$~32 (Original)

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ C.A.(COMM.IPD-PAT) 10/2021 and I.A. 13552/2021 (Stay)

DOLBY INTERNATIONAL AB ..... Appellant

Through: Ms. Vindhya S. Mani and Mr. Gursimran Singh Narula, Advs.

Versus

THE ASSISTANT CONTROLLER
OF PATENTS AND DESIGNS ..... Respondent

Through: Mr. Harish Vaidyanathan Shankar, CGSC with Mr. Srish Kumar Mishra, Mr. Sagar Mehlawat and Mr. Alexander Mathai Paikaday, Advs.

CORAM:
HON'BLE MR. JUSTICE C.HARI SHANKAR

JUDGMENT (ORAL)

% 14.03.2023

1. This appeal assails the order dated 29th January 2021 whereby Application No. 6570/DELNP/2009, of the appellant, has been rejected by the Assistant Controller of Patents.

2. I am constrained to observe that the impugned order, to say the least, most unsatisfactorily drawn up – it is hardly possible to treat it as written or drafted. To illustrate why I am constrained to express my anguish thus, I deem it appropriate to place the impugned order on record in the form of a screenshot thus:

GOVERNMENT OF INDIA
MINISTRY OF COMMERCE & INDUSTRY

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Patents/Designs/Trademark
GEOGRAPHICAL INDICATIONS

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The Patents Act, 1970

(Section15)

Application No: 6570/DELNP/2009

Hearing held on 22/10/2020

1. An application for patent bearing number 6570/DELNP/2009 was filed on **14/10/2009.** The request for examination was filed on 17/03/2011. The said application was examined under sections 12 and 13 of the Patents Act, 1970 (as amended) and First Examination report was issued. In response to the First Examination Report, applicant's agent submitted its reply.

2. After considering the reply filed against first examination report by the applicant's agent and the report of the examiner on such reply, it was observed that the said patent application was not in order for grant. In order to dispose of the application, hearing was offered to the applicant and accordingly hearing was fixed on 22/10/2020. The intimation of said hearing was sent to applicant's agent vide e-mail dated 22/09/2020 along with the following objections which were found outstanding in the application:

Objections

Clarity and Conciseness

1. Claim 1 recite various means. The said claim is not clear in respect of structural features of the said means. In absence of such structural features the said claim is indefinite and do not satisfy the requirement of section 10(4)(c) of the Act.

Invention u/s 2(1)(ja)

1. The subject matter as in claim(s) 1 lack inventive step in the view of following prior art document(s).

D1: MVC high-level syntax for random access Authors: Purvin Pandit, Yeping Su, Peng Yin, Cristina Gomila, Anthony Vetro, Emin Martinian Publication data: 77. MPEG meeting; 17-07-2006 - 21-07-2006; Klagenfurt, (Motion Picture Expert Group or ISO/IEC JTC1/SC29/WG11), 20060712 Source info: Nr: M1371

D2: MVC high level syntax Authors: Pandit P, Yin P, Gomila C Publication data: 22. JVT meeting; 79. MPEG meeting; 13-01-2007 - 20-01-2007; Marrakech,MA; (Joint Video Team of ISO/IEC JTC1/SC29/WG11 and ITU-T SG 16); 20070114 Source info: Nr: JVT-V054

Thus, in the view of features described in D1 and/or D2, the subject matter of Claim 1 is not inventive as it would be obvious to the person skilled in the art. Hence, as such does not constitute an invention u/s 2(1)(j) of The Patent Act, 1970(as amended).

3. In response to the said hearing notice, Agent attended the hearing on 22/10/2020 and made written submission on 05/11/2020 .

4. I now turn my attention to the claimed subject matter. The alleged invention is summarized as follows:

In an implementation, a supplemental sequence parameter set ("SPS") structure is provided that has its own network abstraction layer ("NAL") unit type and allows transmission of layer-dependent parameters for non-base layers in an SVC environment. The supplemental SPS structure also may be used for view information in an MVC environment. In a general aspect, a structure is provided that includes (1) information (1410) from an SPS NAL unit, the information describing a parameter for use in decoding a first-layer encoding of a sequence of images, and (2) information (1420) from a supplemental SPS NAL unit having a different structure than the SPS NAL unit, and the information from the supplemental SPS NAL unit describing a parameter for use in decoding a second-layer encoding of the sequence of images. Associated methods and a pparatuses are provided on the encoder and decoder sides, as well as for the signal.

