

Internal distribution code:

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

**Datasheet for the decision
of 1 February 2012**

Case Number: T 0762/08 - 3.5.05
Application Number: 06114547.0
Publication Number: 1860526
IPC: G06F 3/033, H04M 1/725
Language of the proceedings: EN

Title of invention:

Temporary Modification of a User Profile in an Electronic Device

Applicant:

RESEARCH IN MOTION LIMITED

Headword:

Temporary Modification of a User Profile/ RESEARCH IN MOTION

Relevant legal provisions:

EPC Art. 52(1)
EPC. R. 115(2)
RPBA Art. 13(1), 13(3), 15(3), 15(6)

Relevant legal provisions (EPC 1973):

EPC Art. 56

Keyword:

"Non-attendance at oral proceedings"
"Inventive step - main request, first and second auxiliary requests (no)"
"Admission into proceedings - third auxiliary request (no)"

Decisions cited:

-

Catchword:

-



Case Number: T 0762/08 - 3.5.05

D E C I S I O N
of the Technical Board of Appeal 3.5.05
of 1 February 2012

Appellant:
(Applicant)

RESEARCH IN MOTION LIMITED
295 Phillip Street
Waterloo
Ontario N2L 3W8 (CA)

Representative:

MERH-IP
Matias Erny Reichl Hoffmann
Paul-Heyse-Strasse 29
D-80336 München (DE)

Decision under appeal:

Decision of the Examining Division of the
European Patent Office posted 22 November 2007
refusing European application No. 06114547.0
pursuant to Article 97(2) EPC.

Composition of the Board:

Chairman: A. Ritzka
Members: P. Corcoran
D. Prietzel-Funk

Summary of Facts and Submissions

- I. This appeal is against the decision of the examining division to refuse the European patent application No. 06 114 547.0, publication No. EP 1 860 526. The decision was announced during oral proceedings on 25 October 2007 and the written reasons were dispatched on 22 November 2007.
- II. The decision under appeal was based on a main request and an auxiliary request both of which were filed with the letter dated 18 September 2007. Each of said requests comprised a set of claims 1 to 8.
- III. The examining division found that the subject-matter of independent claims 1 and 6 of the main request lacked an inventive step over the following document:
D1: US 2004/0203656.
A similar finding was made in respect of the corresponding claims of the auxiliary request.
- IV. Notice of appeal was received at the EPO on 21 January 2008 with the appeal fee being paid on the same date. A written statement setting out the grounds of appeal was received at the EPO on 21 March 2008. With the statement setting out the grounds of appeal the appellant filed a new main request and three auxiliary requests and made submissions in support of the aforementioned requests.
- V. In a communication accompanying a summons to oral proceedings to be held on 1 February 2012, the board gave its preliminary opinion that the appellant's requests were not allowable.

VI. With regard to the main request, the board raised objections under Articles 84 and 123(2) EPC against the independent claims of said request. The board further expressed the preliminary opinion that the modifications to D1 required to arrive at the subject-matter of claim 1 of the main request did not require the exercise of inventive skill as they did not appear to go beyond an aggregation of mere design choices each of which was obvious in itself. In the apparent absence of any non-obvious technical inter-relationship the board was not inclined to accept that the claimed subject-matter involved an inventive step. Substantially similar objections to those noted above were also raised in respect of the auxiliary requests.

The communication also made reference *inter alia* to the following prior art document which the board considered to be of relevance to the question of inventive step:

D5: US 2004/0203644 A.

VII. With a letter of reply dated "30 December 2012" [sic] which was received at the EPO on 30 December 2011, the appellant filed an amended main request and three amended auxiliary requests. The appellant also made submissions in response to the observations set forth in the board's communication.

VIII. With a letter dated 19 January 2012, the appellant's representative notified the board to the effect that he did not intend to attend the scheduled oral proceedings and further made a request to the effect that the oral proceedings be held in his absence: "*We ... therefore request that Oral proceedings will be held by the*

Boards of Appeal without the representative of the Applicant".

IX. The appellant has requested that the decision under appeal be set aside and that a patent be granted on the basis of the main request or one of the three auxiliary requests filed with the letter dated "30 December 2012" [*sic*], received at the EPO on 30 December 2011.

X. Claim 1 of the main request reads as follows:

"A method for temporarily modifying a notification setting in an electronic device (20), the method comprising:

maintaining (64) a first notification setting;

temporarily activating (66, 68, 70, 72) a second notification setting associated with a period of time, thereby switching from said first notification setting to said second notification setting;

after said second notification setting is activated (74), receiving (76) a user-selected option (78, 80) to prompt or not to prompt the user, upon expiry of said period of time;

if said option (80) to prompt the user is selected, upon expiry of said period of time, prompting (84) the user to choose between extending said period of time and returning to the first notification setting, otherwise activating the first notification setting without notifying the user upon expiry of said period of time,

wherein a notification is generated in accordance with the second notification setting if an event is determined to occur while said second notification setting is active, otherwise said notification is

generated in accordance with the first notification setting."

