cable France SA, Blue
Cable Germany GmbH, TV
Grid Switzerland SA and TV
Grid Italy SpA

(May 2014)

EXHIBITS PRODUCED IN COURT

Nº	Designation
1.	European patent application Nº 0 447 968
2.	Communication of the observations of the opposition division dated 9 February 2007
3.	Letter dated 10 August 2007 from United Video Program Inc.'s European representative in reply to the observations of the opposition division, with claims 1 and 2 as filed in annex
4.	Article entitled " <i>Personal Home TV Programming Guide</i> "
5.	List of the speakers at the <i>IEEE 1990 International Conference on consumer electronics</i> held in Chicago from 6 to 8 June 1990
6.	<i>Electronic program guide</i> , Wikipedia, the free encyclopaedia

WITH ALL RESERVES

MÉMOIRE EN DUPLIQUE AU MÉMOIRE EN RÉPLIQUE ET MÉMOIRE EN RÉPLIQUE AU MÉMOIRE EN DÉFENSE À LA DEMANDE RECONVENTIONNELLE

POUR

1. **Blue Cable France SA**, société de droit français, inscrite au registre du commerce de Paris sous le n° B 345 724 631, dont le siège est 55, rue du Faubourg Saint-Honoré, 75008 Paris, France
2. **Blue Cable Germany GmbH**, société de droit allemand, dont le siège est Spreeweg 1, 10557 Berlin, Allemagne
3. **TV Grid Switzerland SA**, société de droit suisse, dont le siège est Bundesplatz, 3000 Bern, Suisse
4. **TV Grid Italy SpA**, société de droit italien, dont le siège est Piazza del Quirinale, 1, 00187 Roma, Italie

Défendeurs

représentés par **M^e Pierre Véron** et **M^e Amandine Métier**,
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CONTRE

1. **Telecast BV**, dont le siège est Pompstationsweg 32, Den Haag, Pays-Bas

Demandeur

M. Michael Burdon,
solicitor
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Olswang LLP

Mémoire en duplicata au mémoire en réplique et mémoire en réplique au mémoire en défense à la demande reconventionnelle pour le compte des sociétés Blue Cable France SA, Blue Cable Germany GmbH, TV Grid Switzerland SA et TV Grid Italy SpA

(Mai 2014)

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(Mai 2014)

PLAISE AU TRIBUNAL

Par mémoire en demande du 24 mars 2014, la société Telecast BV (ci-après « société Telecast ») a engagé une procédure en contrefaçon des revendications n° 1 et 2 de son brevet européen n° 1 003 442 à l'encontre des sociétés Blue Cable France, Blue Cable Germany (ci-après « les sociétés Blue Cable »), TV Grid Switzerland et TV Grid Italy SpA (ci-après « les sociétés TV Grid ») (collectivement « les défendeurs »).

Le 31 mars 2014, les défendeurs ont déposé des objections préliminaires en application de la règle 19 du Règlement de procédure¹, relativement à :

- ▶ la compétence de la division centrale de la Juridiction unifiée du brevet pour connaître de la présente procédure ;
- ▶ la recevabilité de la demande de la société Telecast qui ne justifie pas être propriétaire du brevet européen n° 1 003 442 et qui, en tout cas, ne justifie pas avoir inscrit l'acquisition de ce titre au registre national des brevets français ;
- ▶ la fourniture de traductions des documents de la procédure.

¹ Règle 19 du Règlement de procédure :

« 1. Dans un délai d'un mois à compter de la signification du mémoire en demande, le défendeur peut déposer une objection préliminaire concernant :

- (a) la compétence de la Juridiction
- (b) la compétence de la division indiquée par le demandeur [règle 13, § 1, point i)] ;
- (c) la langue du mémoire en demande [règle 14].

2. Une *objection préliminaire contient :

- (a) les informations prévues à la règle 24, § 1, points a) à c) ;
- (b) la décision sollicitée par le défendeur ;
- (c) les motifs fondant l'objection préliminaire ;
- (d) le cas échéant, les faits et preuves invoqués.

3. L'objection préliminaire est établie:

- (a) dans la langue de procédure [règle 14, § 2] ; ou
- (b) dans une langue officielle de l'État membre contractant dans lequel le défendeur a son domicile ou son principal établissement ou, en l'absence de domicile ou de principal établissement, son établissement.

4. Si l'action a été engagée devant une division régionale, le défendeur peut, par une objection préliminaire, demander un transfert de l'action vers la division centrale en vertu de l'article 33, § 2, de l'Accord. L'objection préliminaire contient, dans ce cas, tous les faits et preuves étayant l'existence de la même contrefaçon dans au moins trois divisions régionales.

5. Le greffe invite, dès que possible, le demandeur à faire part de ses observations sur l'objection préliminaire. Le cas échéant, le demandeur peut, de sa propre initiative, remédier à toute insuffisance [règle 19, § 1, point b) ou c)], dans un délai de 14 jours à compter de la signification de la notification de l'objection préliminaire.

Alternativement, le demandeur peut soumettre des observations écrites dans le même délai. Le juge-rapporteur est informé de toute correction apportée ou de toute observation écrite soumise par le demandeur.

6. Le dépôt d'une objection préliminaire n'a pas d'incidence sur le délai pour déposer le mémoire en défense [règle 23], sauf décision contraire du juge-rapporteur.

7. Le défaut de dépôt par le défendeur d'une objection préliminaire dans le délai visé à la règle 19, § 1 est considéré comme une acceptation de la compétence de la Juridiction et de la division choisie par le demandeur. »

Mémoire en duplique au mémoire en réplique et mémoire en réplique au mémoire en défense à la demande reconventionnelle pour le compte des sociétés Blue Cable France SA, Blue Cable Germany GmbH, TV Grid Switzerland SA et TV Grid Italy SpA

(Mai 2014)

En application des règles 24² et 25³ du Règlement de procédure, les défendeurs ont, par leur mémoire en défense en date du 9 avril 2014, demandé au tribunal d'annuler les revendications n° 1 et 2 du brevet européen n° 1 003 442 ou, à tout le moins, de juger que les appareils incriminés (*set-top boxes*) Blue Cable ne mettent pas en œuvre ces revendications.

Par décision du 22 avril 2014, le Juge-rapporteur a statué sur les objections préliminaires des sociétés Blue Cable et TV Grid.

Il a écarté l'objection relative à l'incompétence de la division centrale de la Juridiction unifiée du brevet, mais a autorisé les parties à interjeter appel de cette question ; ce que les sociétés Blue Cable et TV Grid ont fait le 24 avril 2014.

Les sociétés Blue Cable et TV Grid demandent au tribunal de surseoir à statuer dans l'attente de la décision de la Cour d'appel sur cette question.

² La règle 24 du Règlement de procédure se lit ainsi :

« Le *mémoire en défense contient :

(a) les noms du défendeur et du représentant du défendeur ;

(b) les adresses postale et électronique pour les significations au défendeur et les noms et adresses des personnes habilitées à recevoir signification ;

(c) le numéro d'affaire du dossier ;

(d) l'indication, le cas échéant, que le défendeur a déposé une objection préliminaire [règle 19] ;

(e) une indication des faits invoqués, y compris toute contestation des faits invoqués par le demandeur ;

(f) la preuve invoquée [règle 170.1], lorsqu'elle est disponible, et une indication de toute autre preuve qui sera présentée à l'appui ;

(g) les raisons pour lesquelles l'action doit être rejetée, les arguments de droit et tout argument tiré des dispositions de l'article 28 de l'Accord et, le cas échéant, toute contestation de l'interprétation des revendications proposée par le demandeur ;

(h) une indication de toute mesure que le défendeur sollicitera au sujet de l'action en contrefaçon, au cours de la procédure de mise en état [règle 104 (e)] ;

(i) l'indication le cas échéant, que le défendeur conteste l'estimation par le demandeur de la valeur de l'action en contrefaçon et les motifs de cette contestation ; et

(j) une liste des documents, y compris les attestations de témoin, visés au mémoire en défense ainsi que toute requête selon laquelle la traduction intégrale ou partielle de ces documents n'est pas nécessaire ou toute demande en vertu de la règle 262.2. Les règles 13.2 et 13.3 s'appliquent *mutatis mutandis*. »

³ La règle 25 du Règlement de procédure indique :

« 1. S'il est prétendu, dans le mémoire en défense, que les brevets prétendument contrefaits sont nuls, le mémoire en défense doit inclure une *demande reconventionnelle en nullité desdits brevets à l'encontre des titulaires des brevets conformément à la règle 43. La demande reconventionnelle en nullité contient :

(a) une indication de la portée de la nullité des brevets sollicitée ;

(b) un ou plusieurs motifs de nullité, qui sont étayés, autant que possible, par des arguments de droit, et, le cas échéant, une explication de l'interprétation des revendications proposée par le défendeur ;

(c) une indication des faits invoqués ;

(d) les preuves invoquées, lorsqu'elles sont disponibles, et une indication de toutes autres preuves qui seront présentées à l'appui ;

(e) une indication de toute mesure que le défendeur sollicitera au cours de la procédure de mise en état [règle 104 (e)] ;

(f) si le défendeur estime que la valeur du litige, y compris la demande reconventionnelle, excède la valeur de l'action en contrefaçon de plus de [EUR***], une indication de la valeur du litige incluant la demande reconventionnelle ;

(g) une déclaration de sa position, le cas échéant, sur les options prévues à l'article 33, § 3, points a), b) ou c) de l'Accord et à la règle 37.4 ;

(h) une liste des documents, y compris les attestations de témoin, visés à la demande reconventionnelle en nullité ainsi que toute requête selon laquelle la traduction intégrale ou partielle de ces documents n'est pas nécessaire. Les règles 13.2 et 13.3 s'appliquent *mutatis mutandis*, et ;

(i) dans la mesure où les titulaires des brevets ne sont pas demandeurs à la procédure en contrefaçon, les informations requises par la règle 13.1 (b) et (d) concernant lesdits titulaires.

2. Lorsque le demandeur n'est pas le titulaire ou n'est pas le seul titulaire du brevet ou des brevets concernés, le greffe signifie, dès que possible, une copie de la demande reconventionnelle en nullité au titulaire ou aux titulaires concernés, conformément à la règle 13.1 (e), et fournit une copie de chaque document visé au § 2. La règle 271 s'applique *mutatis mutandis*. Les titulaires concernés deviennent parties à la procédure en nullité et sont considérés défendeurs dans toutes les procédures ultérieures. Les titulaires fournissent les informations en vertu de la règle 13.1 (e) si elles n'ont pas déjà été fournies par le demandeur. »

Mémoire en duplique au mémoire en réplique et mémoire en réplique au mémoire en défense à la demande reconventionnelle pour le compte des sociétés Blue Cable France SA, Blue Cable Germany GmbH, TV Grid Switzerland SA et TV Grid Italy SpA

(Mai 2014)

Par ailleurs, le juge-rapporteur a estimé que les objections des défendeurs tendant à déclarer irrecevables les demandes de la société Telecast, en raison de son défaut de qualité à agir, à tout le moins pour ce qui concerne le territoire français, ne constituaient pas des objections préliminaires au sens de la règle 19 (1) et (4) du Règlement de procédure et qu'elles ne pouvaient permettre un rejet sommaire du mémoire en demande en application de la règle 334 (h) du Règlement de procédure.

Ainsi, le juge-rapporteur a estimé que ces demandes n'entraient pas dans sa compétence pour statuer sur des objections préliminaires ou pour permettre un rejet sommaire.

Mais il n'a pas jugé que ces demandes étaient mal fondées.

Afin d'en saisir formellement le tribunal, les sociétés Blue Cable et TV Grid ont donc déposé un mémoire en défense rectifié le 28 avril 2014.

Le demandeur a déposé son mémoire en réplique le 1^{er} mai 2014.

Par le présent mémoire en duplique, les défendeurs répondent aux arguments du demandeur.

Mémoire en duplicque au mémoire en réplique et mémoire en réplique au mémoire en défense à la demande reconventionnelle pour le compte des sociétés Blue Cable France SA, Blue Cable Germany GmbH, TV Grid Switzerland SA et TV Grid Italy SpA

(Mai 2014)

FAITS ET PROCÉDURE

La société Telecast BV et le brevet européen n° 1 003 442

La société de droit néerlandais Telecast BV prétend être titulaire du brevet européen n° 1 003 442 (pièce Telecast n° 2).

Ce brevet a été déposé le 10 septembre 1995 par la société américaine United Video Programmes Inc, spécialisée dans le développement de guides de programmes électroniques (EPG) sous priorité d'une demande de brevet des États-Unis d'Amérique.

Le brevet a été délivré le 12 juin 2002.

La société Telecast BV considère qu'elle l'a acquis le 24 décembre 2013 au même titre que les autres brevets déposés sous la même priorité américaine.

La cession a été inscrite au registre national des brevets en Allemagne et en Italie.

La société Telecast BV a accordé des licences d'exploitation de ce brevet (ainsi que pour d'autres brevets portant sur des fonctionnalités liées aux EPG) à différents fournisseurs de programmes.

Le brevet européen n° 1 003 442 porte sur une « *méthode et un appareil pour obtenir des informations sur des programmes de télévision* », qui prétend améliorer les guides de programmes électroniques connus.

Les sociétés Blue Cable France, Blue Cable Germany, TV Grid SpA et TV Grid Switzerland

À la demande de la société TV Grid Italy, un guide des programmes a été développé par la société TV Grid Switzerland.

Ce guide électronique des programmes est fourni par la société TV Grid Italy aux sociétés Blue Cable France et Blue Cable Germany qui les insèrent dans leur boîtiers décodeurs (« ci-après *set-top boxes* »).

Les guides de programmes électroniques

Au cours des trois dernières décennies, le nombre de chaînes de télévision disponibles a très fortement augmenté.

Les exploitants de chaînes ont intérêt à ce que les téléspectateurs puissent avoir connaissance des programmes en cours de diffusion ou à venir.