Applicant has also emphasized on following points in submitted reply document :

1.

a. The Applicant submitted that the present invention relates to an apparatus for multi-view video coding (MVC) processing.

b. Concerning the underlying problem that the present subject matter is solving, the Applicant submitted that, in the context of encoding and decoding of video data, the present invention solves a problem that arises when multiple interoperability points (IOPs) (also referred to as layers) need different values for parameters that are typically carried in the sequence parameter set (SPS).

c. Hence, it may be said that no technique currently exists through which layer dependent syntax elements can be transmitted in the SPS for different layers having the same SPS identifier. It is problematic to send separate SPS data for each such layer. For example, in many existing systems a base layer and its composite temporal layers

d. Therefore, from the state of the art, a technical problem arises as to how to decode multiple layers of a coded video sequence efficiently.

2.

e. The pending claim 1 is directed towards a technique to solve the technical problems, as stated above. Claim 1, presented herewith, is for an apparatus for multi-view video coding (MVC) processing. As would be generally understood, MVC relates to approaches for stereoscopic video coding for video compression. The resulting encoding mechanisms allow for the encoding of video sequences captured simultaneously from multiple camera angles in a single video stream.

3.

i. As would be appreciated by the Ld. Asst. Controller, the claimed technique solves the deficiencies inherent in the state of the art by providing a different NAL unit type for supplemental SPS data. Thus, multiple NAL units can be sent, and each NAL unit can include supplemental SPS information for a different SVC layer, without transmitting the entire SPS again, but each NAL unit can be identified by the same NAL unit type. Therefore, the claimed invention solves the technical problem of decoding multiple layers of a coded video sequence efficiently.

5. Once the access information is obtained, the parsing unit may further obtain supplemental information from a supplemental SPS NAL unit. The supplemental SPS NAL unit is different from the SPS NAL unit from the information for decoding the encoding of the first MVC layer was obtained. Furthermore, the supplemental information may further include an identifier indicating that the supplemental SPS NAL unit is to supplement the SPS NAL unit, and also indicates a video usability information (VUI) parameter having layer dependent information. In this manner, information pertinent to different layers is available for decoding the encoding of the different MVC layers.

5. Without prejudice to the above said, having considered the aforesaid submission, I do not find the submission persuasive in view of following:

Claims 1 claims mainly

I/We claim:

1. An apparatus (200, 1500) for multi-view video coding (MVC) processing, the apparatus comprising:

a parsing unit (204, 212, 222, 1510, 2245) to

access information from a sequence parameter set network abstraction layer unit (SPS NAL unit), wherein the information describes a parameter at least for use in decoding an encoding of a first MVC layer in a sequence of images;

access supplemental information from a supplemental SPS NAL unit having a different structure than the SPS NAL unit, wherein the supplemental information describes an identifier of the sequence parameter set indicating that the supplemental SPS NAL unit is used to supplement the SPS NAL unit, and a video usability information ("VUI") parameter having layer dependent information, for use in decoding an encoding of a second MVC layer in the sequence of images; and

a decoder (1520) to

decode the encoding of the first MVC layer based on the accessed information from the SPS NAL unit; and

decode the encoding of the second MVC layer, based on the accessed supplemental information from the supplemental SPS NAL unit.

6 . The oral argument and the written submission of the agent of the applicant have been carefully considered. However without prejudice, although the hearing submissions have attempted to address the other requirements, yet the substantive requirement of the Patents Act, 1970 i.e. **Section 3(k)** is not found complied with which is as follows :

The subject-matter of claim 1 relates to multi view video coding processing. Embodiments described herein in terms of functional and/or logical block components and various processing steps may be realized by software components configured to perform the specified function . Further, there is no recitation of any hardware in the claim, which makes the claim software per se. Therefore, the subject matter of said claim falls within scope of clause (k) of section (3) of the Patents Act, 1970 (as amended). Therefore invention claimed in said claims is not patentable.

Also with reference to the drawings :

An apparatus (200, 1500) for multi-view video coding (MVC) processing, the apparatus comprising: a parsing unit (204, 212, 222, 1510, 2245)

Here the apparatus explained have no physical presence but only a method of programming as seen above (204, 222, 212) etc.

