

Internal distribution code:

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

**Datasheet for the decision
of 23 November 2010**

Case Number: T 1058/07 - 3.5.05

Application Number: 01946224.1

Publication Number: 1295198

IPC: G06F 3/033

Language of the proceedings: EN

Title of invention:

Providing a scrolling function for a multiple frame web page

Applicant:

Intel Corporation

Headword:

Scrolling function for a multiple frame web page/INTEL

Relevant legal provisions:

EPC Art. 52(1), 56, 84, 116(1), 123(2),
RPBA Art. 15(1)(3)

Relevant legal provisions (EPC 1973):

EPC Art. 106, 107, 108

Keyword:

"Oral proceedings held in absence of appellant"
"Inventive step - no (all requests)"

Decisions cited:

J 0010/07, T 0190/03

Catchword:

-



Case Number: T 1058/07 - 3.5.05

D E C I S I O N
of the Technical Board of Appeal 3.5.05
of 23 November 2010

Appellant: Intel Corporation
2200 Mission College Boulevard
Santa Clara, CA 95052 (US)

Representative: Jacoby, Georg
Samson & Partner
Widenmayerstrasse 5
D-80538 München (DE)

Decision under appeal: Decision of the Examining Division of the
European Patent Office posted 1 December 2006
refusing European patent application
No. 01946224.1 pursuant to Article 97(1) EPC
1973.

Composition of the Board:

Chair: A. Ritzka
Members: P. Corcoran
F. Blumer

Summary of Facts and Submissions

I. This is an appeal against the decision of the examining division to refuse the European patent application no. 01 946 224.1. The decision was announced in oral proceedings held on 24 April 2006 and the written reasons were dispatched on 1 December 2006.

II. The following documents were cited during the examination proceedings:

D1: JP 04-259034 A;

D2: JP 01-140194 A.

English language translations of these documents were additionally cited, said translations being referred to respectively as D1t and D2t.

III. The decision under appeal was based on a set of requests filed during oral proceedings before the examining division, viz. a main request and first and second auxiliary requests, each of said requests comprising claims 1 to 10. The examining division found that the independent claims of the main request lacked inventive step over D1 and, likewise, over D2. A similar finding was made in respect of the independent claims of the auxiliary requests.

IV. In relation to the main request, the examining division argued to the effect that the skilled person faced with the problem of applying scrolling operation to a plurality of frames when one of the frames had reached its beginning or end would recognise without the exercise of inventive skill that there were a limited number of possibilities and that these possibilities were mere design options among which the skilled person

would select depending on the given circumstances (cf. decision under appeal: Grounds for the Decision, item 2.5, p.5-6).

- V. Notice of appeal was received on 8 January 2007 and the appeal fee paid on the same date. The appellant requested that the decision under appeal be set aside and that a patent be granted based on the documents currently on file. The notice of appeal also included a precautionary request for oral proceedings. A statement setting out the grounds of appeal was received at the EPO on 30 March 2007. Amended description pages 2 and 2A were filed with the statement setting out the grounds of appeal.
- VI. In a communication accompanying a summons to oral proceedings to be held on 23 November 2010, the board gave its preliminary opinion that none of the applicant's requests were allowable.
- VII. In said communication, objections were raised against the independent claims of the second auxiliary request under Article 84 EPC. It was further noted that, even if appellant were to succeed in overcoming these objections, the subject matter of said independent claims did not appear to satisfy the inventive step requirements of the EPC. In particular, the claimed subject-matter appeared to lack an inventive step over the disclosure of D2. The board was further of the opinion that D1 provided a basis for an inventive step objection as did the background art acknowledged in the application.

According to the board's preliminary opinion, the objections raised against the independent claims of the second auxiliary request also applied *mutatis mutandis* to the corresponding claims of the main and first auxiliary requests.

VIII. With a letter of reply dated 22 October 2010, the appellant filed a new set of requests comprising a main request and first and second auxiliary requests. The independent claims of the new requests incorporated amendments made in response to the objections under Article 84 EPC which had been raised in the board's communication. An amended version of page 3 of the description was also filed.

The appellant did not make any substantive response to the inventive step objections raised in the board's communication but merely referred to its previous submissions in this regard.