Mémoire en duplique au mémoire en réplique et mémoire en réplique au mémoire en défense à la demande reconventionnelle pour le compte des sociétés Blue Cable France SA, Blue Cable Germany GmbH, TV Grid Switzerland SA et TV Grid Italy SpA

(Mai 2014)

Jusqu'à l'apparition des moyens de communication électroniques, ces informations étaient essentiellement diffusées sous format papier : elles étaient présentées sous forme d'une liste de programmes organisée par chaîne et par heure de diffusion, avec des variantes pouvant porter sur l'heure de début et de fin du programme, la chaîne de diffusion ou encore intégrer des commentaires sur les programmes.

Face à cet accroissement du nombre de chaînes disponibles et à l'allongement consécutif des grilles de programmes, la solution a été d'offrir des grilles électroniques accessibles au téléspectateur directement sur son écran de télévision.

Les informations relatives aux programmes peuvent être transmises par différents moyens, de préférence par les ondes *via* les services de prestataires privés : le téléspectateur peut savoir quel programme est diffusé à une heure donnée en sélectionnant une grille et en recherchant une heure, un horaire et une chaîne déterminés.

Typiquement, la navigation dans le guide de programmes électronique se fait au moyen d'une télécommande, laquelle contrôle un marqueur de sélection sur l'écran, et la sélection d'un programme est réalisée en pointant le marqueur sur le programme puis en pressant le bouton de sélection sur la télécommande, après quoi une opération relative à ce programme est lancée, telle que l'obtention d'informations complémentaires sur celui-ci.

Opposition au brevet européen n° 1 003 442 devant l'Office européen des brevets

Le brevet européen n° 1 003 442 a fait l'objet d'une opposition devant l'Office européen des brevets.

La division d'opposition a émis un avis préliminaire concluant à l'absence de nouveauté et d'activité inventive de la revendication 1 (pièce Blue Cable / TV Grid n° 2).

La société United Video Programmes a soumis des revendications modifiées (pièce Blue Cable / TV Grid n° 3) en réponse à cet avis préliminaire mais l'opposition a ensuite été retirée, de sorte que seules les revendications telles que initialement déposées sont en vigueur.

La présente procédure

La société Telecast BV a imaginé d'opposer le brevet européen n° 1 003 442 aux sociétés Blue Cable et TV Grid.

En juin 2013, elle a cru pouvoir mettre en demeure les sociétés Blue Cable France et Blue Cable Germany de cesser de mettre en œuvre la méthode protégée par la revendication 1 du brevet européen n° 1 003 442 et de cesser de fabriquer, détenir, mettre dans le commerce et offrir à la vente des *set-top boxes* protégées par la revendication 2 dudit brevet.

Les sociétés Blue Cable, considérant qu'elles sont parfaitement en droit de commercialiser les *set-top boxes* litigieuses munies de leur guide électronique des programmes, ont estimé inutile de répondre à ces lettres de menace.

Mémoire en duplique au mémoire en réplique et mémoire en réplique au mémoire en défense à la demande reconventionnelle pour le compte des sociétés Blue Cable France SA, Blue Cable Germany GmbH, TV Grid Switzerland SA et TV Grid Italy SpA

(Mai 2014)

Par mémoire en demande du 24 mars 2014, la société Telecast BV a formé contre les sociétés Blue Cable France, Blue Cable Germany, TV Grid Switzerland et TV Grid Italy une demande en contrefaçon de son brevet européen n° 1 003 442 devant la division centrale du tribunal de première instance de la Juridiction unifiée du brevet.

Compte-tenu du domaine technique du brevet concerné, l'affaire a été attribuée au siège de Paris.

Les sociétés Blue Cable et TV Grid ont formulé, le 19 mars 2014, des objections préliminaires en application de la règle 19 du Règlement de procédure ; ces objections ont été rejetées ou estimées irrecevables en tant qu'objections préliminaires par décision du juge-rapporteur du 22 avril 2014

Comme autorisé par le juge-rapporteur dans sa décision du 22 avril 2014, les sociétés Blue Cable et TV Grid ont interjeté appel du rejet de leur objection préliminaire portant sur l'incompétence de la division centrale du tribunal en application de l'article 33 § 1 a) de l'Accord ⁴.

Elles ont exposé, dans leur mémoire du 9 avril 2014, leur défense tendant à obtenir l'annulation des revendications n° 1 et 2 du brevet européen n° 1 003 442 dans toutes ses désignations nationales et le rejet des demandes en contrefaçon.

Par leur mémoire en défense rectifié du 28 avril 2014, les sociétés Blue Cable et TV Grid ont réitéré leurs demandes telles qu'exposées dans leur mémoire du 9 avril 2014 en y incluant, à titre préliminaire :

- ▶ une demande de sursis à statuer dans l'attente de la décision de la Cour d'appel sur la question de la compétence de la division centrale du tribunal ;
- ▶ la fin de non-recevoir pour défaut de droit à agir de la société Telecast, qui ne justifie pas être propriétaire du brevet européen n° 1 003 442, fin de non-recevoir que le juge-rapporteur, dans sa décision du 22 avril 2014, a estimé ne pas relever de sa compétence ;
- ▶ la fin de non-recevoir concernant toute demande relative au territoire français pour défaut de la recevabilité de la demande puisque, en tout cas, la société Telecast ne justifie pas avoir inscrit l'acquisition de ce titre au registre national des brevets français

En tout état de cause, le tribunal prendra acte de ce que la société Telecast a admis, lors de la conférence de mise en état, qu'elle ne pourrait pas obtenir une mesure d'interdiction et de réparation pour les actes commis en Suisse, ce pays n'étant pas membre de l'Accord relatif à une juridiction unifiée du brevet.

La société Telecast a déposé le 1^{er} mai 2014 un mémoire en réplique.

Les sociétés Blue Cable et TV Grid y répondent, par le présent mémoire.

⁴ Les sociétés Blue Cable et TV Grid ont réitéré leur déclaration d'appel le 30 avril 2014, soit le lendemain de la signification de la décision du Juge-rapporteur du 22 avril 2014, en conformité avec la règle 224 du Règlement de procédure.

Mémoire en duplique au mémoire en réplique et mémoire en réplique au mémoire en défense à la demande reconventionnelle pour le compte des sociétés Blue Cable France SA, Blue Cable Germany GmbH, TV Grid Switzerland SA et TV Grid Italy SpA

(Mai 2014)

DISCUSSION

Les sociétés Blue Cable et TV Grid demandent au tribunal de surseoir à statuer dans l'attente de la décision de la cour d'appel sur la question de la compétence de la division centrale du tribunal pour connaître du présent litige (**1.**).

Si le tribunal refuse de faire droit à cette demande, les sociétés Blue Cable et TV Grid lui demandent de juger irrecevable l'action de la société Telecast puisque cette société ne justifie pas être propriétaire du brevet européen n° 1 003 442 sur lequel elle fonde ses demandes (**2.**) ; à titre subsidiaire, elles lui demandent de déclarer l'action irrecevable en ce qui concerne les faits qui se sont déroulés sur le territoire français, en raison de l'absence d'inscription au registre national des brevets français de la cession du brevet sur le fondement duquel l'action a été engagée (**3.**).

Si le tribunal considère que la société Telecast est recevable à agir, pour certains des territoires désignés par le brevet, les sociétés Blue Cable et TV Grid lui demandent d'annuler les revendications n° 1 et 2 du brevet européen n° 1 003 442 pour absence de brevetabilité (comme portant sur une présentation d'informations), en tout cas, pour défaut de nouveauté ou, à tout le moins, défaut d'activité inventive (**4.**)

Enfin, dans l'hypothèse — hautement improbable — où la validité des revendications n° 1 et 2 du brevet européen n° 1 003 442 serait reconnue, les sociétés Blue Cable et TV Grid demandent au tribunal de juger que leurs *set top boxes* ne les mettent pas en œuvre (**5.**).

1. Sursis à statuer dans l'attente de la décision de la cour d'appel sur la compétence de la division centrale du tribunal

Le juge-rapporteur, dans sa décision du 22 avril 2014, a autorisé les parties à faire appel du rejet de l'objection préliminaire des défendeurs tendant à déclarer la division centrale du tribunal incompétente pour connaître du présent litige.

Les sociétés Blue Cable et TV Grid ont interjeté appel de cette décision le 24 avril 2014 ; cette demande a été réitérée le 30 avril 2014.

Elles demandent au tribunal, en application de la règle 295 c) ii)⁵ du Règlement de procédure, de surseoir à statuer dans l'attente de la décision de la cour d'appel.

Comme l'a souligné le juge-rapporteur dans sa décision du 22 avril 2014, la question de la compétence de la division centrale du tribunal est d'une importance fondamentale pour le présent litige, mais aussi pour tout futur litige qui présenterait une configuration similaire quant à la localisation des défendeurs.

⁵ L'article 295 c) ii) indique :
 « La Jurisdiction peut surseoir à statuer :
 [...] (c) lorsqu'un appel est formé devant la Cour d'appel contre une décision ou une ordonnance du Tribunal de première instance :
 [...] (ii) tranchant une question de recevabilité ou une objection préliminaire ; »

Mémoire en duplicata au mémoire en réplique et mémoire en réplique au mémoire en défense à la demande reconventionnelle pour le compte des sociétés Blue Cable France SA, Blue Cable Germany GmbH, TV Grid Switzerland SA et TV Grid Italy SpA

(Mai 2014)

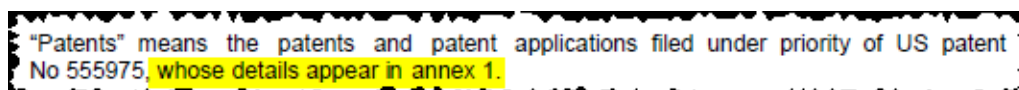
Les sociétés Blue Cable et TV Grid prient donc le tribunal de surseoir à statuer.

Dans l'hypothèse où le tribunal considèrerait qu'il n'y a pas lieu de surseoir à statuer, il déclarerait l'action de la société Telecast irrecevable.

2. À titre subsidiaire, irrecevabilité de l'action de la société Telecast pour défaut de qualité à agir

La société Telecast affirme qu'elle est devenue titulaire du brevet européen n° 1 003 442, par acte de cession du 24 décembre 2013 et qu'elle est, de ce fait, recevable à agir.

Toutefois, l'acte de cession qu'elle produit (pièce Telecast n° 1) ne vise pas le brevet européen n° 1 003 442, puisqu'il se réfère à une liste exhaustive de droits cédés figurant en annexe 1 de la cession :



"Patents" means the patents and patent applications filed under priority of US patent No 555975, whose details appear in annex 1.

Figure 1: extrait de l'acte de cession sur lequel la société Telecast se fonde pour agir

Or la liste de l'annexe 1 de cet acte ne comporte aucune référence au brevet européen n° 1 003 442, comme le démontre l'extrait de l'acte de cession reproduit ci-après :

- 
- Annex 1**
(List of assigned patents and patent application)
- US 555975
 - WO 92/01804
 - EP 0 682 845
 - EP 1 454 623
 - EP 1 456 571
 - EP 1 532 321
 - AT 589 753
 - AU 789 956
 - AU 5 990 596
 - BR 9 544 899
 - CA 2 499 751
 - CN 1 195 447
 - CN 1 213 856
 - ES 2 021 756
 - ES 2 856 423
 - HK 1 334 412
 - JP 068945
 - JP 069001
 - KR 0104895
 - KR 0106541

Figure 2: annexe 1 de l'acte de cession du 24 décembre 2013

À défaut de démontrer qu'elle est devenue le propriétaire du brevet européen n° 1 003 442 sur lequel elle fonde son action, la société Telecast sera déclarée irrecevable pour défaut de qualité à agir.

Mémoire en duplique au mémoire en réplique et mémoire en réplique au mémoire en défense à la demande reconventionnelle pour le compte des sociétés Blue Cable France SA, Blue Cable Germany GmbH, TV Grid Switzerland SA et TV Grid Italy SpA

(Mai 2014)

Le tribunal prendra acte de l'absence de réponse de la société Telecast sur ce point dans son mémoire du 1^{er} mai 2014 et déclarera sa demande irrecevable.

Si, par impossible, le tribunal estime que la société Telecast est recevable à agir, les sociétés Blue Cable et TV Grid demandent que l'action soit déclarée irrecevable en ce qui concerne tout fait en relation avec le territoire français, en raison de l'absence d'inscription de la cession du brevet objet du litige, au registre national des brevets français.

3. À titre plus subsidiaire, irrecevabilité de l'action en ce qui concerne le territoire français en raison du défaut d'inscription de la cession au registre national des brevets français

La société Telecast n'a pas déposé le brevet européen n° 1 003 442 : elle prétend l'avoir acquis auprès de son déposant, la société américaine United Video Programmes Inc., le 24 décembre 2013.

Or, pour pouvoir valablement opposer son brevet européen à l'égard de sociétés établies en Allemagne, Italie et France, la société Telecast doit rapporter la preuve que les désignations nationales correspondantes de son brevet européen sont effectivement opposables aux tiers dans ces pays.

La société Telecast BV indique :

- ▶ avoir enregistré la cession du brevet européen n° 1 003 442 auprès des registres nationaux allemand et italien ;
- ▶ avoir entrepris d'inscrire la cession au Registre européen des brevets.

Mais la cession n'a pas été enregistrée en France au sein du registre national des brevets.

Or, en vertu de l'article L. 613-9 du code de la propriété intellectuelle français :

« Tous les actes transmettant ou modifiant les droits attachés à une demande de brevet ou à un brevet doivent, pour être opposables aux tiers, être inscrits sur un registre, dit registre national des brevets, tenu par l'Institut national de la propriété industrielle.

Toutefois, avant son inscription, un acte est opposable aux tiers qui ont acquis des droits après la date de cet acte, mais qui avaient connaissance de celui-ci lors de l'acquisition de ces droits.

Le licencié, partie à un contrat de licence non inscrit sur le registre national des brevets, est également recevable à intervenir dans l'instance en contrefaçon engagée par le propriétaire du brevet afin d'obtenir la réparation du préjudice qui lui est propre. »

Lors de la conférence de mise en état, le Juge-rapporteur a invité la société Telecast à se conformer aux exigences de l'article L. 613-9 du code de la propriété intellectuelle français dans les plus brefs délais.

Mais, dans son mémoire du 1^{er} mai 2014, la société Telecast ne justifie d'aucune démarche visant à faire enregistrer la cession de la partie française de son brevet européen n° 1 003 442.