VUI parameters for multiple layers into a single SUP SPS as claimed in claim 1 is computer executable programming as explained in the description pg 20 , 21 and 22 .

svc_vui_parameters( ) {	C	Descriptor
timing_info_present_flag	0	u(1)
if(timing_info_present_flag) {		
num_units_in_tick	0	u(32)
time_scale	0	u(32)
fixed_frame_rate_flag	0	u(1)
)		
nal_hrd_parameters_present_flag	0	u(1)
if(nal_hrd_parameters_present_flag)		
hrd_parameters( )		
vcl_hrd_parameters_present_flag	0	u(1)
if(vcl_hrd_parameters_present_flag)		
hrd_parameters( )		
if(nal_hrd_parameters_present_flag || vcl_hrd_parameters_present_flag)		
low_delay_hrd_flag	0	u(1)
pic_struct_present_flag	0	u(1)
bitstream_restriction_flag	0	u(1)
if(bitstream_restriction_flag) {		
motion_vectors_over_pic_boundaries_flag	0	u(1)
max_bytes_per_pic_denom	0	ue(v)
max_bits_per_mb_denom	0	ue(v)
log2_max_mv_length_horizontal	0	ue(v)
log2_max_mv_length_vertical	0	ue(v)
num_reorder_frames	0	ue(v)
max_dec_frame_buffering	0	ue(v)
)		

Also Objections for

Invention u/s 2(1)(ja)

1 The subject matter as in claim(s) 1 lack inventive step in the view of following prior art document(s):

D1: NVC high-level syntax for random access Authors: Purvin Pandit, Yeping Su, Peng Yin, Cristina Gomila, Antoniy Vetro, Emin Martinian Publication data: 27. MPEG meeting; 17-07-2006 - 21-07-2006; Klagenfurt (Motion Picture Expert Group or ISO/IEC JTC1/SC29/WG11), 20060712 Source info: Nr M1371

D2: NVC high level syntax, Authors: Pandit P, Yin P, Gomila C Publication data: 22. JVT meeting; 79. MPEG meeting; 13-01-2007 - 19-01-2007; Marrakech,MA; (Joint Video Team of ISO/IEC JTC1/SC29/WG11 and ITU-T SG.16), 20070114 Source info: Nr JVT-V054

Thus, in the view of features described in D1 and/or D2, the subject matter of Claim 1 is not inventive as it would be obvious to the person skilled in the art. Hence, as such does not constitute an invention u/s 2(1)(j) of The Patent Act, 1970(as amended).

Also FER containd objection regarding documents :

1.	D1: The H.264/AVC Advanced Video Coding Standard: Overview andIntroduction to the Fidelity Range Extensions". August, 2004		01/08/2004	Whole document		1
2.						
3.						

The oral argument and the written submission of the agent of the Applicant have been carefully considered. However without prejudice, although the hearing submissions have attempted to address the other requirements, yet the substantive requirement of the Patents Act, 1970 i.e. section 2(1)(j) are not found complied with. Hence,
in view of the above and unmet requirements, this instant application is not found in order for grant .

Hence, in view of the above and unmet requirements, this instant application is not found in order for grant **Also I agree with the findings of the examiner that the subject matter as described and claimed attract the provisions of sections 3(k)) and 2(1)(j) of the Patent Act, 1970.**

7. Thus, in view of the aforesaid and unsatisfactory submissions made by the Agents in respect of the pertinent requirements as raised in the said hearing notice, this instant application does not comply with the requirements of the Act. I, therefore, hereby order that the grant of a patent is **REFUSED** under the provisions of Section 15 of the Patents Act.

8. This is to be noted that the aforesaid observations, and decision thereof, are based solely on the electronically uploaded documents to date.

Dated this 29/01/2021

(ASHLESH MAURYA)

Asst. Controller of Patents & Designs

3. It is impossible to understand, from the impugned order, where the reference to the claims begins, what part refers to the FER and where one is to find the reasoning of the Assistant Controller. In fact, in para 6 of the impugned order, a full page has been devoted to what appears to be a part of a diagram which has been cut and pasted by the Assistant Controller apparently for no reason whatsoever.

4. Let us try to deconstruct the impugned order. Para 1 is formal. Para 2 cuts and pastes the objection which was found outstanding from those in the First Examination Report (FER), as communicated to the appellant by the Controller. Para 4 first reproduces the claim in the patent application and, thereafter, sets out the response of the appellant thereto. Para 5 initially records the observation of the Assistant Controller that he did not "find the submission persuasive" in view of the reasons which follow. What follows, however, is only the claim of the appellant in its application. Para 6, thereafter, starts with the reassuring comment that the "oral argument and written submission of the agent of the appellant have been carefully

considered". Thereafter, however, the impugned order first reproduces the objection in the FER relating to Section 3(k) of the Patents Act – which was, incidentally, not found "outstanding" in the notice of hearing, which merely sought the appellant's response relating to Section 2(1)(ja). It then reproduces part of the drawing of the apparatus in question, with neither prelude nor preface, and with no clarification why it does so. The diagram too, incidentally, is not reproduced in full and, as reproduced, makes no sense whatsoever. Then follows the single sentence which may, if at all, be regarded as "reasoning" in the impugned order:

> "Here the apparatus explained have no physical presence but only a method of programming as seen above (204, 222, 212) etc."

