

Internal distribution code:

- (A) Publication in OJ
(B) To Chairmen and Members
(C) To Chairmen
(D) No distribution

**Datasheet for the decision
of 4 February 2010**

Case Number: T 0713/07 - 3.5.04

Application Number: 97910591.3

Publication Number: 0882354

IPC: H04N 1/00

Language of the proceedings: EN

Title of invention:

A method and device for configuring a multimedia message for presentation

Applicant:

Koninklijke Philips Electronics N.V.

Opponent:

-

Headword:

-

Relevant legal provisions:

EPC Art. 123(2)

RPBA Art. 13(1)

Relevant legal provisions (EPC 1973):

-

Keyword:

"Amendments - added subject-matter (yes)"

Decisions cited:

-

Catchword:

-



Case Number: T 0713/07 - 3.5.04

D E C I S I O N
of the Technical Board of Appeal 3.5.04
of 4 February 2010

Appellant: Koninklijke Philips Electronics N.V.
Groenewoudseweg 1
NL-5621 BA Eindhoven (NL)

Representative: Faessen, Louis Marie Hubertus
Philips
Intellectual Property & Standards
P.O. Box 220
NL-5600 AE Eindhoven (NL)

Decision under appeal: Decision of the Examining Division of the
European Patent Office posted 24 November 2006
refusing European application No. 97910591.3
pursuant to Article 97(1) EPC 1973.

Composition of the Board:

Chairman: F. Edlinger
Members: C. Kunzelmann
T. Karamanli

Summary of Facts and Submissions

- I. The appeal is against the decision of the examining division to refuse European patent application No. 97 910 591.3, published as WO 98/25231 A2.
- II. The application was refused on the ground of lack of inventive step (Article 56 EPC 1973).
- III. The applicant appealed and requested oral proceedings as an auxiliary measure. With the statement of grounds of appeal the appellant filed a new set of claims 1 to 5. The appellant referred *inter alia* to page 4, lines 17 to 30, of the published application as providing disclosure of the amendments of the claims in the application as filed (Article 123(2) EPC). The appellant also submitted arguments in support of inventive step.
- IV. The board issued a communication dated 21 September 2009 and pursuant to Article 15(1) of the Rules of Procedure of the Boards of Appeal (RPBA) annexed to a summons to oral proceedings. In this communication the board expressed doubts as to whether the amendments made by the appellant complied with the requirements of Article 123(2) EPC. The board indicated that there was no explicit disclosure of the feature "a predetermined number of selector spots in parallel ... the predetermined number being determined by the selected style". The passages on page 4 indicated by the appellant did not appear to fulfil the criterion of direct and unambiguous disclosure of this feature. The indicated passages appeared to disclose that in the

cited embodiments the display sequence may be determined by the template.

The board also expressed doubts as to whether the claimed method involved an inventive step (Article 56 EPC 1973).

- V. With a letter dated 4 January 2010 the appellant filed claims 1 to 5 according to a new main request and claims 1 to 4 according to a new auxiliary request. In this letter the appellant submitted that, in order to overcome the board's objection under Article 123(2) EPC, the appellant had *inter alia* replaced the feature "the predetermined number being determined by the selected style" with the feature "the display sequence of the predetermined number of selector spots being determined by the selected style" in the amended independent claims. The appellant also submitted that the latter feature was based on page 4, lines 17 to 27, of the published application.

The appellant also submitted that the feature added to claim 1 of the auxiliary request was not disclosed in D1.

- VI. Claim 1 of the main request reads as follows.

"A method for configuring a multimedia message for presentation to a non-local destination, said method comprising the steps of:
presenting a formatted choice menu for various multimedia categories, at least one multimedia category being the category of images,

upon one or more user selections in series, offering to each such user selection a monomedium item space for enabling the user to enter an item pertaining to the associated monomedium into said space, and after termination of all selections formatting the message for transfer, which includes the step of inserting the entered user items into the message, characterized by offering to a user said formatting as being selectable in any of a plurality of predetermined styles that are defined in the form of a respective template, by providing in said formatted choice menu a predetermined number of selector spots in parallel, each associated to a respective monomedium, the display sequence of the predetermined number of selector spots being determined by the selected style, and by after said entering of a particular user item into the associated space, displaying a symbolizer of that item at a predetermined position next to any remaining selector spot in the menu."

Claim 1 of the auxiliary request has, so far, the same wording, but then comprises the additional feature "said symbolizer being an excerpt from the associated user item as entered" at the end of the claim.

- VII. In a letter dated 19 January 2010 the appellant announced that they would not attend the oral proceedings.
- VIII. Oral proceedings were held on 4 February 2010 in the absence of the appellant in application of Rule 71(2) EPC 1973 and Article 15(3) RPBA. The board noted in the oral proceedings that the appellant had requested in writing that the decision under appeal be set aside and

that a patent be granted on the basis of the claims according to the main request or, alternatively, according to the auxiliary request, both filed with the letter of 4 January 2010. At the end of the oral proceedings the chairman announced the board's decision.

IX. The appellant's arguments, as far as they are relevant for the present decision, can be summarised as follows.

In the statement of grounds of appeal the appellant stated: "New claim 1 is a combination of original claims 1 and 4 with the additional feature that the formatted choice menu shows a predetermined number of selector spots, which predetermined number is determined by the selected style. This is disclosed on page 4 lines 17 - 30. This passage makes it clear that the monomedium items to be used are determined by the template/style". Moreover the appellant submitted that the invention provided a user interface with reduced complexity and improved ease of use. By allowing the user to select a style or template which prescribed the multimedia items to be attached, the user was guided in selecting the right end of items. Subsequently the selector spots were provided in parallel to provide a single-screen overview of the items that still could be attached.