Quand bien même, d'ailleurs, la société Telecast régulariserait — enfin — la situation, son action n'en deviendrait pas, rétroactivement, recevable.

Mémoire en duplique au mémoire en réplique et mémoire en réplique au mémoire en défense à la demande reconventionnelle pour le compte des sociétés Blue Cable France SA, Blue Cable Germany GmbH, TV Grid Switzerland SA et TV Grid Italy SpA

(Mai 2014)

En effet, il est de principe, en droit français, que l'inscription au registre national des brevets ne rend opposable une cession de brevet d'invention qu'à compter du jour de cette inscription.

Autrement dit, l'action en contrefaçon des demandeurs ne pourrait porter que sur les faits postérieurs à l'inscription et non sur les faits antérieurs.

Or aucun fait postérieur à l'inscription (dont on ne sait si elle a été régularisée ou non) n'est allégué.

Dès lors, par application de l'article 24 § 1 e) de l'Accord⁶ et de l'article L. 613-9 du code de la propriété intellectuelle français, le tribunal n'aura d'autre choix que de déclarer l'action de la société Telecast irrecevable en ce qui concerne les faits allégués sur le territoire français, en raison de l'inopposabilité de l'acquisition de son droit sur ce territoire.

4. À titre infiniment subsidiaire, demande reconventionnelle en nullité des revendications n° 1 et 2 du brevet européen n° 1 003 442

Selon l'article 65, 1) et 2) de l'Accord :

« La Juridiction statue sur la validité d'un brevet sur la base d'une action en nullité ou d'une demande reconventionnelle en nullité.

La Juridiction ne peut annuler un brevet, en tout ou en partie, que pour les motifs visés à l'article 138, paragraphe 1, et à l'article 139, paragraphe 2, de la CBE. »

L'article 138, 1) de la Convention sur le brevet européen (ci-après « la CBE ») indique :

« Sous réserve de l'article 139, le brevet européen ne peut être déclaré nul, avec effet pour un État contractant, que si :

a) l'objet du brevet européen n'est pas brevetable en vertu des articles 52 à 57 ;

b) le brevet européen n'expose pas l'invention de façon suffisamment claire et complète pour qu'un homme du métier puisse l'exécuter ;

c) l'objet du brevet européen s'étend au-delà du contenu de la demande telle qu'elle a été déposée ou, lorsque le brevet a été délivré sur la base d'une demande divisionnaire ou d'une nouvelle demande déposée en vertu de l'article 61, si l'objet du brevet s'étend au-delà du contenu de la demande antérieure telle qu'elle a été déposée ;

d) la protection conférée par le brevet européen a été étendue ; ou

e) le titulaire du brevet européen n'avait pas le droit de l'obtenir en vertu de l'article 60, paragraphe 1. »

Les défendeurs présenteront l'objet du brevet européen n° 1 003 442 de la société Telecast, tel qu'il a été délivré ou tel qu'il est proposé d'être modifié en application de la règle 30 du Règlement de procédure (**4.1.**).

⁶ L'article 24 §1 e) de l'Accord indique :
*« 1. En parfaite conformité avec l'article 20, lorsqu'elle a à connaître d'une affaire dont elle est saisie en vertu du présent accord, la Juridiction fonde ses décisions sur :
 (...)
 e) les droits nationaux. »*

Mémoire en duplicata au mémoire en réplique et mémoire en réplique au mémoire en défense à la demande reconventionnelle pour le compte des sociétés Blue Cable France SA, Blue Cable Germany GmbH, TV Grid Switzerland SA et TV Grid Italy SpA

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Puis, ils démontreront que le brevet européen n° 1 003 442 doit être déclaré nul au motif qu'il constitue une présentation d'informations non-brevetables en application de l'article 52 (2), d) de la CBE (**4.2.**).

Si le tribunal estime que l'invention objet du brevet européen n° 1 003 442 est brevetable, alors il ne pourra que constater que les revendications n° 1 et 2 :

- ▶ ne sont pas nouvelles au sens de l'article 54 de la CBE (**4.3.**) ;
- ▶ n'impliquent pas une activité inventive au sens de l'article 56 de la CBE (**4.4.**).

4.1. Présentation de la prétendue invention objet des revendications n° 1 et 2 du brevet européen n° 1 003 442 tel que délivré et tel que proposé d'être modifié

Il résulte de la description du brevet européen n° 1 003 442 que le but de la prétendue invention objet de ce brevet est de fournir un procédé pour l'accès à l'information sur les programmes de télévision comportant une interface utilisateur qui est configurée pour tenir compte de la nature particulière des informations contenues dans les grilles de programmes de télévision (pièce Telecast n° 2, paragraphe [0003] de la description).

En outre, selon la description de ce brevet, un autre but de l'invention est de fournir une interface utilisateur dans laquelle des informations complémentaires contenues dans les grilles sont présentées comme des superpositions qui masquent une quantité minimale d'autres informations utiles (pièce Telecast n° 2, paragraphe [0004] de la description).

Il convient de présenter les revendications du brevet européen n° 1 003 442 tel que délivré (**4.1.1.**) et les modifications que la société Telecast propose d'y apporter en application de la règle 30 du Règlement de procédure (**4.1.2.**).

4.1.1. Revendications n° 1 et 2 du brevet européen n° 1 003 442 tel que délivré

Les revendications n° 1 et 2 du brevet européen n° 1 003 442, tel que délivré, portent sur :

- « 1. Procédé permettant d'accéder à des informations concernant des programmes de télévision, le procédé comprenant les étapes
- ▶ de stockage dans une mémoire électronique d'un dispositif de commande de grilles connecté en fonctionnement à un écran de contrôle d'une pluralité d'intitulés de programmes de télévision, chaque intitulé comprenant le titre, l'heure de diffusion et le canal,
 - ▶ d'affichage d'une superposition sur l'écran de contrôle fournissant, parmi les intitulés stockés, le titre ou des informations sur le canal d'un programme sélectionné simultanément au programme sélectionné lors de la sélection d'un changement de canal,
 - ▶ et d'affichage, en réponse à une entrée de l'utilisateur, d'une autre superposition contenant d'autres informations concernant le programme sélectionné parmi les intitulés stockés. »

Mémoire en duplique au mémoire en réplique et mémoire en réplique au mémoire en défense à la demande reconventionnelle pour le compte des sociétés Blue Cable France SA, Blue Cable Germany GmbH, TV Grid Switzerland SA et TV Grid Italy SpA

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« 2. Appareil permettant d'accéder à des informations concernant des programmes de télévision, l'appareil comprenant

- ▶ un moyen pour stocker dans une mémoire électronique d'un dispositif de commande de grilles connecté en fonctionnement à un écran de contrôle une pluralité d'intitulés de programmes de télévision, chaque intitulé comprenant le titre, l'heure de diffusion et le canal,
- ▶ un moyen pour afficher une superposition sur l'écran de contrôle fournissant, parmi les intitulés stockés, le titre ou des informations sur le canal d'un programme sélectionné simultanément au programme sélectionné lors de la sélection d'un changement de canal,
- ▶ et un moyen pour afficher, en réponse à une entrée de l'utilisateur, une autre superposition contenant d'autres informations concernant le programme sélectionné parmi les intitulés stockés. »

L'invention objet du brevet européen n° 1 003 442 est donc relative à un procédé permettant d'accéder à des informations relatives à des programmes de télévision et à un appareil permettant d'accéder à ces informations qui présenterait trois caractéristiques.

Selon une première caractéristique, les informations sont stockées dans une mémoire électronique d'un dispositif de commande de grilles, ledit dispositif étant connecté en fonctionnement à un écran de contrôle d'une pluralité d'intitulés de programmes de télévision, soit à un écran de télévision, chaque intitulé de programme de télévision comprenant le titre du programme, l'heure de diffusion et le canal.

Selon une deuxième caractéristique, le procédé objet de l'invention, ou l'appareil, comprend, en outre, des moyens pour afficher une superposition sur l'écran de contrôle fournissant, parmi les intitulés stockés, les informations relatives au titre sélectionné.

Dans son mémoire du 1^{er} mai 2014, la société Telecast prétend que la première présentation d'information, objet de la deuxième caractéristique de la revendication n° 1, s'afficherait de façon automatique dès la sélection d'une chaîne de télévision sur le guide des programmes électroniques.

Des informations de base, telles que le nom de la chaîne et le titre du programme, seraient fournies.

Selon une troisième caractéristique, le procédé objet de l'invention ou l'appareil comprend, enfin, des moyens pour afficher, en réponse à une entrée de l'utilisateur, une autre superposition contenant d'autres informations concernant le programme sélectionné parmi les intitulés stockés.

En d'autres termes, outre l'étape préalable de stockage dans une mémoire électronique de différentes informations sur les programmes, les revendications du brevet européen n° 1 003 442 portent sur une caractéristique relative à des moyens pour obtenir un affichage primaire qui se superpose au programme sélectionné à l'écran et sur une caractéristique relative à des moyens pour obtenir un affichage secondaire, qui apparaît en réponse à une entrée de l'utilisateur et donne accès à d'autres informations.

Mémoire en duplique au mémoire en réplique et mémoire en réplique au mémoire en défense à la demande reconventionnelle pour le compte des sociétés Blue Cable France SA, Blue Cable Germany GmbH, TV Grid Switzerland SA et TV Grid Italy SpA

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Selon l'invention, les informations relatives à un titre sélectionné se présentent notamment sous la forme de bandeaux.

L'invention objet du brevet européen n° 1 003 442 porte donc sur la manière dont sont présentées sur un écran de télévision les informations relatives aux programmes et sur l'accès à ces informations par les utilisateurs.

Dans son mémoire du 1^{er} mai 2014, la société Telecast, consciente de la faiblesse des revendications de son brevet, propose au tribunal de modifier les revendications n° 1 et 2 de la même manière que devant l'Office européen des brevets au cours de l'opposition.

4.1.2. Modifications des revendications n° 1 et 2 du brevet européen n° 1 003 442 proposées par la société Telecast

Selon la règle 30 du Règlement de procédure⁷, le défendeur à une demande reconventionnelle en nullité (soit le titulaire du brevet) peut proposer une modification des revendications du brevet invoqué.

En l'espèce, la société Telecast a soumis, dans son mémoire du 1^{er} mai, deux propositions de modification de ses revendications correspondant à la requête principale et à la première requête subsidiaire soumises par la société United Video Programme dans le cadre de l'opposition à son brevet, avant que cette opposition ne soit retirée.

Selon la première proposition de modification, les revendications n° 1 et 2 du brevet européen n° 1 003 442 seraient modifiées comme suit (les mots ajoutés sont en couleur bleue et les mots supprimés sont barrés) :

« 1. A method for accessing information about television programs, the method comprising the steps of storing in an electronic memory of a schedule controller operably connected with a monitor screen, a plurality of television program listings, each listing including title, telecast time and channel, displaying on the monitor screen an overlay providing, from the stored listings, a title of and channel information on a selected program simultaneously with the selected program upon selection of a channel change, and displaying, responsive to a user input, a ~~further~~ supplemental overlay containing ~~further~~ supplemental information on the selected program from the stored listings.

⁷ La règle 30 du Règlement de procédure indique :
« 1. Le mémoire en défense à la demande reconventionnelle en nullité peut inclure une *demande de modification du brevet soumise par le titulaire du brevet, qui contient :

- a) la proposition de modifications des revendications et de la description du brevet concerné, y compris, le cas échéant et lorsque cela est approprié, un ou plusieurs jeux alternatifs de revendications (requêtes auxiliaires), dans la langue dans laquelle le brevet a été délivré ; lorsque la langue de procédure [règle 14.3] n'est pas la langue dans laquelle le brevet a été délivré, le demandeur titulaire dépose une traduction des modifications proposées dans la langue de procédure et, lorsque le brevet est un brevet européen à effet unitaire, dans la langue du domicile du défendeur dans un État membre contractant ou du lieu des faits de contrefaçon allégués ou de menaces de contrefaçon, si le défendeur le demande ;
- b) une explication des raisons pour lesquelles les modifications satisfont l'exigence des articles 84 et 123, § 2 et 3 de la CBE et des raisons pour lesquelles les revendications modifiées proposées sont valables et contrefaites ; et
- c) une indication du caractère conditionnel ou non conditionnel des propositions soumises ; le nombre des modifications proposées, si elles sont soumises à des conditions, doit être raisonnable eu égard aux circonstances de l'affaire.

2. Toute requête ultérieure pour modifier le brevet n'est recevable que si elle est autorisée par la Juridiction.

3. Lorsque d'autres procédures impliquant le brevet objet d'une demande en vertu de la règle 30.1 sont en cours, le demandeur informe la juridiction concernée qu'une telle demande a été faite et fournit les informations requises à la règle 30.1 (a). »

Mémoire en duplicata au mémoire en réplique et mémoire en réplique au mémoire en défense à la demande reconventionnelle pour le compte des sociétés Blue Cable France SA, Blue Cable Germany GmbH, TV Grid Switzerland SA et TV Grid Italy SpA

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2. Apparatus for accessing information about television programs, the apparatus comprising the means for storing in an electronic memory of a schedule controller operably connected with a monitor screen, a plurality of television program listings, each listing including title, telecast time and channel, means for displaying on the monitor screen an overlay providing, from the stored listings, a title of and channel information on a selected program simultaneously with the selected program upon selection of a channel change, and means for displaying, responsive to a user input, a ~~further~~ supplemental overlay containing ~~further~~ supplemental information on the selected program from the selected listings. ».

La société Telecast prétend que les revendications de son brevet sont tout à fait claires même sans cette modification.

Toutefois, elle mentionne qu'elle est disposée, si le tribunal l'estime nécessaire, à indiquer de façon plus claire que la seconde présentation d'information doit contenir des informations différentes de la première présentation d'information qui s'affiche automatiquement à la sélection d'une chaîne sur la grille électronique des programmes.

En réalité, c'est en réponse aux arguments des opposants et à une notification de l'examineur (pièce Blue Cable / TV Grid n° 2) que la société United Video Programme Inc. a accepté de modifier ses revendications afin d'indiquer que l'étape d'affichage objet de la caractéristique c) de la revendication n° 1 se distingue de l'étape d'affichage objet de la caractéristique b) en ce qu'elle permet d'afficher en superposition d'autres informations que celles qui sont déjà affichées :

« You will recall that the basis of the invention is to provide a method/apparatus for effectively splitting the provision of program guide information into manageable parts (see patentee's letter of 18 July 2006 under 'Main Request'). Thus, claim 1 recites the one overlay of program title and channel which appears on the screen 'simultaneously with the selected program upon selection of a channel change'. The other, supplemental, overlay is user-selected in addition to that one overlay.