IX. On 23 November 2010, the appellant's representative notified the board by telephone and by telefax that he would not be attending the oral proceedings scheduled on that date.

X. The appellant has requested that the decision under appeal be set aside and that a patent be granted on the basis of the claims of one of the following requests:

Claims 1-10 of the main request as filed with the letter dated 22 October 2010;

Claims 1-10 of the first auxiliary request as filed with the letter dated 22 October 2010;

Claims 1-10 of the second auxiliary request as filed with the letter dated 22 October 2010.

The further documents on which the appellant's requests are based, i.e. the text of the description and the drawings, are as follows:

Description, pages:

1, 4 and 5 as published.

2 and 2a as filed on 30 March 2007.

3 as filed with the letter dated 22 October 2010.

Drawings, Figures: 1-5 as published.

XI. Claim 9 of the main request reads as follows:

"A system (48) comprising:

a processor-based device (50); and

a storage (56) coupled to said processor-based device (50) storing instructions that enable the processor-based device (50) to receive a command from a single scroll device (20) to simultaneously scroll each of two frames (12;16) in each of two windows (24a;24b) on a display (54), said scroll device (20) being provided for both frames (12; 16) to generate said command;

said instructions further enable the processor-based device (59) [*sic*] to determine when the beginning or end of one of said frames (12;16) is displayed in its window (24a;24b), and automatically stop the scrolling of a frame (12;16) when its beginning is displayed during an upwards scrolling operation or when is [*sic*] end is displayed during a downwards scrolling operation while continuing to scroll the other of said frames (16;12) in response to said command."

The request comprises two further independent claims, viz. claim 1 directed towards a corresponding method and claim 5 directed towards a corresponding computer program.

XII. Claim 9 of the first auxiliary request reads as follows:

"A system (48) comprising:

a processor-based device (50); and

a storage (56) coupled to said processor-based device (50) storing instructions that enable the processor-based device (50) to receive a command from a single scroll device (20) to simultaneously scroll each of two frames (12;16) in each of two windows (24a;24b) on a display (54), only one scroll device (20) being provided for both frames (12; 16) to generate said command;

said instructions further enable the processor-based device (59) [*sic*] to determine when the beginning or end of one of said frames (12;16) is displayed in its window (24a;24b), and automatically stop the scrolling of a frame (12;16) when its beginning is displayed during an upwards scrolling operation or when its [*sic*] end is displayed during a downwards scrolling operation while continuing to scroll the other of said frames (16;12) in response to said command."

As in the case of the main request, the first auxiliary request comprises two further independent claims directed respectively towards a corresponding method (claim 1) and computer program (claim 5).

XIII. Claim 9 of the second auxiliary request reads as follows:

"A system (48) comprising:

a processor-based device (50); and

a storage (56) coupled to said processor-based device (50) storing instructions that enable the processor-based device (50) to receive a command from a single scroll device (20) to simultaneously scroll each of two frames (12;16) in each of two windows (24a;24b) on a display (54), only one scroll device (20) being provided for both frames (12; 16) to generate said command;

said instructions further enable the processor-based device (59) [sic] to automatically determine when the beginning or end of one of said frames (12;16) is displayed in its window (24a;24b), and automatically stop the scrolling of a frame (12;16) when its beginning is displayed during an upwards scrolling operation or when its [sic] end is displayed during a downwards scrolling operation while continuing to scroll the other of said frames (16;12) in response to said command."

As in the case of the preceding requests, the second auxiliary request comprises two further independent claims directed respectively towards a corresponding method (claim 1) and computer program (claim 5).

XIV. Oral proceedings were held as scheduled on 23 November 2010. The appellant was not represented. After deliberation by the board, the chair announced the decision.

Reasons for the Decision

1. *Admissibility*

1.1 The appeal complies with the provisions of Articles 106 to 108 EPC 1973 which are applicable according to J 10/07, point 1 (cf. Facts and Submissions, item V. above). Therefore it is admissible.