Reasons for the Decision

1. The appeal is admissible.
2. *Admissibility of the main and auxiliary requests*
 - 2.1 The main and auxiliary requests were filed in response to the board's communication dated 21 September 2009. They were received on the final date for making written submissions fixed in the board's communication. The amendments in the claims of the main request concerned the Article 123(2) EPC issues raised in the board's communication. They essentially consisted in reformulating objected features and did not increase the complexity of the case. The additional amendment in the claims of the auxiliary request concerned the issue of inventive step (Article 56 EPC 1973) also raised in the board's communication. The amendments did not lead to new issues, so that it could be expected that the board could come to a decision in the oral proceedings despite the appellant's absence.
 - 2.2 Hence the board decided to admit the main and auxiliary requests when exercising its discretion pursuant to Article 13(1) RPBA.
3. *Amendments (Article 123(2) EPC)*
 - 3.1 Both claim 1 of the main request and claim 1 of the auxiliary request comprise the feature of "the display sequence of the predetermined number of selector spots being determined by the selected style". The appellant submitted that this feature was based on page 4, lines 17 to 27, of the application as originally filed.

3.2 In order to correctly determine the relevant disclosure of the paragraph on page 4, lines 17 to 27, of the application as originally filed, it is necessary to read this paragraph in its context. The context is as follows.

In the framework of the explanation of the navigation diagram shown in figure 2, the description discloses on page 3, line 24, to page 4, line 2, how the text, audio, picture and video items necessary for configuring the desired multimedia message can be added to the message ("add to letter"). They are selected, on a "create screen 50", by hotspots ("selector spots" in terms of claim 1) corresponding to text, audio, picture and video categories, which allows retrieval of the desired content items (that is text item(s), audio item(s), picture item(s) and video item(s)) from an appropriate storage mechanism. Page 4, lines 2 to 16, then discloses that symbolizers of the retrieved user items are shown on the screen (for instance at locations of the corresponding hotspots) so that the user knows the categories for which items have already been entered, and which possibilities for selecting items have been left unused. Page 4, lines 17 to 30, discloses that a "compose screen 60" allows selection between a plurality of styles, each style being defined in the form of a respective template. The styles may be **formal** for a business letter, **classic** for a standard letter, **congratulatory**, **hilarious** or other. The **classic** style, for instance, is an embodiment in which first text and picture are displayed side-by-side; next the video is played; finally the sound is played while again displaying the picture. The paragraph on page 4,

line 31, to page 5, line 8, then discloses that selecting the style transfers to a play/stop/addressing screen 62. In this context it is clear that selecting "play" allows the content items of the configured message to be played in the sequence determined by the selected style. Selecting "addressing" leads to a screen which allows selection in an address directory or typing of an appropriate address. Finally, the message may be sent to the addressee.

3.3 Thus, when read in context, the paragraph on page 4, lines 17 to 27, relates to the display sequence of the content items. This display sequence is determined by the selected style. This is also confirmed by the statement on page 2, lines 29 and 30, that "[a]lternatively, the user may be offered a choice for freely composing the **succession of the various items** in the message and their presentations to the receiver" (emphasis by the board).

3.4 In summary, the paragraph on page 4, lines 17 to 27, does not relate to a display sequence of the predetermined number of selector spots specified in claim 1 of the main and auxiliary requests. When the board observed in its communication that apparently in the embodiments the display sequence may be determined by the template, it expressly referred to the passages indicated by the appellant (page 4). The board's observation did not however refer to the display sequence of selector spots (or "hotspots" in the description). Instead, from the context of the cited passages set out in points 3.2 and 3.3 above, it was clear that the observation related to the display

sequence of the content items, but not that of the selector spots.

3.5 Furthermore the board does not see any other disclosure of "the display sequence of the predetermined number of selector spots being determined by the selected style" in the application as filed. Page 5, lines 17 to 24, describes the create screen 50 displaying four selector spots (see figure 3A). The selector spots are provided in parallel, as specified in claim 1. Highlighting of the text selector spot may indicate that first the text item should be chosen. But the application does not disclose that the highlighting is determined by the selected style. In particular, it is not disclosed that any other than a first selector spot is highlighted next in the meaning of a display sequence guiding a user when selecting content items. According to the described embodiment, the style is selected on the compose screen 60 after the desired items have been added to the message (see page 5, lines 1 to 4, in conjunction with page 4, lines 11, 17 and 18, and figure 3F of the application as filed).

3.6 The appellant's arguments submitted in the statement of grounds of appeal have not convinced the board for the following reasons.

Original claim 4 specifies that the formatting of the message for transfer (specified in claim 1) is selectable in any of a plurality of predetermined styles that were defined in the form of a respective template. Original claim 4 does not concern any display sequence.

Even if it were accepted by the board that the passage on page 4, lines 17 to 30, discloses that the selected style (and thus the template) prescribed the multimedia items to be attached, this does not imply any display **sequence** of the selector spots which are provided in parallel. Nor does it imply highlighting of selector spots in a predetermined sequence (see point 3.5 above).

3.7 Thus the board judges that with the amendments to claim 1 of both the main and the auxiliary request the application has been amended in such a way that it contains subject-matter which extends beyond the content of the application as filed, contrary to Article 123(2) EPC. Therefore both requests are not allowable and, consequently, the appeal is to be dismissed.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:

L. Fernández Gómez

F. Edlinger