The use of the phrase 'supplemental overlay' is intended to make clear that the overlay in question is not merely a repeat of the one overlay (i.e. a further showing of the same thing), but is separate and distinct from it.» (pièce Blue Cable / TV Grid n° 3, page 2)

La seconde proposition de modification des revendications n° 1 et 2 du brevet européen n° 1 003 442 se lit ainsi :

« 1. A method for accessing information about television programs, the method comprising the steps of storing in an electronic memory of a schedule controller operably connected with a monitor screen, a plurality of television program listings, each listing including title, telecast time and channel, displaying on the monitor screen an overlay providing, from the stored listings, a title of and channel information on a selected program simultaneously with the selected program upon selection of a channel change, and displaying, responsive to a user input, a ~~further~~ supplemental overlay containing ~~further~~ supplemental information on the selected program from the stored listings such supplemental information in said supplemental overlay containing a program note selected by way of a select key on a user-actuated remote control device, the program note containing information pertinent to a program currently being broadcast on the selected channel.

Mémoire en duplique au mémoire en réplique et mémoire en réplique au mémoire en défense à la demande reconventionnelle pour le compte des sociétés Blue Cable France SA, Blue Cable Germany GmbH, TV Grid Switzerland SA et TV Grid Italy SpA

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2. *Apparatus for accessing information about television programs, the apparatus comprising the means for storing in an electronic memory of a schedule controller operably connected with a monitor screen, a plurality of television program listings, each listing including title, telecast time and channel, means for displaying on the monitor screen an overlay providing, 10 from the stored listings, a title of and channel information on a selected program simultaneously with the selected program upon selection of a channel change, and means for displaying, responsive to a user input, a ~~further~~ supplemental overlay containing ~~further~~ supplemental information on the selected program from the selected listings such supplemental information in said supplemental overlay containing a program note selected by way of a select key on a user-actuated remote control device, the program note containing information pertinent to a program currently being broadcast on the selected channel.* » (Les mots ajoutés sont en couleur bleue et les mots supprimés sont barrés)

Une fois encore, la société Telecast prétend que les revendications n° 1 et 2 de son brevet sont parfaitement claires sans cette modification, mais qu'elle est disposée à les modifier comme elle le propose si le tribunal l'estime nécessaire.

Or, le tribunal ne pourra que constater que les propositions de modification des revendications de la société Telecast en satisfont pas les exigences de la règle 30 1b) du Règlement de procédure qui indique que la demande de modification doit contenir :

« une explication des raisons pour lesquelles les modifications satisfont l'exigence des articles 84 et 123, § 2 et 3 de la CBE et des raisons pour lesquelles les revendications modifiées proposées sont valables et contrefaites »

Le mémoire de la société Telecast du 1^{er} mai 2014 s'abstient de démontrer en quoi les modifications proposées satisfont aux exigences des articles 84⁸ et 123 §§ 2 et 3⁹ de la CBE.

Cette demande de modification sera donc rejetée par le tribunal.

En tout état de cause, les sociétés Blue Cable et TV Grid démontreront que ces revendications telles qu'elles ont été délivrées ou telles qu'il est proposé de les modifier sont nulles.

4.2. Absence de brevetabilité de l'invention objet du brevet européen n° 1 003 442 comme portant sur une présentation d'informations

L'article 52, (2) de la CBE indique :

« Ne sont pas considérés comme des inventions au sens du paragraphe 1 notamment :

a) les découvertes, les théories scientifiques et les méthodes mathématiques ;

⁸ L'article 84 de la CBE se lit ainsi :

« Les revendications définissent l'objet de la protection demandée. Elles doivent être claires et concises et se fonder sur la description. »

⁹ L'article 123 §2 et 3 de la CBE indique :

« 2. La demande de brevet européen ou le brevet européen ne peut être modifié de manière que son objet s'étende au-delà du contenu de la demande telle qu'elle a été déposée.

3. Le brevet européen ne peut être modifié de façon à étendre la protection qu'il confère. »

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b) les créations esthétiques ;

c) les plans, principes et méthodes dans l'exercice d'activités intellectuelles, en matière de jeu ou dans le domaine des activités économiques, ainsi que les programmes d'ordinateur ;

d) les présentations d'informations. »

Il a été précédemment démontré que, outre l'étape préalable de stockage dans une mémoire électronique de différentes informations sur les programmes, les revendications du brevet européen n° 1 003 442 portent sur une caractéristique relative à des moyens pour obtenir un affichage primaire automatique qui se superpose au programme sélectionné à l'écran et sur une caractéristique relative à des moyens pour obtenir un affichage secondaire, qui apparaît en réponse à une entrée de l'utilisateur et donne accès à d'autres informations.

Les informations relatives à un titre sélectionné se présentent notamment sous la forme de bandeaux.

L'invention objet du brevet européen n° 1 003 442 porte donc sur la manière dont sont présentées les informations relatives aux programmes sur un écran de télévision et sur l'accès par les utilisateurs à ces informations.

À cet égard, la description indique :

"[0002] (...) When using a television set as a display for a schedule system, the size and resolution of the television display limit the amount of text that can be displayed with the grid. Improved techniques are required for conveying the most amount of information to the user in an easily understood manner within the limitations of the television display." (pièce Telecast n° 2, page 2, colonne 1)

"[0003] Accordingly, it is an object of this invention to provide a television schedule system and process with a user interface that is configured to compensate for the particular nature of the television schedule information."

[0004] It is another object of the invention to provide such a user interface in which supplemental schedule information is presented in overlays that obscure a minimum amount of useful other information." (pièce Telecast n° 2, page 2, colonne 1)

"[0010] (...) The program note 52 overlays and hides 3 or 4 listings of a guide. To minimize concealment of the guide, an auto-rolling note is used."

The program note will overlay either the top half or bottom half of the screen, as necessary to avoid masking the title of the selected listing."

Ainsi, il ressort de la description même qu'il était déjà connu de stocker, extraire et fournir des informations sur les programmes de télévision dans l'art antérieur, au moyen d'un programme d'ordinateur contenu dans un dispositif relié à un écran de télévision.

L'invention objet du brevet européen n° 1 003 442 consisterait donc à proposer un guide électronique des programmes de télévision et à fournir des informations additionnelles sur un titre sélectionné par superposition, sans toutefois que ces informations additionnelles superposées occultent la totalité de l'écran de télévision, afin que l'utilisateur puisse toujours voir une partie du guide des programmes.

Mais, loin d'indiquer les caractéristiques techniques qui permettraient d'obtenir l'affichage de plus d'informations sur un programme sélectionné, les revendications n° 1 et 2 se contentent d'indiquer que les informations sur un programme sélectionné peuvent être visualisées sous forme de bandeaux venant se superposer aux informations de base déjà affichées.

Mémoire en duplicata au mémoire en réplique et mémoire en réplique au mémoire en défense à la demande reconventionnelle pour le compte des sociétés Blue Cable France SA, Blue Cable Germany GmbH, TV Grid Switzerland SA et TV Grid Italy SpA

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Or, la simple présentation d'informations ne saurait être brevetable.

Les chambres de recours de l'OEB ont notamment jugé que la simple organisation de la projection d'informations ne saurait revêtir un caractère technique si cette organisation n'est pas structurée (chambre de recours technique 3.5.01, 17 mars 2011, T 1235/07¹⁰) :

« The Board is thus in this case taking a wider view of "presentation of information" than just the actual information that is displayed, the so-called cognitive content, to include also structural aspects of how the information is displayed. In the Board's view, such additional aspects can only contribute to inventive step if they have technical character. »

La description du brevet européen n° 1 003 442 ne fait état d'aucun apport technique quant à l'organisation de la visualisation des informations des programmes revendiquée.

Dès lors, l'invention objet du brevet européen n° 1 003 442 ne présente aucun caractère technique et ne répond donc pas à la condition de brevetabilité de l'article 52 (2) d) de la CBE.

Dans son mémoire du 1^{er} mai 2014, la société Telecast prétend que l'invention objet de ses revendications n° 1 et 2 concerne un « *ingénieux système technique pour la gestion et l'affichage d'informations* ».

En particulier, la société Telecast indique :

« The Patent does not merely claim the form in which TV program information is displayed on a screen. The technical contribution or achievement of the Patent builds on the previous technical innovation by third parties such as Hallenbeck by providing a system which enables the TV program information to be processed and displayed in manageable parts and provides a different user interface. The program information is downloaded and stored in a schedule controller. Part of the program information is retrieved from the memory and displayed automatically when the user selects a TV channel. The new system enables other more detailed program information, which prior art systems could not manage and display, to be retrieved and displayed as a result of user input. The user experiences the result of the technical contribution in the form of the availability, on request, of more detailed program information in a second overlay. » (page 9, paragraphe 34 du mémoire du 1^{er} mai 2014 de la société Telecast)

S'il est bien entendu que le but de la prétendue invention objet du brevet européen n° 1 003 442 est de fournir plus d'informations à l'utilisateur sur un programme sélectionné, notamment par superpositions, le tribunal ne pourra que constater que le brevet de la société Telecast ne fournit aucun élément technique permettant d'assurer la présentation des informations demandées.

La description du brevet européen n° 1 003 442 se contente d'indiquer qu'il est préférable de fournir des informations sur les programmes, notamment au moyen de notes de programme se superposant sur la grille de télévision affichée, **mais elle ne fournit aucun détail technique sur la manière d'afficher lesdites notes de programme.**

¹⁰ Voir également la décision du 1^{er} avril 2009, chambre de recours technique 3.5.01, T 1143/06

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Le paragraphe [0010] de la description du brevet se contente d'indiquer :

« Program notes for a selected program are overlaid over the grid guide upon request. The program note can be toggled off/on using a SELECT command. The program note 52 overlays and hides 3 or 4 listings of a guide. To minimize concealment of the guide, an auto-roving note is used.

The program note will overlay either the top half or bottom half of the screen, as necessary to avoid masking the title of the selected listing. If the cursor 32 is in the upper half of the screen, the note will appear in the bottom half, and vice versa.

If the cursor 32 is moved to the lower half of the screen, the note will automatically position itself in the upper half of the screen. »

Dès lors, à défaut de fournir « les caractéristiques techniques nouvelles » permettant de présenter les informations, comme le requièrent les directives de l'OEB citées par le demandeur, le tribunal ne pourra que constater que les revendications n° 1 et 2 du brevet européen n° 1 003 442 ne sont pas brevetables.

Et les modifications des revendications proposées par la société Telecast dans son mémoire du 1^{er} mai 2014 ne modifient en rien cette conclusion dans la mesure où elles n'ajoutent aucun détail technique nouveau.

Les revendications n° 1 et 2 du brevet européen n° 1 003 442 tel que délivré ou les revendications telles qu'il est proposé de les modifier seront donc annulées pour cette première raison.

Dans l'hypothèse où le tribunal considérerait que cette invention n'est pas exclue de la brevetabilité, il ne pourra que constater qu'elle ne fait pas preuve de nouveauté ou, à tout le moins, d'activité inventive.

4.3. Absence de nouveauté des revendications n° 1 et 2 du brevet européen n° 1 003 442

En vertu de l'article 54 (1) de la CBE :

« Une invention est considérée comme nouvelle si elle n'est pas comprise dans l'état de la technique. »

Le procédé permettant d'accéder à des informations concernant des programmes de télévision, objet de la revendication n° 1 du brevet européen n° 1 003 442, comporte les étapes suivantes :

- a) une étape de stockage dans une mémoire électronique d'un dispositif de commande de grilles connecté à un écran de contrôle d'une pluralité d'intitulés de programmes de télévision, chaque intitulé comprenant le titre, l'heure de diffusion et le canal ;
- b) une étape d'affichage d'une superposition sur l'écran de contrôle fournissant, parmi les intitulés stockés, le titre ou des informations sur le canal d'un programme sélectionné simultanément au programme sélectionné lors de la sélection d'un changement de canal ;
- c) une étape d'affichage, en réponse à une entrée de l'utilisateur, d'une autre superposition contenant d'autres informations concernant le programme sélectionné parmi les intitulés stockés.

La revendication n° 2 porte sur un appareil susceptible de mettre en œuvre les étapes du procédé précédemment décrit.

Mémoire en duplicata au mémoire en réplique et mémoire en réplique au mémoire en défense à la demande reconventionnelle pour le compte des sociétés Blue Cable France SA, Blue Cable Germany GmbH, TV Grid Switzerland SA et TV Grid Italy SpA

(Mai 2014)

Les observations faites à l'égard de la revendication n° 1 s'appliqueront donc *mutatis mutandis* à la revendication n° 2.

Les revendications n° 1 et 2 du brevet européen n° 1 003 442 ne font pas preuve de nouveauté au regard de la demande de brevet européen n° 0 447 968, déposée par la société RCA Licensing Corporation, dont l'inventeur est Monsieur Bruno Hennig (ci-après « la demande de brevet Hennig », pièce Blue Cable / TV Grid n° 1).

La demande de brevet Hennig a été déposée le 14 mars 1991 et concerne un « *Apparatus for providing TV program information* ».

L'invention objet de cette demande de brevet décrit comment obtenir des informations, comme l'heure du début et de fin, sur les programmes de télévision notamment au moyen des pages dites « VPT » (*Videorecorder Programming by Teletext* ou « *enregistrement vidéo au moyen de la programmation par télétexte*¹¹).

Cette demande de brevet divulgue toutes les caractéristiques des revendications n° 1 et 2 du brevet européen n° 1 003 442.