2. *Non-attendance at oral proceedings*

2.1 In accordance with Article 116(1) EPC, oral proceedings shall take place either at the instance of the European Patent Office if it considers this to be expedient or at the request of any party to the proceedings. In the present case, the appellant had made a conditional request for oral proceedings and the board also considered it expedient to hold oral proceedings. A summons accompanied by a communication was therefore issued as foreseen by Article 15(1) RPBA.

2.2 Although the appellant's representative announced his intention not to attend, the appellant did not withdraw his request for the oral proceedings. In view of these circumstances, the board considered that the twin requirements of fairness and procedural economy were best served by holding the oral proceedings as scheduled. In this regard the board notes that pursuant to Article 15(3) RPBA it shall not be obliged to delay any step in the proceedings, including its decision, by reason only of the absence at the oral proceedings of any party duly summoned who may then be treated as relying only on its written case.

2.3 The appellant could reasonably have expected that during the oral proceedings the board would consider the objections and issues raised in the communication annexed to the summons to oral proceedings (cf. point VII. above). In deciding not to attend the oral proceedings, the appellant thus chose not to avail itself of the opportunity to present its observations and counter-arguments orally but instead to rely on its written case as presented in the written statement setting out the grounds of appeal and in the letter dated 22 October 2010.

3. *Preliminary observations*

3.1 The independent claims of all requests have been amended to specify that the scrolling of a frame is stopped "when its beginning is displayed during an upwards scrolling operation or when is [sic] end is displayed during a downwards scrolling operation". The board is satisfied that support for these amendments can be found on p.3 1.5-32 of the description as filed.

3.2 The amendments to p.3 of the description filed with the letter dated 22 October 2010 are, in the board's judgement, either minor amendments of a clarifying nature (i.e. the insertion of the reference "Down" on lines 8, 25 and 31 of p.3 for consistency with Figs. 1-3) or are intended to correct an obvious error (i.e. the replacement of "upward" by "downward" on lines 25 and 31 of p.3). The board finds that these amendments do not introduce subject-matter which extends beyond the content of the application as filed and are thus allowable under Article 123(2) EPC.

- 3.3 The aforementioned amendments to the independent claims are found to overcome the objections raised against said claims under Article 84 EPC in the board's communication (cf. Facts & Submissions, item VII.).
- 3.4 The different versions of the independent claims according to the appellant's three requests vary only slightly in the specification of the scroll device and the determining of the beginning or end of one of the frames. The independent claims of the first auxiliary request specify that "only one" or "only a single" scroll device is provided for both frames, a limitation which is absent from the corresponding claims of the main request. The independent claims of the second auxiliary request further specify that the instructions enable the processor-based device to "automatically" determine the beginning or end of one of the frames, a further limitation which is absent from the corresponding claims of the main and first auxiliary requests.
- 3.5 As may be inferred from the observations under 3.4 above, the independent claims of the second auxiliary request are the most limited. The board therefore considers it appropriate to begin by considering this request.

Second auxiliary request

4. *Inventive step*

- 4.1 D2 which discloses a "multi-window display system" (cf. D2t: p.1, section entitled "Field of industrial application" and section entitled "Prior art", first

paragraph) is found to represent the closest prior art. The system disclosed in D2 comprises a processor and means for storing instructions (D2t: p.2 section entitled "Embodiment", first paragraph). The system is designed to support scrolling operations in a multi-window display system with as little key input as possible (cf. D2t: p.2 first paragraph) and supports "simultaneous" or "concurrent" scrolling of displayed windows (cf. D2t: paragraph bridging p.2 and 3; p.3 last full paragraph).

- 4.2 On this basis D2 is found to disclose, at least implicitly, a processor-based device and a storage coupled to said processor-based device storing instructions that enable the processor-based device to receive a command from a single scroll device to simultaneously scroll each of two frames in each of two windows on a display, only one scroll device being provided for both frames to generate said command.

Referring to the specification of "a single scroll device" in claim 9, it is noted that D2t refers to the generation of "a scroll instruction" (cf. D2t: p.3 1.25-38, in particular 1.26-29) which, in the board's judgement, implies a command received from a single scroll device, i.e. "only one scroll device" as recited in claim 9.