Here, again, there is no reason forthcoming, whatsoever, for this finding. The impugned order, thereafter, sets out "VUI parameters" for the claimed invention, followed by a cut-and-paste reproduction of the objections regarding Section 2(1)(ja) as contained in the notice of hearing and the FER. Three prior arts, denoted as D1, D2 and again D1, are referred to therein. There is no reference, whatsoever, to the appellant's explanation in response to the objections, and the order concludes, laconically, with the comment that "the substantive requirement of the Patents Act, 1970 i.e. section 2(1)(j) are not found complied with". In so holding, the Assistant Controller also seems to have overlooked the fact that the objection was predicated not on Section 2(1)(j) but on Section 2(1)(ja). The application is ultimately rejected on the ground of Section 3(k) – which finds no place in the notice of hearing issued to the appellant – and Section 2(1)(j), which was never invoked at any stage.

5. Ms. Vindhya S. Mani is correct in her submission that the only single sentence in the impugned order of ten pages which can be

likened to any kind of reasoning is this:

> "Here the apparatus explained have no physical presence but only a method of programming as seen above (204, 222, 212) etc."

6. Apart from the aforesaid sentence, there is no reasoning in the entire impugned order.

7. The Assistant Controller appears to be thoroughly confused both as to the nature of the claim for which the application was made as well as objections raised in the FER and in the notice of hearing. For example, with respect to the objections relating to Section 2(1)(ja), the impugned order first cuts and pastes the objections in the FER which is predicated on two prior arts noted as D-1 and D-2. Thereafter, it cuts and pastes part of notice of hearing and table from the FER, which refers to a third prior art, also denoted as D-1. Thereafter, without the courtesy of referring to the prior art with respect to which the Assistant Controller found a lack of inventive step, the order merely states that "the substantive requirement of the Patents Act, 1970, i.e. Section 2(1)(j) are not found complied with". In fact, the impugned order reflects that parts – often incomplete – of various documents have been randomly cut and pasted together, leaving the reader of the order to divine, for himself, the reason why.

8. This Court is, frankly, aghast at the manner in which the impugned order has been passed. Such cut-and-paste orders do little justice to the solemn functions which have been entrusted on the officers in the office of the Controller of Patents and Designs. It is solely because of the completely arbitrary manner in which the impugned order has been passed, that the Court is not in a position to examine the order on merit. The appellant, having applied for a

patent, has suffered an FER, a notice of personal hearing and, thereafter, the impugned and completely incomprehensible order, rejecting the appellant's application.

9. It would well for the officers in the office of the Controller of Patents and Designs, who are discharging such functions, to bear in mind the fact that grant or rejection of a patent is a serious matter. A patent is meant to be a recognition of the innovative step that has been put into a crafting of an invention. Inventions increment the state of existing scientific knowledge and, thereafter, are of inestimable public interest. Any decision, whether to grant or refuse a patent has, therefore, to be informed by due application of mind, which must be reflected in the decision. Orders refusing applications for grant of a patent cannot be mechanically passed, as has been done in the present case.

10. The Officer adjudicating the claim for registration of a patent must bear in mind the fact that the life of a patent is reckoned from the date when the application is made, and not from the date when the patent is granted. Unreasonable delay in grant of a patent results in reduction of the residual life of the patent, which can itself be a serious disinclination for inventors who seek to invent new and innovative methods, products or processes.

11. The impugned order, which cannot be said to satisfy even the most fundamental requisites of an order adjudicating on a claim for registration of a patent is, therefore, quashed and set aside.

12. The matter is remanded to the Controller of Patents for reconsideration. Prior to deciding the matter afresh, the appellant

shall be granted a hearing. Needless to say, the matter would not be decided by the officer who has passed the impugned order. Let the aforesaid exercise be completed and order passed within two months from today.

13. Needless to say, the *de novo* consideration would proceed completely uninfluenced by the impugned order.

14. This appeal is allowed accordingly. Miscellaneous applications does not survive for consideration and stand disposed of.

C.HARI SHANKAR, J

MARCH 14, 2023
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