En effet, cette demande de brevet concerne des récepteurs de télévision incorporant des décodeurs télétexte comportant une mémoire stockant des informations sur les programmes, comme notamment le titre des programmes, le canal et l'heure de début et de fin (page 4, colonne 6, lignes 1 à 6), comme l'illustre la figure 1a) reproduite ci-après :

P402	402	CH-TEXT	15.02.90	14:25:03
SRG	TV-DRS	Donnerstag	15. Februar	1990
			24101	150290
			CF	
08.30	0830	Schulfernsehen: Geographie		
09.20	0920	Reise durch unseren Körper		
09.50	2500	Ende / Pause		
12.55	1255	Nachrichten		
13.00	1300	Ein Heim für Tiere		
13.55	1355	Zeitspiegel: Herrscher des goldenen Dreiecks		
14.45	1445	MTV		
15.40				

Figure 3 : figure 1a de la demande de brevet européen n° 0 447 968 (Hennig) montrant les informations des programmes stockés dans un récepteur de télévision incorporant un décodeur télétexte

¹¹ Le télétexte est un service permettant de délivrer des informations sous format texte et animations, retransmis dans les signaux de télédiffusion d'une chaîne (source : Wikipédia).

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(Mai 2014)

La société Telecast prétend que la caractéristique a) de la revendication n° 1 du brevet européen n° 1 003 442 ne serait pas divulguée par la demande de brevet Hennig au motif que les informations sur les programmes de télévision ne seraient pas stockées dans la mémoire électronique d'un dispositif de commande de grilles connecté à un écran de contrôle, mais seulement obtenues par des signaux télétexte ou au moyen d'un code d'un serveur de programmation vidéo.

Cette affirmation est totalement erronée.

En effet, si la demande de brevet Hennig prévoit d'obtenir les informations sur les programmes de télévision au moyen de signaux télétexte ou d'un code de serveur de programmation vidéo, ces informations sont bien, ensuite, enregistrées dans la mémoire du système pour pouvoir être transmises à l'utilisateur *via* l'écran de télévision.

Ces informations sont ensuite régulièrement mises à jour par le système (comme l'impose tout guide électronique des programmes).

Le système décrit dans la demande de brevet Hennig comporte bien une mémoire pour stocker et extraire le titre d'un programme, son heure de début et l'heure de début du programme suivant :

« *signal processing apparatus comprising :*

[...]

memory means for storing and retrieving at least said program title information and included starting time information for the current program and starting time information for the next program decoded by said first signal decoder means; » (pièce Blue Cable / TV Grid n° 1, colonne 6, lignes 1 à 6)

La figure 2 de la demande de brevet Hennig mentionne aussi la présence d'une mémoire dans le décodeur relié à la télévision.

La caractéristique a) de la revendication n° 1 du brevet européen n° 1 003 442 est donc dépourvue de nouveauté.

La demande de brevet Hennig offre, en outre, la possibilité d'afficher par superposition (références 540 et 540') le titre ou des informations sur le canal d'un programme sélectionné simultanément au programme sélectionné lors de la sélection d'un changement de canal, comme l'illustrent les figures 5a et 5b reproduites ci-après :

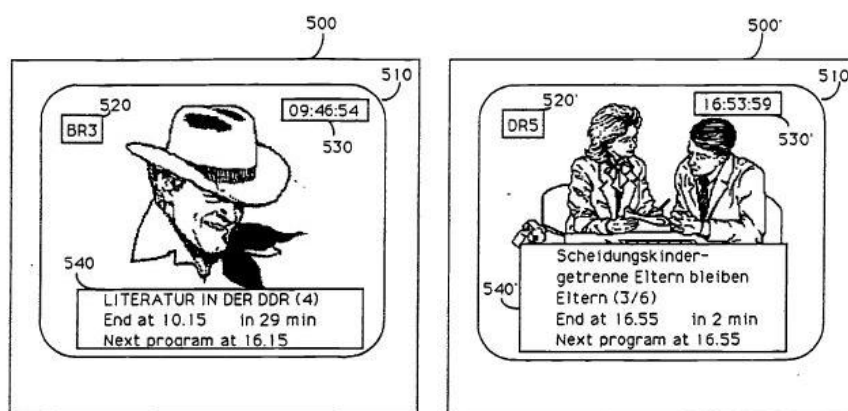


Figure 4 : figures 5a et 5b de la demande de brevet européen n° 0 447 968 (Hennig) illustrant la superposition d'informations sur le programme sélectionné dans des bandeaux 540 et 540'

Mémoire en duplique au mémoire en réplique et mémoire en réplique au mémoire en défense à la demande reconventionnelle pour le compte des sociétés Blue Cable France SA, Blue Cable Germany GmbH, TV Grid Switzerland SA et TV Grid Italy SpA

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Enfin, la demande de brevet Hennig enseigne une étape d'affichage, en réponse à une entrée de l'utilisateur, d'une autre superposition contenant d'autres informations concernant le programme sélectionné parmi les intitulés stockés.

En effet, la description de la demande de brevet Hennig indique à cet égard :

« The display (540, 540'), indicating the remaining duration, has to be updated during the time the microcomputer waits for the next appearance of pages, and if desired, the title of the following program can also be displayed » (page 4, colonne 5, lignes 9 à 13)

Le procédé objet de la revendication n° 1 et le dispositif mettant en œuvre ce procédé, objet de la revendication n° 2 ne sont donc pas nouveaux au regard des enseignements de la demande de brevet Hennig.

Dans son mémoire du 1^{er} mai 2014, la société Telecast prétend qu'il n'est pas possible, dans la demande de brevet Hennig, de savoir si les informations affichées le sont de façon automatique, à la sélection d'une chaîne, ou à la demande d'un utilisateur.

Il est bien évident que, dans le cadre d'un guide électronique des programmes, l'utilisateur doit sélectionner le guide au moyen de sa télécommande afin d'obtenir des informations à son sujet.

Cet argument sera donc rejeté.

En outre, la société Telecast prétend que la demande de brevet Hennig ne divulgue pas l'affichage d'informations supplémentaires, comme le requiert la caractéristique c) de la revendication n° 1 du brevet européen n° 1 003 442.

Or, la demande de brevet Hennig indique que toute mise à jour des informations affichées sur un programme est prise en compte, de sorte que des informations différentes sont susceptibles d'être affichées (comme un changement de programme ou encore un changement dans l'heure du début d'un programme par exemple).

Les revendications n° 1 et 2 du brevet européen n° 1 003 442 tel que délivré seront donc annulées par le tribunal.

Consciente de ce que les revendications de son brevet ne sont pas nouvelles, la société Telecast a proposé de modifier ces revendications de la même manière que la société United Video Programme Inc., alors titulaire du brevet, l'avait proposé dans le cadre de l'opposition.

En effet, cette société avait admis que les revendications n° 1 et 2 de son brevet ne faisaient pas preuve de nouveauté, notamment au regard des enseignements de la demande de brevet Hennig (voir page 17 du présent mémoire).

L'opposition ayant par la suite été retirée par les opposants, le brevet européen n° 1 003 442 a, finalement, été délivré tel que déposé, sans que les modifications proposées dans la requête principale du titulaire aient été adoptées.

Il n'en demeure pas moins que le titulaire du brevet européen n° 1 003 442, dans le cadre de l'opposition, a admis que les revendications n° 1 et 2 ne sont pas nouvelles au regard des enseignements de la demande de brevet Hennig.

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Il en est de même des revendications n° 1 et 2 telles que modifiées par la société Telecast, en application de la règle 30 du Règlement de procédure.

En effet, les modifications suggérées qui, de l'aveu de la demanderesse, n'apportent rien de plus techniquement sur l'apport de l'invention sont également divulguées par la demande de brevet Hennig.

Les informations supplémentaires susceptibles d'être obtenues le sont notamment au moyen d'une télécommande.

Le tribunal ne pourra que constater que les revendications n° 1 et 2, telles que délivrées ou telles que modifiées, doivent donc être annulées pour absence de nouveauté.

À tout le moins, ces revendications seront déclarées nulles pour défaut d'activité inventive.

4.4. Absence d'activité inventive des revendications n° 1 et 2 du brevet européen n° 1 003 442

L'article 56 de la CBE indique :

« Une invention est considérée comme impliquant une activité inventive si, pour un homme du métier, elle ne découle pas d'une manière évidente de l'état de la technique. Si l'état de la technique comprend également des documents visés à l'article 54, paragraphe 3, ils ne sont pas pris en considération pour l'appréciation de l'activité inventive. »

Selon la description du brevet européen n° 1 003 442, l'invention répond au problème de l'organisation de la visualisation d'un nombre important d'informations relatives aux programmes de télévision.

En particulier, l'invention a pour but de permettre à un utilisateur d'obtenir des informations sur un programme particulier sans que ces informations occupent une partie trop importante de l'écran de télévision afin qu'une partie de la liste des programmes soit toujours visible.

Les revendications n° 1 et 2 du brevet européen n° 1 003 442 ne font preuve d'aucune activité inventive pour l'homme du métier que ce soit :

- ▶ au regard des enseignements de la demande de brevet européen Hennig n° 0 447 968 (**4.4.1.**) ;
- ▶ ou au regard de la publication « *Personal Home TV Programming Guide* », de Peter D. Hallenbeck, exposée lors de la conférence "IEEE 1990, International Conference on consumer electronics" qui s'est tenue à Chicago du 6 au 8 juin 1990 (pièces Blue Cable / TV Grid n° 4 et 5) et des informations disponibles sur ce système antérieurement au brevet européen n° 1 003 442 (pièce Blue Cable / TV Grid n° 6) (**4.4.2.**).

4.4.1. Absence d'activité inventive au regard des enseignements de la demande de brevet européen n° 0 447 968

Il a été précédemment démontré (voir titre 4.3.) que la demande de brevet européen Hennig divulguait l'ensemble des caractéristiques des revendications n° 1 et 2 du brevet européen n° 1 003 442 (telles que délivrées ou telles que modifiées).

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Si le tribunal considère que l'ensemble des caractéristiques des revendications n° 1 et 2 ne sont pas divulguées par ce document, il ne pourra que constater que l'homme du métier n'avait à déployer aucune activité inventive pour parvenir à l'invention au regard des enseignements de la demande de brevet Hennig.

En effet, la demande de brevet Hennig enseigne déjà la visualisation des informations d'un programme sous forme de notes (bandeaux) n'occupant qu'une partie de l'écran de télévision (voir les références 540 et 540' sur les figures 5a et 5b reproduites ci-après) :

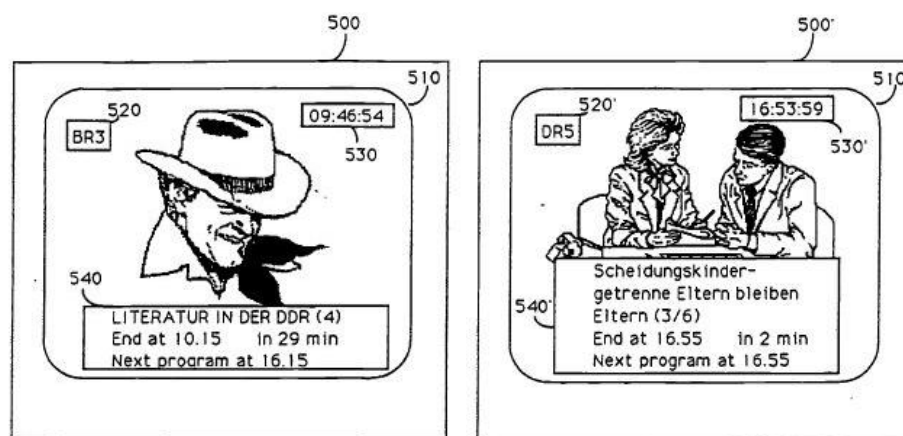


Figure 5 : figures 5a et 5b de la demande de brevet européen n° 0 447 968 (Hennig) illustrant la superposition d'informations sur le programme sélectionné dans des bandeaux 540 et 540'

Dès lors, le simple fait de superposer le bandeau à la liste de tous les programmes afin qu'une partie de cette liste soit toujours consultable par l'utilisateur ne constitue qu'un simple confort de visualisation pour l'utilisateur qui ne confère aucun avantage technique.

Il ne s'agit que d'un choix arbitraire qui s'offre à l'évidence à l'homme du métier, qui est un ingénieur spécialisé dans les systèmes de réception audiovisuelle, en particulier les *set-top boxes*.

La société Telecast prétend qu'il n'était pas évident pour l'homme du métier de prévoir d'afficher des informations supplémentaires dans des notes de programme s'affichant sur une partie de l'écran de télévision en réponse à une sélection d'un utilisateur.

Or, le problème technique que tend à résoudre l'invention est celui de fournir un certain nombre d'informations sur un programme de télévision dans les limites de l'écran de télévision (paragraphe [0002] du brevet européen n° 1 003 442).

L'homme du métier qui sait déjà utiliser les notes de programme pour fournir des informations sur le titre des programmes, leur heure de début et de fin, au regard des enseignements de la demande de brevet Hennig pourra sans faire preuve d'une quelconque activité inventive prévoir d'afficher d'autres notes de programme contenant des informations supplémentaires en réponse à une sélection d'un utilisateur.

Les revendications n° 1 et 2 du brevet européen n° 1 003 442, telles que délivrées ou telles que modifiées, seront donc annulées pour absence d'activité inventive.

Elles le seront également au regard des enseignements du système antérieur dénommé « *SuperGuide* ».

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4.4.2. Absence d'activité inventive au regard de la publication « *Personal Home TV Programming Guide* » de Peter D. Hallenbeck et des informations disponibles sur ce système antérieurement au brevet européen n° 1 003 442

Peter D. Hallenbeck a mis au point dès 1985 (soit neuf années avant la prétendue invention de la société Telecast) un système d'organisation et d'accès aux programmes de télévision intitulé « SuperGuide ».

Ce système a été présentée lors de la conférence "*IEEE 1990 International Conference on consumer electronics*" qui s'est tenue à Chicago du 6 au 8 juin 1990 (pièces Blue Cable / TV Grid n° 4 et 5).

Deux versions furent développées, l'une en 1985 et l'autre en 1988, prenant en considération l'augmentation de la capacité des mémoires et donc le nombre d'informations pouvant être délivrées sur les écrans de télévision des utilisateurs :

« The Original Guide loaded the listing for all services available, much as the paper guides print the listings for all available services. The listing are stored in the local box to allow for immediate response to any action taken by the viewer.

[...]

The New SuperGuide System

Design of the new system began in 1988. Keeping in mind the perils of any "second system," we set out to correct the "undocumented features" in first system and incorporate many of the little things we learned about people interactions with the original SuperGuide system.