- 4.3 Claim 9 is thus found to be distinguished over D2 in that it specifies that the instructions "further enable the processor-based device (59) [sic] to automatically determine when the beginning or end of one of said frames (12;16) is displayed in its window (24a;24b), and automatically stop the scrolling of a frame (12;16)

when its beginning is displayed during an upwards scrolling operation or when is [sic] end is displayed during a downwards scrolling operation while continuing to scroll the other of said frames (16;12) in response to said command."

4.4 The aforementioned distinguishing characteristics of claim 9 solve the objective technical problem of managing the simultaneous scrolling of a plurality of frames having unequal scrolling ranges. In the board's judgement, neither the posing of the underlying problem nor the claimed solution thereto require the exercise of inventive skill for the reasons which follow.

4.5 The requirement to manage the simultaneous scrolling of a plurality of frames having unequal scrolling ranges arises in a straightforward manner in a multiple window environment from the fact that different frames will typically contain different amounts of data and will thus have different scrolling ranges.

It is noted in this regard that, in the context of an illustrative example, D2 refers to comparing two document versions (i.e. "texts") in order to ascertain where they differ (cf. D2t: p.1, section entitled "Prior art", first paragraph). In the board's judgement, it is self-evident for the skilled person that in such a case the amount of data in each of the frames (corresponding to the document versions or "texts" in the terminology of D2) will differ which in turn implies that each frame may inherently have a different scrolling range.

The board thus finds that the underlying problem, i.e. managing the simultaneous scrolling of a plurality of frames having unequal scrolling ranges, is one which can be expected to arise in practice and whose recognition by the skilled person does not require the exercise of inventive skill.

4.6 The board judges that the skilled person attempting to solve the aforementioned problem has a limited number of options at his disposal for dealing with the situation which arises when one frame reaches the limit of its scrolling range before the other. The board further takes the view that, in the context under consideration, the skilled person would not require the exercise of inventive skill to recognise these options which may be enumerated as follows:

(a) Continue scrolling both frames in the current direction such that the frame which has reached the limit of its scrolling range displays empty space.

(b) Inhibit the further scrolling of both frames in the current direction.

(c) Inhibit the further scrolling of the frame which has reached the limit of its scrolling range in the current direction and continue scrolling the other frame which has not yet reached its limit.

Under the given circumstances, the board judges that choosing the aforementioned option (c), i.e. inhibiting the further application of the scrolling operation to

the frame which has reached its limit while permitting the other frame to continue scrolling, represents a straightforward, obvious design choice which does not require the exercise of inventive skill.

4.7 When assessing the inventive step of a solution chosen from various possibilities, the key issue is whether the chosen one is obvious and it is not necessarily relevant that there may be other possible solutions (cf. T 190/03, in particular reasons 14-16). An arbitrary selection of a solution from a number of possibilities in the absence of a hint to do so is not inventive if not justified by a non-obvious technical effect which distinguishes the claimed solution from the other solutions (cf. T 190/03, reasons 14).

4.8 In the present case the board cannot identify any non-obvious technical effect which would distinguish the claimed solution from the other possible solutions enumerated under 4.6 above. It is further noted that the appellant did not submit any substantive response to the observations which were made in this regard in the board's communication.

5. *Observations re appellant's written submissions*

5.1 In the written statement setting out the grounds of appeal, the appellant submitted that D2 implements a master/slave structure of coupled windows with icons being provided in the title bar of a "slave window" (cf. written statement: item 4.2) and further argued on this basis that using such a master/slave approach would inevitably lead the skilled person to provide a system in which the "slave" window would continue to scroll

- and display white space if it reached the limit of its scrolling range before the master window.
- 5.2 In the board's judgement, the disclosure concerning the setting up of a "master and slave relationship" between windows (cf. D2t: p.4 l.3 et seq.) relates to the specific embodiment of Fig. 6 of D2. There is no mention of a master/slave relationship in the preceding passages of the document. The board therefore finds that, contrary to the appellant's submissions, there is no basis for concluding that the disclosure of D2 is restricted to an arrangement in which there is a master/slave coupling between the windows to be scrolled simultaneously.
- 5.3 The board further notes that even if, for argument's sake, the appellant's interpretation of D2 were to be followed, i.e. that said document were to be read as requiring a master/slave coupling between windows, the wording of claim 9 of the present request does not exclude a situation in which such a coupling exists. Hence interpreting the disclosure of D2 in the aforementioned manner would not in itself lessen the relevance of said document with respect to the subject matter of claim 9.
- 5.4 Concerning the appellant's assertion to the effect that the disclosure of D2 would inevitably lead the skilled person to provide a system in which the "slave" window would continue to scroll and display white space if it reached the limit of its scrolling range before the master window, the board cannot identify any objective basis in D2 which would support this assertion.