[...]

The Great DRAM crunch of '88 made us determined to significantly increase how much information we could store in a given amount of memory" (pièce Blue Cable / TV grid n° 4)

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Un article issu de Wikipédia détaille également les fonctionnalités du SuperGuide mis au point par Peter D. Hallenbeck (pièce Blue Cable / TV Grid n° 6), dans sa première et sa deuxième versions¹², comme l'illustrent les images reproduites ci-après :



Figure 6: capture d'écran issue de la première version du système SuperGuide mis au point par Peter D. Hallenbeck, en février 1986

http://en.wikipedia.org/wiki/File:SuperGuide_1_screen_16L.jpg (pièce Blue Cable / TV Grid n° 4)

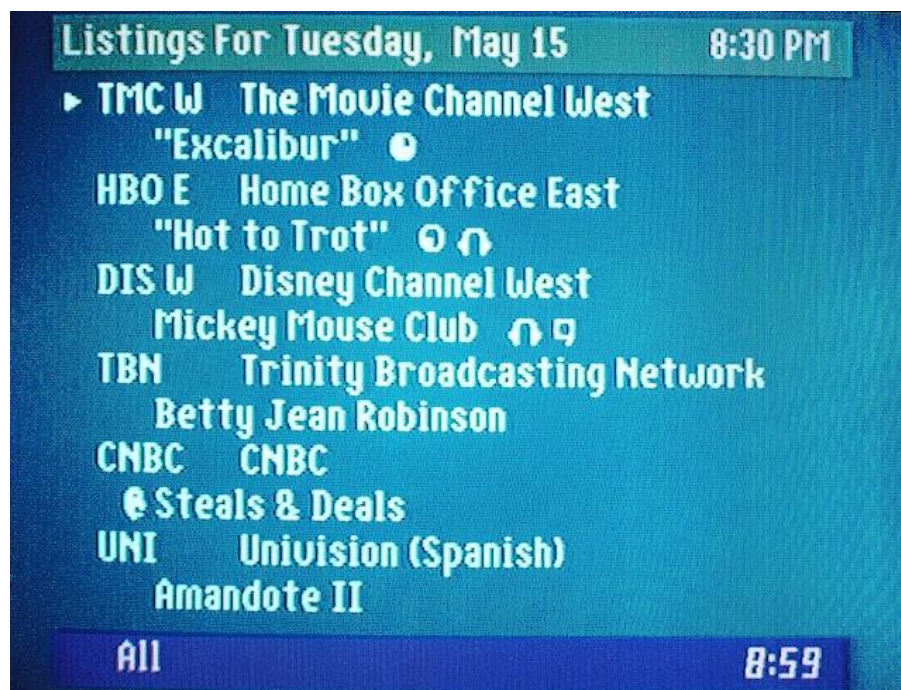


Figure 7: capture d'écran issue de la seconde version du système SuperGuide mis au point par Peter D. Hallenbeck, en mai 1990 (pièce Blue Cable / TV Grid n° 4)

¹² Le demandeur a admis, lors de la conférence de mise en état du 22 avril 2014 que les photographies issues de l'article Wikipedia sont bien antérieures à la date de priorité du brevet européen n° 1 003 442.

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Au regard des enseignements du système SuperGuide, l'homme du métier n'avait à mettre en œuvre aucune activité inventive pour présenter des informations additionnelles sur les programmes dans des bandeaux ne couvrant pas la totalité d'un écran de télévision.

La société Telecast prétend que l'homme du métier n'était pas orienté à présenter les informations sur les programmes dans des notes de programmes superposées.

Mais le tribunal constatera que l'homme du métier connaissait de telles notes de programmes par la demande de brevet Hennig.

Les enseignements du système SuperGuide et de la demande de brevet Hennig démontrent que les revendications n° 1 et 2 du brevet européen n° 1 003 442 ne font donc pas preuve d'activité inventive.

Il en est de même des revendications n° 1 et 2 telles que la société Telecast propose de les modifier, puisque l'utilisation d'une télécommande pour sélectionner le titre d'un programme et obtenir des informations à son sujet était déjà largement connue.

Afin d'en convaincre le tribunal, les défendeurs demandent à ce que Peter D. Hallenbeck, développeur du système SuperGuide, soit entendu dans le cadre de la présente affaire, par application de la Règle 176 du Règlement de procédure :

*« Sous réserve des décisions de la Juridiction visées aux règles 104 (e) et 112, paragraphe 2, b), une partie souhaitant fournir un témoignage oral dépose une *demande d'audition du témoin en personne qui expose :*

(a) les raisons pour lesquelles le témoin devrait être entendu en personne ;

(b) les faits dont la partie s'attend à ce qu'ils soient confirmés par le témoin ; et

(c) la langue dans laquelle le témoin déposera. »

Au regard des informations que Peter D. Hallenbeck est susceptible de fournir pour éclairer le tribunal sur l'art antérieur au brevet européen n° 1 003 442 et afin que ces informations puissent être soumises à la contradiction, il est demandé au tribunal d'autoriser l'audition de Peter D. Hellenbeck à l'audience.

Peter D. Hallenbeck étant de nationalité américaine, il pourra être auditionné dans la langue de la procédure, à savoir l'anglais.

Les défendeurs ont donc prié le juge-rapporteur de bien vouloir accéder à la présente demande d'audition de témoin lors de la conférence de mise en état du 22 avril 2014 : le juge-rapporteur a estimé qu'il ne se proposait pas de convoquer ce témoin à l'audience finale.

Les défendeurs se réservent toutefois de le prier d'être présent à l'audience pour apporter son témoignage si la nécessité s'en fait sentir.

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En application de la règle 180, paragraphe 2¹³, les défendeurs sont prêts à verser une somme que le tribunal jugera suffisante pour couvrir les frais que le témoin aura engagés.

Si le tribunal venait à juger que les revendications n° 1 et 2 étaient valables, alors il ne pourra que juger qu'elles ne sont pas reproduites par les *set-top boxes* des sociétés Blue Cable incorporant le logiciel mis au point par les sociétés TV Grid.

5. Absence de contrefaçon des revendications n° 1 et 2 du brevet européen n° 1 003 442

La société Telecast prétend que les revendications n° 1 et 2 de son brevet européen n° 1 003 442 seraient reproduites par les *set-top boxes* des sociétés Blue Cable incorporant le logiciel mis au point par les sociétés TV Grid.

Or, il a été précédemment démontré que les revendications n° 1 et 2 du brevet européen n° 1 003 442 ne sont pas valables.

La demande formée par la société Telecast sur ce point sera donc rejetée.

En tout état de cause, la société Telecast ne prouve pas que le guide électronique des programmes des défendeurs met en œuvre les revendications n° 1 et 2 de ce brevet.

Le procédé permettant d'accéder à des informations concernant des programmes de télévision, objet de la revendication n° 1 du brevet européen n° 1 003 442, comporte les étapes suivantes :

- a) une étape de stockage dans une mémoire électronique d'un dispositif de commande de grilles connecté à un écran de contrôle d'une pluralité d'intitulés de programmes de télévision, chaque intitulé comprenant le titre, l'heure de diffusion et le canal ;
- b) une étape d'affichage d'une superposition sur l'écran de contrôle fournissant, parmi les intitulés stockés, le titre ou des informations sur le canal d'un programme sélectionné simultanément au programme sélectionné lors de la sélection d'un changement de canal ;
- c) une étape d'affichage, en réponse à une entrée de l'utilisateur, d'une autre superposition contenant d'autres informations concernant le programme sélectionné parmi les intitulés stockés.

La société Telecast ne prouve pas que les informations additionnelles s'affichant lors de la sélection du titre d'un programme sont affichées par superposition sur le guide des programmes, cachant, aux yeux de l'utilisateur une partie de la liste des programmes, comme le requièrent les caractéristiques b) et c) de la revendication n° 1.

¹³ La règle 180 du Règlement de procédure se lit ainsi :

« 1. Un témoin a droit au remboursement :
(a) des frais de déplacement et de séjour ; et
(b) de la perte de revenu causée par son audition en personne.

Une fois que le témoin a rempli ses obligations et à sa demande, le greffe rembourse à ce témoin les frais qu'il a engagés.

2. Lorsqu'une partie a déposé une demande d'audition d'un témoin en personne, la Juridiction subordonne la citation du témoin au dépôt d'une somme suffisante pour couvrir les frais visés au paragraphe 1.

Lorsque la Juridiction, de sa propre initiative, ordonne qu'un témoin soit entendu en personne, les fonds nécessaires sont fournis par la Juridiction. »

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Et pour cause, le guide électronique des programmes offert par les *set-top boxes* des sociétés Blue Cable et TV Grid n'offre pas d'informations superposées à la grille de programme ; en effet, les informations portant sur un programme sélectionné sont intégrées à ladite grille de programme comme le montre la photographie reproduite ci-après :



Figure 8 : capture écran du guide électronique des programmes Blue Cable

Comme le démontre l'image reproduite ci-dessus, la sélection du programme « The Shadow » de la chaîne 112, permet d'afficher des informations sur ce programme dans la partie inférieure de l'écran.

Cet affichage a pour effet de rétrécir la hauteur des lignes de chaque chaîne présentée par le guide.

L'information fournie à l'utilisateur quand il sélectionne un programme ne se superpose donc pas aux autres informations disponibles sur la grille : c'est la grille qui rétrécit en hauteur pour permettre à l'utilisateur d'accéder aux informations demandées.

Les caractéristiques b) et c) ne sont donc pas reproduites.

La demande formée par la société Telecast au titre de la prétendue reproduction des revendications n° 1 et 2 de son brevet européen n° 1 003 442, telles que délivrées ou telles que modifiées sera donc rejetée.

En tout état de cause, le tribunal prendra acte de ce que la société Telecast a admis, lors de la conférence de mise en état, qu'elle ne pourrait pas obtenir une mesure d'interdiction et de réparation pour les actes commis en Suisse, ce pays n'étant pas membre de l'Accord relatif à la juridiction unifiée du brevet.

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(Mai 2014)

PAR CES MOTIFS

À titre principal,

Vu la règle 295 c) ii) du Règlement de procédure,

- ▶ Surseoir à statuer dans l'attente de la décision de la cour d'appel sur l'appel interjeté par les sociétés Blue Cable et TV Grid sur la question de la compétence de la division centrale du tribunal ;

À titre subsidiaire,

- ▶ Déclarer irrecevable, pour défaut de qualité, l'action de la société Telecast, qui ne justifie pas être propriétaire du brevet européen n° 1 003 442;

À titre plus subsidiaire,

Vu l'article L. 613-9 du code de la propriété intellectuelle français,

- ▶ Déclarer l'action de la société Telecast irrecevable en ce qui concerne le territoire français pour défaut d'inscription de la cession au registre national des brevets français ;

À titre infiniment subsidiaire,

Vu la règle 30 du Règlement de procédure :

- ▶ Rejeter les demandes de modification des revendications n° 1 et 2 du brevet européen n° 1 003 442 pour non-respect des dispositions de cette règle ;

Vu l'article 65, 1) et 2) de l'Accord et l'article 138, 1) de la Convention sur le brevet européen :

- ▶ Déclarer nulles les revendications n° 1 et 2 du brevet européen n° 1 003 442 pour défaut de brevetabilité, absence de nouveauté ou à tout le moins défaut d'activité inventive, pour toutes les désignations nationales concernées ;
- ▶ Rejeter en tout état de cause les demandes formées par la société Telecast au titre de la contrefaçon et de l'indemnisation du préjudice qu'elle prétend avoir subi ;
- ▶ Prendre acte que la société Telecast ne forme plus aucune demande en ce qui concerne le territoire suisse désigné par le brevet européen n° 1 003 442, puisque la Confédération suisse n'est pas membre de l'Accord sur la Juridiction unifiée du brevet ;
- ▶ Ordonner à la société Telecast le paiement des frais engagés par les sociétés Blue Cable et TV Grid pour se défendre, en application de l'article 69 de l'Accord.

Mémoire en duplicata au mémoire en réplique et mémoire en réplique au mémoire en défense à la demande reconventionnelle pour le compte des sociétés Blue Cable France SA, Blue Cable Germany GmbH, TV Grid Switzerland SA et TV Grid Italy SpA

(Mai 2014)

PIÈCES VERSÉES AUX DÉBATS

N°	Désignation
1.	Demande de brevet européen n° 0 447 968
2.	Notification des observations de la division d'opposition en date du 9 février 2007
3.	Lettre datée du 10 août 2007 du mandataire européen de la société United Video Programme Inc. en réponse aux observations de la division d'opposition, comportant en annexe les revendications n° 1 et 2 telles que proposées
4.	Article intitulé " <i>Personal Home TV Programming Guide</i> "
5.	Liste des interventions à la conférence " <i>IEEE 1990 International Conference on consumer electronics</i> " qui s'est tenue à Chicago du 6 au 8 juin 1990
6.	<i>Electronic program guide</i> , Wikipedia, the free encyclopaedia

SOUS TOUTES RÉSERVES

Unified Patent Court
Central Division (Paris Seat)

Docket No 2014/01

Telecast BV (Claimant)

v.

Blue Cable France SA, (defendant 1)
Blue Cable Germany GmbH (defendant 2)
TV Grid Switzerland SA (defendant 3)
TV Grid Italy Spa (defendant 4)

Counsel for Claimant
MICHAEL BURDON
OLSWANG

EP 1 003 442 Claim 2

OLSWANG

Apparatus for accessing information about television programs, the apparatus comprising:

- [A] means for storing in an electronic memory of a schedule controller operably connected with a monitor screen, a plurality of television program listings, each listing including title, telecast time and channel,
- [B] means for displaying on the monitor screen an overlay providing, from the stored listings, a title of and channel information on a selected program simultaneously with the selected program upon selection of a channel change, and
- [C] means for displaying, responsive to a user input, a further overlay containing further information on the selected program from the stored listings.

Blue Cable EPG

OLSWANG

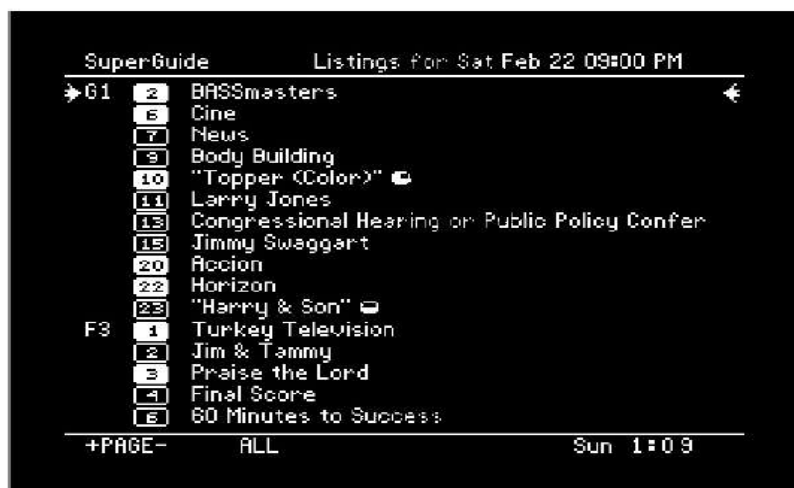


2

Figure 1: screenshot of the Blue Cable electronic programme guide showing the overlay obtained upon selection of a given programme

Super Guide 1

OLSWANG



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Figure 2: screen shot taken from the 1st working prototype of SuperGuide by Peter Hallenbeck, February 1986 http://en.wikipedia.org/wiki/File:SuperGuide_1_screen_16L.jpg

Super Guide 2

OLSWANG

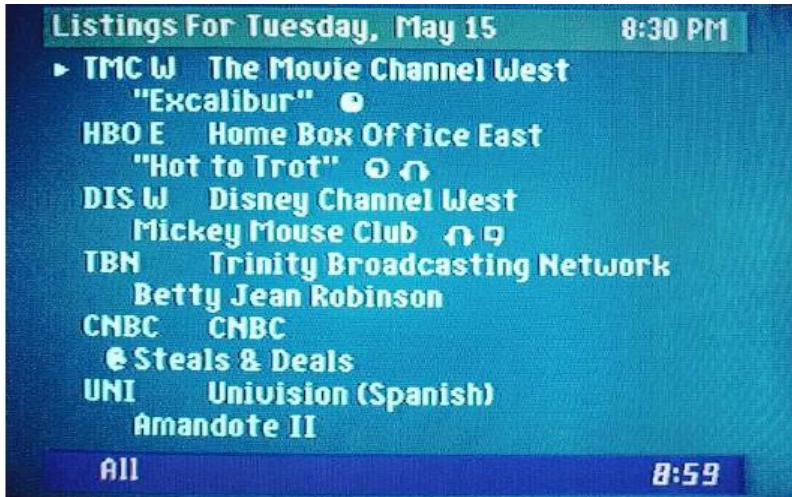


Figure 3: Screen shot of 2nd generation SuperGuide system by Peter Hallenbeck, May 1990
http://en.wikipedia.org/wiki/File:SuperGuide_2_screen_8L.jpg

EP 0 447 968 A2 (Hennig)

OLSWANG

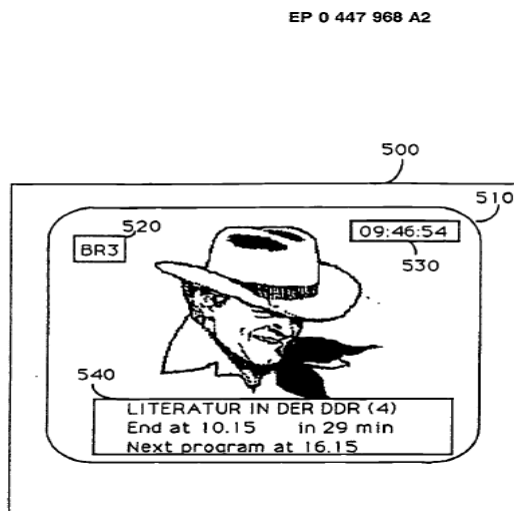


Fig. 5a

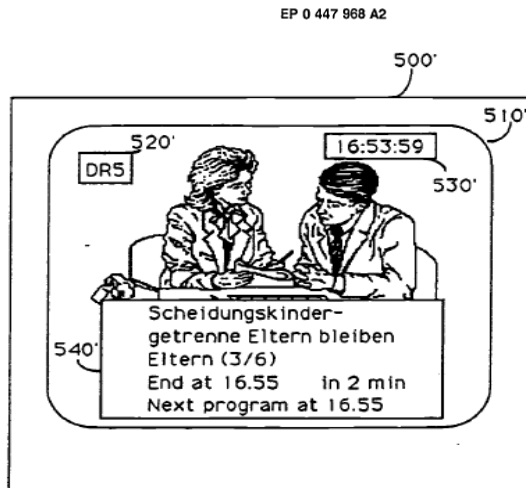


Fig. 5b

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Amendment 1

Claims

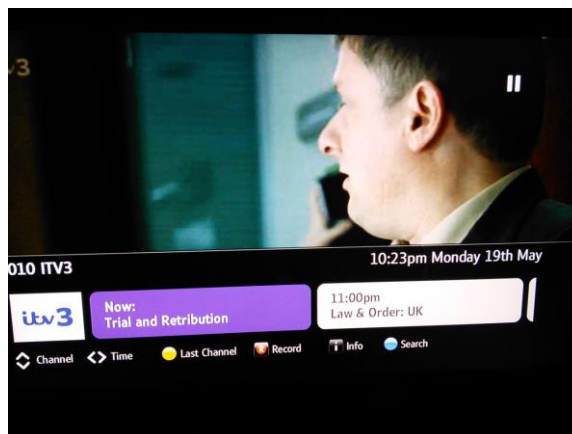
5

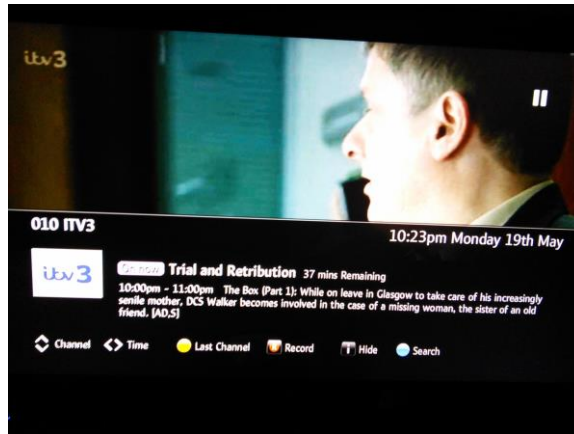
1. A method for accessing information about television programs, the method comprising the steps of storing in an electronic memory of a schedule controller operably connected with a monitor screen, a plurality of television program listings, each listing including title, telecast time and channel, displaying on the monitor screen an overlay providing, from the stored listings, a title of and channel information on a selected program simultaneously with the selected program upon selection of a channel change, and displaying, responsive to a user input, a further supplemental overlay containing further supplemental information on the selected program from the stored listings.
- 10
- 15

Claims

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1. A method for accessing information about television programs, the method comprising the steps of storing in an electronic memory of a schedule controller operably connected with a monitor screen, a plurality of television program listings, each listing including title, telecast time and channel, displaying on the monitor screen an overlay providing, from the stored listings, a title of and channel information on a selected program simultaneously with the selected program upon selection of a channel change, and displaying, responsive to a user input, a further supplemental overlay containing further supplemental information on the selected program from the stored listings such supplemental information in said supplemental overlay containing a program note selected by way of a select key on a user-actuated remote control device, the program note containing information pertinent to a program currently being broadcast on the selected channel.





Defendants' presentation for the oral hearing

22 May 2014 • APEB Mock Trial
Unified patent Court • Court of First Instance
Central Division • Paris

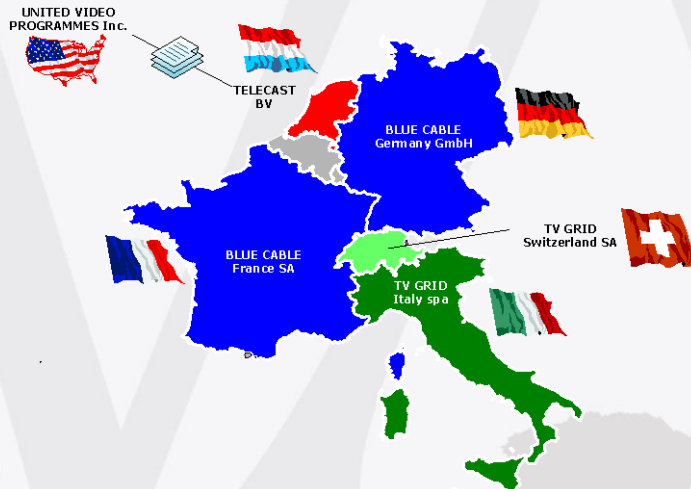
Pierre Véron & Amandine Métier

VÉRON VA
& ASSOCIÉS
AVOCATS
Paris ■ Lyon



Unified Patent Court
Oral hearing

The parties



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& ASSOCIÉS
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Main request**Stay of the proceedings
pending the decision of the Court of Appeal
on the jurisdiction of the Central division of the Court**

- The defendant's preliminary objection on jurisdiction has been dismissed by the Judge-rapporteur's decision of 22 April 2014
- But this issue being of "*fundamental importance*", the Judge-rapporteur authorized the parties to lodge an appeal
- The defendants lodged an appeal on 30 April 2014
- The proceedings on the merits should be stayed until after the Court of Appeal's decision

In the alternative**Action is inadmissible**

- Inadmissibility of the action for lack of standing to bring an action
(claimant not proprietor of the patent)
- This has been held inadmissible **as preliminary objections** under Rule 19 (1) and (4) by the Judge-rapporteur's decision of 22 April 2014
- But it has been added in the last (amended) pleading of the defendants and should now be decided by the full Court

In the alternative

Action is inadmissible for lack of standing to bring an action

Claimant has no right on the patent at issue (EP 1 003 442) which is not listed among the patents that he has acquired

"Patents" means the patents and patent applications filed under priority of US patent No 555975, whose details appear in annex 1.

Annex 1 (List of assigned patents and patent application)	
•	US 555975
•	WO 92/01804
•	EP 0 682 845
•	EP 1 454 623
•	EP 1 456 571
•	EP 1 532 321
•	AT 589 753
•	AU 789 956
•	AU 9 990 596
•	BR 9 544 899
•	CA 2 499 751
•	CN 1 195 447
•	CN 1 233 856
•	ES 2 021 756
•	ES 2 856 423
•	HK 1 334 412
•	JP 068945
•	JP 069001
•	KR 0204895
•	KR 0208541

In the further alternative

Action is inadmissible for the French territory acquisition not entered in FR patent registry (RNB)

- In the further alternative, inadmissibility of the action on the French territory (absence of entry in the French patent register of the patent assignment)
- Again, this has been held inadmissible **as preliminary objections** under Rule 19 (1) and (4) by the Judge-rapporteur's decision of 22 April 2014
- But it has been added in the last (amended) pleading of the defendants and should now be decided by the full Court

Unified Patent Court
Oral hearing

In the further alternative

Action is inadmissible for the French territory

acquisition not entered in FR patent registry (RNB)

Article L. 613-9 of the French Intellectual Property Code:

"All acts transferring or modifying the rights deriving from a patent application or a patent must, to be enforceable against third parties, be entered in a register, known as the National Patent Register kept by the National Institute of Industrial Property."

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Unified Patent Court
Oral hearing

In the further alternative

Action is inadmissible for the French territory

acquisition not entered in FR patent registry (RNB)

- The claimant says that he has entered the acquisition in the DE and IT patent registries
- But he confesses that he had **not** entered the acquisition in the FR patent registry: article L. 613-9 FR IPC is applicable (art. 24 Agreement)
- He took no further step for such registration, despite the Judge-rapporteur's invitation to proceed
- And in any case, should the claimant have registered, this registration has **no retroactive effect** (only acts post-registration would be concerned)

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Pompstationsweg 32, Den Haag,

Profile: Scheveningen prison

By Anna Holligan
BBC News, The Hague



Scheveningen prison lies in a suburb of The Hague

Scheveningen jail is a temporary holding bay for some of the world's most notorious war crimes suspects.

In the very alternative Counterclaim for revocation of claims 1 and 2 of European patent N° 1 003 442

- Amendments of the claims filed by the Claimant inadmissible because they do not meet requirement of Rule 30 of the Rules of procedure (no explanation)
- Invention not patentable because it is a presentation of information (art. 52 EPC)
- Claims 1 and 2 as filed or as amended lack novelty (art. 54 (1) EPC)
- Claims 1 and 2 as filed or as amended lack inventive step (art. 56 EPC)

Claims 1 as granted

1. A **method** for accessing information about television programs, the method comprising the steps of
- **storing** in an electronic memory of a schedule controller operably connected with a monitor screen, a plurality of television **program listings**, each listing including title, telecast time and channel,
 - **displaying** on the monitor screen **an overlay** providing, from the stored listings, a title of and channel information on a selected program simultaneously with the selected program upon selection of a channel change
 - and **displaying, responsive to a user input, a further overlay containing further information** on the selected program from the stored listings.

Claims 2 as granted

2. **Apparatus** for accessing information about television programs, the apparatus comprising
- the **means for storing** in an electronic memory of a schedule controller operably connected with a monitor screen, a plurality of television program listings, each listing including title, telecast time and channel,
 - **means for displaying** on the monitor screen **an overlay** providing, from the stored listings, a title of and channel information on a selected program simultaneously with the selected program upon selection of a channel change,
 - and **means for displaying, responsive to a user input, a further overlay** containing further information on the selected program from the stored listings.

Claims 1 & 2: main features

1. Storing information in an electronic memory
2. Displaying an overlay on the monitor screen
3. Displaying, responsive to a user input, a further overlay containing further information

First set of amendments

"1. A method for accessing information about television programs, the method comprising the steps of storing in an electronic memory of a schedule controller operably connected with a monitor screen, a plurality of television program listings, each listing including title, telecast time and channel, displaying on the monitor screen an overlay providing, from the stored listings, a title of and channel information on a selected program simultaneously with the selected program upon selection of a channel change, and displaying, responsive to a user input, a further supplemental overlay containing further supplemental information on the selected program from the stored listings.