It is noted in this regard that in a multiple window environment, each window typically has an inherent limit to its scrolling range in both an upward and downward direction. When a window is scrolled independently, it is normal practice to inhibit further scrolling when it reaches its inherent limit in the current direction of scrolling.

In the context of simultaneously applying a scrolling command to a plurality of windows, the board judges that it would be obvious to take account of the inherent limits to each individual window's scrolling range and to inhibit further scrolling when a window has reached its limit in the current direction of scrolling. The board thus concludes that, irrespective of whether or not a "master-slave" coupling exists between a plurality of windows being simultaneously scrolled, it would lie within the routine competence of the skilled person to inhibit the further scrolling of any individual window when it had reached the inherent limit of its scrolling range.

The board cannot identify any disclosure or suggestion in D2 which could be interpreted as teaching away from inhibiting the further scrolling of a window in this manner. In particular, contrary to the appellant's submissions, there is no identifiable teaching or suggestion in D2 to the effect that a "slave" window should be allowed to continue to scroll and display white space if it reaches the limit of its scrolling range before the master window.

- 5.5 The appellant further submitted that another relevant distinction over D2 is that said document discloses a

plurality of independent scrolling devices in the form of the individual scrolling bars of each window (cf. written statement: item 4.2, second paragraph). In this regard, the board notes that the present application also discloses a plurality of windows having individual graphical scroll bars (cf. application: p.2 l.26-30; Figs. 1-3). In the board's judgement, the term "scroll device" as used in the context of the present application is to be understood as denoting a device for inputting a scrolling command, e.g. a mechanical scrolling device such as referred to on p.1 l.19-20 of the published application, rather than the graphical scroll bars of a window. The board therefore does not accept the appellant's arguments to the effect that the individual scrolling bars of each window in D2 constitute a plurality of independent scrolling devices.

Furthermore, as noted under 4.2 above, D2 discloses the generation of "a scroll instruction" which, in the board's judgement, implies a command received from a single scroll device. The board concludes on this basis that, contrary to the appellant's submissions, there is no identifiable disclosure in D2, either explicit or implicit, concerning the provision of a plurality of scrolling devices.

- 5.6 In view of the foregoing, the submissions made by appellant contesting the relevance of D2 have failed to convince the board that said document is not prejudicial to the inventive step of claim 9.

6. Referring in particular to its observations set forth under 4. above, the board concludes that the features which distinguish claim 9 of the second auxiliary

request from the disclosure of D2 represent a non-inventive selection from a limited range of alternative design options for managing the simultaneous scrolling of a plurality of frames having unequal scrolling ranges. On this basis, said claim 9 is found to lack an inventive step (Articles 52(1) and 56 EPC). This finding also applies *mutatis mutandis* to independent claims 1 and 5 of the request. The second auxiliary request is therefore not allowable.

7. In view of the above finding that the independent claims of the second auxiliary request lack an inventive step over D2, it is not necessary for the board to give further consideration to the additional inventive step objections raised in its communication (cf. facts and Submissions, item VII.). For the sake of completeness it is however noted that the lack of a substantive response from the appellant to the relevant observations set out in the board's communication means that, in principle, these objections still apply.

Main and first auxiliary requests

8. *Inventive step*
 - 8.1 As may be inferred from 3.4 above, the independent claims of the main and first auxiliary requests are somewhat broader than the corresponding claims of the second auxiliary request. The finding that the independent claims of the second auxiliary request lack an inventive step over D2 thus applies *mutatis mutandis* to the corresponding claims of the higher-ordered requests. Consequently, the main and first auxiliary requests must also be rejected.

Concluding Remarks

9. In the absence of an allowable request the appeal must be dismissed.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chair:

K. Götz

A. Ritzka