2. Apparatus for accessing information about television programs, the apparatus comprising the means for storing in an electronic memory of a schedule controller operably connected with a monitor screen, a plurality of television program listings, each listing including title, telecast time and channel, means for displaying on the monitor screen an overlay providing, from the stored listings, a title of and channel information on a selected program simultaneously with the selected program upon selection of a channel change, and means for displaying, responsive to a user input, a further supplemental overlay containing further supplemental information on the selected program from the selected listings."

Second set of amendments

"1. A method for accessing information about television programs, the method comprising the steps of storing in an electronic memory of a schedule controller operably connected with a monitor screen, a plurality of television program listings, each listing including title, telecast time and channel, displaying on the monitor screen an overlay providing, from the stored listings, a title of and channel information on a selected program simultaneously with the selected program upon selection of a channel change, and displaying, responsive to a user input, a further supplemental overlay containing further supplemental information on the selected program from the stored listings such supplemental information in said supplemental overlay containing a program note selected by way of a select key on a user-actuated remote control device, the program note containing information pertinent to a program currently being broadcast on the selected channel.

2. Apparatus for accessing information about television programs, the apparatus comprising the means for storing in an electronic memory of a schedule controller operably connected with a monitor screen, a plurality of television program listings, each listing including title, telecast time and channel, means for displaying on the monitor screen an overlay providing, from the stored listings, a title of and channel information on a selected program simultaneously with the selected program upon selection of a channel change, and means for displaying, responsive to a user input, a further supplemental overlay containing further supplemental information on the selected program from the selected listings such supplemental information in said supplemental overlay containing a program note selected by way of a select key on a user-actuated remote control device, the program note containing information pertinent to a program currently being broadcast on the selected channel."

Amendments of claims 1 and 2 filed during the proceedings are inadmissible

Claimant did not comply with Rule 30 (1b) of the Rules of procedure which requires:

"an explanation as to why the amendments satisfy the requirement of Articles 84 and 123 (2) and (3) EPC and why the proposed amended claims are valid and infringed"

Lack of patentability: presentation of information

- No technical features disclosed in order to provide information on programs through information notes
- No “*novel technical features*” according to the EPC directives and case-law

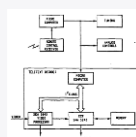
Lack of novelty

European patent application Hennig
N° 0 447 968 discloses the features of
claims 1 and 2

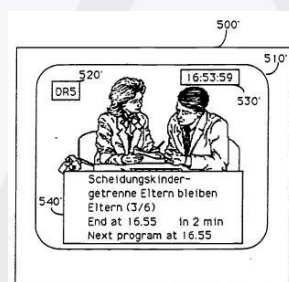
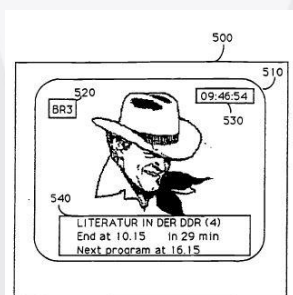
European patent application Hennig N° 0 447 968

- Electronic program guide displaying information on programs
- Information stored in a decoder and retrieved when necessary

P402	402	CH-TEXT	15.02.90	14:23:02
S9G	TY-DIG		Donnerstag	15. Februar 1990
08.30	0753	SchauFernsehen: Geographie	15:00	0753
09.20	0753	Reise durch unseren Körper	15:00	0753
09.30	0753	Ende / Pause	15:00	0753
10.05	0753	Wunderfrauen	15:00	0753
12.00	0753	Ein Haie für Tiere	15:00	0753
12.05	0753	Teilzeitgel: Herrscher des gelben Dreiecks	15:00	0753
14.45	0753	MIV	15:00	0753
15.40				

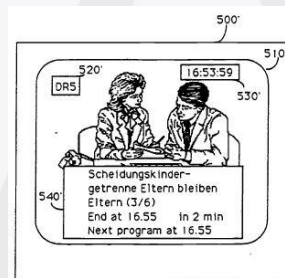
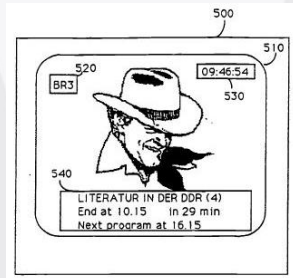


European patent application Hennig N° 0 447 968



Displays in overlays (references 540 and 540') the title or the information on the channel of a selected program simultaneously with the selected program upon the touch of a button when a new channel is selected

European patent application Hennig N° 0 447 968

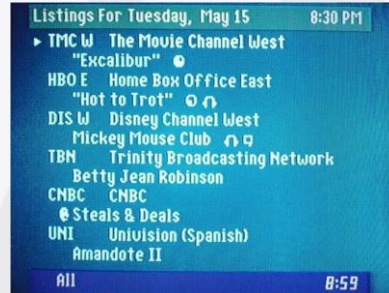


Also teaches a displaying step, responsive to a user input, of another overlay containing further information concerning the selected program from the stored listings (update of information) (p. 4, col. 5, lines 9-13):
"The display (540, 540'), indicating the remaining duration, has to be updated during the time the microcomputer waits the next appearance of pages, and if desired, the title the program can also be displayed."

Lack of inventive step

- Or over the publication "Personal Home TV Programming Guide" by Peter D. Hallenbeck and the teachings of the Superguide
- Over the teachings of the Hennig European patent application

The publication "*Personal Home TV Programming Guide*" by Peter D. Hallenbeck and the prior use of the SuperGuide

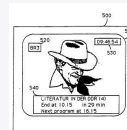
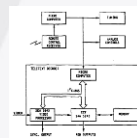


Considering the teachings of the SuperGuide system, the person skilled in the art did not have to exercise any inventive skill to present additional information on the programs in banners that do not take up the totality of a television screen.

European patent application Hennig N° 0 447 968

Claims 1 & 2: main features

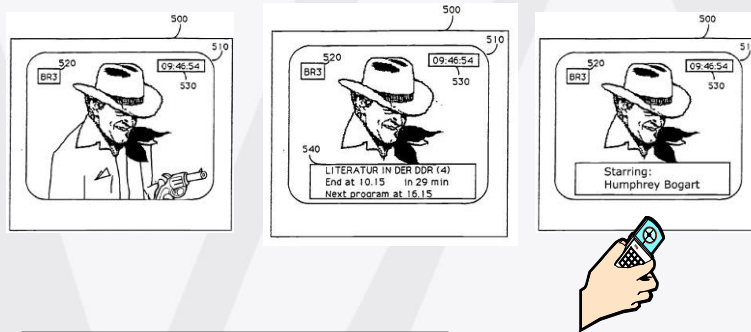
1. Storing information in an electronic memory
2. Displaying on the monitor screen an overlay
3. Displaying, responsive to a user input, a further overlay containing further information



"The display (540, 540'), indicating the remaining duration, has to be updated during the time the microcomputer waits the next appearance of pages, and if desired, the title the program can also be displayed."

Unified Patent Court
Oral hearing

European patent application Hennig N° 0 447 968



No inventive step in adding
the further overlay displaying
further information
responsive to a user input

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Unified Patent Court
Oral hearing

Inventive step in view of European patent application Hennig N° 0 447 968

The person skilled in the art who already knows how to use program notes to provide information on the titles of the programs, their starting and end times, with regard to the teachings of the Hennig patent application can, without exercising any inventive step, provide for displaying other program notes containing additional information in response to a user's choice.

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In the very alternative

No infringement of claims 1 and 2

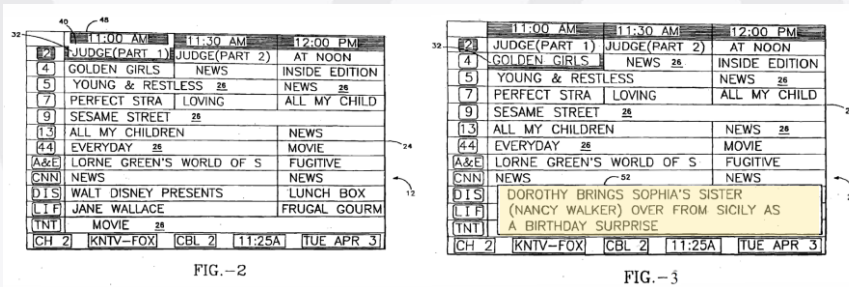
- Additional information available about a selected program is integrated to the program grid
- This entails reducing the height of each line corresponding with each channel in the TV guide



No **further** overlay in the sense of the patent

In the very alternative

No infringement of claims 1 and 2



The patent implies a **further overlay** (superposition):
 "displaying, responsive to a user input, a **further overlay** containing further information on the selected program from the stored listings"

**Pierre Véron
Amandine Métier**

Thank you



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A V O C A T S





ORAL PROCEDURE

Unified Patent Court
Court of First Instance
Central Division (Paris seat)
1, Boulevard du Palais
T +33 1 53 67 47 47
F +33 1 53 67 47 48
registry@unifiedpatentcourt.eu
www.unifiedpatentcourt.eu

Section H1 (Electricity)

Presiding Judge: Mr. Alain Girardet
Judge-rapporteur: Dr. Klaus Grabinski
Technical Judge: Mr. Walter Holzer

Registrar: Mr. Dominique Ménard
Deputy Registrar: Mr. Jules Fabre

CASE No. 2014/01/CDH1	CLAIMANT(S) Telecast BV Representative(s): Mr. Michael Burdon (Olswang LLP) Email(s) provided for service (r.271): michael.burdon@olswang.com	DEFENDANT(S) Blue Cable France SA Blue Cable Germany GmbH TV Grid Switzerland SA TV Grid Italy SpA Representative(s): Me. Pierre Véron and Me. Amandine Métier (Véron & Associés) Email(s) provided for service (r.271) pierre.veron@veron.com amandine.metier@veron.com
PATENT(S)-IN-SUIT EP 1 003 442	DATE 26.05.2014	

SERVICE OF A DECISION OF THE COURT ON THE MERITS (R.6(1))

In the above identified case, you are hereby served the enclosed decision on the merits, which was given orally to the parties immediately after the closure of the oral hearing on Thursday, 22 May 2014 (r.118(7)(a)).

In accordance with Art.73(1) and r.220(1)(a), any appeal shall be lodged within a period

of 2 (two) months

from the service of this decision, this period being computed in accordance with r.300 and r.301.

Suspensive effect (Art.74(2)): in the event of an appeal lodged by the unsuccessful party(ies) within the above period, the effects of the decision as regards the revocation of the patent-in-suit will be suspended pending a decision of the Court of Appeal. Failing an appeal within the above period, a copy of the decision will be sent by the Registrar to the European Patent Office and the national patent offices of the concerned Contracting Member States (Art.65(5)).

Procedure for costs decision (Art.69): where the Court has decided in principle that the legal costs and other expenses incurred by the successful party(ies) shall be borne by the unsuccessful party(ies), the successful party(ies) wishing to seek a cost decision shall lodge an application for a cost decision within a period of 1 (one) month from the service of the decision, under the conditions set out in r.150 and seq..

Application for rehearing (Art.81): after the expiration of the above period for lodging an appeal, an application for rehearing may be lodged under the conditions set out in r.245 *and seq.* by any party adversely affected by the decision.

Rectification: an application for rectification may be lodged within a period of 1 (one) month from the service of the decision, under the conditions set out in r.352 by any of the parties.

The decision has been recorded in the register in accordance with r.350(5).

Remark: *In all future communications with the Registry, please quote the Case No. as indicated above, i.e. including the final four characters (which identify the Section responsible for the subsequent procedure).*

Remark: *The Registry may proceed to service on the parties at an electronic address which they have provided for the purpose of service in the proceedings. Where the electronic address for service of a party changes, that party must give notice in writing of the changes as soon as it has taken place to the Registry and every other party (r.6, 271, 276 and 279).*

The Registrar

**MOCK TRIAL
BEFORE THE UNIFIED PATENT COURT
(CENTRAL DIVISION, PARIS SEAT)
22 MAY 2014**

VERDICT SHEET

This verdict sheet contains the decision which was given orally about 15 minutes after the closure of the oral hearing (due to time constraints) without an in-depth analysis of the case and thus does not reflect the full reasoning and definitive position of the Panel.

№	Question	Audience	Judges
1	Stay the proceedings pending the decision of the Court of Appeal on the appeal lodged by Blue Cable and TV Grid on the issue of the jurisdiction of the Central division of the Court	No	No
2	Hold Telecast's action inadmissible for lack of standing to sue as Telecast does not justify that it is the holder of European patent № 1 003 442	Yes	No
3	Hold Telecast's action inadmissible regarding the French territory because the assignment has not been entered in the French Patent Register	Yes	Yes
4	Dismiss the requests for amending claims 1 and 2 of European patent № 1 003 442 for non-observance of the provisions of rule 30 ROP	No	Yes
5	Hold claims 1 and 2 of European patent № 1 003 442 invalid for lack of patentability (presentation of information)	No	No
6	Hold claims 1 and 2 of European patent № 1 003 442 invalid lack of novelty	No	No
7	Hold claims 1 and 2 of European patent № 1 003 442 invalid for lack of inventive step	Yes	Yes
8	Hold that Defendants infringe claims 1 and 2 of European patent № 1 003 442	No	N/A
9	Issue an injunction to restrain the Defendants and each of them (whether acting by their respective directors, officers, employees, servants or agents or any of them or otherwise howsoever) from infringing the Patent, whether: by making, offering, placing on the market, using, importing or storing a product which is within the scope of Claim 2 of the Patent by using a process which is within the scope of Claim 1 of the Patent; or in any other way; any non-compliance with the aforesaid injunction shall be subject to a recurring penalty payment payable to the Court	No	N/A
10	Issue an order for the delivery up or destruction upon oath of any product which infringes the Patent, whether by recalling the products from the channels of commerce, depriving the product of its infringing property, removing the products from the channels of commerce; and/or destroying the products and/or of the materials and implements concerned;	No	N/A
11	Damages suffered by the Claimant as a result of the Defendants' acts of infringement	Yes	N/A
12	Issue an order for publication, at the Defendants' expense, of any judgment in which the Defendants and each of them are found to have infringed;	No	N/A
13	Legal costs for the Claimant	N/A	N/A
14	Legal costs for the Defendants	Yes	N/A