XI. Claim 1 of the first auxiliary request reads as follows:

"A method for temporarily modifying a notification setting in an electronic device (20), the method comprising:

maintaining (64) a first notification setting;

temporarily activating (66, 68, 70, 72) a second notification setting associated with a period of time, thereby switching from said first notification setting to said second notification setting;

after said second notification setting is activated (74), receiving (76) a user-selected option (78, 80) to prompt or not to prompt the user, upon expiry of said period of time;

if said option (80) to prompt the user is selected:

receiving (80), after said option to prompt the user is selected, a selection of at least one further option relating to prompt notification behaviour of the electronic device, and

upon expiry of said period of time prompting (84) the user, according to the at least one further option, to choose between extending said period of time and returning to the first notification setting, otherwise activating the first notification setting without notifying the user upon expiry of said period of time,

wherein a notification is generated in accordance with the second notification setting if an event is determined to occur while said second notification setting is active, otherwise said notification is

generated in accordance with the first notification setting."

XII. Claim 1 of the second auxiliary request reads as follows:

"A method for temporarily modifying a notification setting in an electronic device (20), the method comprising:

maintaining (64) a first notification setting;

temporarily activating (66, 68, 70, 72) a second notification setting associated with a period of time, thereby switching from said first notification setting to said second notification setting;

after said second notification setting is activated (74), receiving (76) a user-selected option (78, 80) to prompt or not to prompt the user, upon expiry of said period of time;

if said option (80) to prompt the user is selected, upon expiry of said period of time, prompting (84) the user to choose between extending said period of time and returning to the first notification setting, and generating an additional notification if the user does not respond, otherwise activating the first notification setting without notifying the user upon expiry of said period of time,

wherein a notification is generated in accordance with the second notification setting if an event is determined to occur while said second notification setting is active, otherwise said notification is generated in accordance with the first notification setting."

XIII. Claim 1 of the third auxiliary request reads as follows:

"A method for temporarily modifying a notification setting in an electronic device (20), the method comprising:

maintaining (64) a first notification setting;

generating a screen on a display of the electronic device, the screen including a timed profile option and a prompt on return option;

receiving a selection of a second notification setting in connection with the timed profile option, and temporarily activating (66, 68, 70, 72) the second notification setting associated with a period of time, thereby switching from said first notification setting to said second notification setting;

after said second notification setting is activated (74), receiving (76) a user-selected option (78, 80) to prompt or not to prompt the user in connection with the prompt on return option, upon expiry of said period of time;

if said option (80) to prompt the user is selected, upon expiry of said period of time, prompting (84) the user to choose between a first option generated on a display of the electronic device, the first option selectable for extending said period of time and a second option generated on the display, the second option selectable for returning to the first notification setting, otherwise activating the first notification setting without notifying the user upon expiry of said period of time,

wherein a notification is generated in accordance with the second notification setting if an event is determined to occur while said second notification setting is active, otherwise said notification is

generated in accordance with the first notification setting."

XIV. Each of the aforementioned requests comprises two further independent claims directed towards a corresponding computer-readable medium (claim 5) and a corresponding electronic device (claim 6).

XV. Referring in particular to the letter dated "30 December 2012" which was received at the EPO on 30 December 2011, the appellant's written submissions in support of the aforementioned requests which are of relevance for the present decision may be summarised as follows:

Main request

- (i) D1 lacks at least the following features of claim 1 of the Main Request:
 - "after said second notification setting is activated, receiving a user-selected option to prompt or not to prompt the user, upon expiry of said period of time";
 - "otherwise activating the first notification setting without notifying the user upon expiry of said period of time".

- (ii) D1, which teaches that the user is always prompted before expiry of the time period associated with the second notification setting, not only fails to contemplate a user-selected option to prompt or not to prompt the user upon expiry of the time period, but also would lead a

person skilled in the art away from providing such an option.

- (iii) In light of the differences between D1 and the subject-matter of claim 1, the technical problem to be solved is how to reduce disruptions during events while making efficient use of device resources. The claimed solution provides for the receipt of a user-selected option to enable or disable the prompt. Providing such an option allows the consumption of device resources prior to expiry of the time period to be reduced, as some time period expiries will not be accompanied by prompts.
- (iv) Providing an option to enable or disable the prompt function goes beyond a design option which is freely available to the skilled person in the context of customising the behaviour of the device. Extending customisability is not necessarily a general aim of the skilled person as there are instances where it may not be desirable, e.g. providing the user with the ability to set the frequencies used by a device's radio is a type of customisation which might not be desired, as doing so could increase the complexity of operating the device and might allow the user to access unauthorized networks. Customisability is not a sufficient rationale to show that the skilled person would (not simply could) arrive at the claimed solution.
- (v) The decision as to when to receive the user-selected option to enable or disable prompting

is not merely a further obvious design choice. D1 provides no guidance as to when such an option would be received because D1 does not contemplate such an option.

First Auxiliary Request

- (vi) D1 does not mention the configuration of prompts, and thus there is no evidence that the skilled person would be led to receive the options governing prompt notification behaviour as recited in claim 1 of the first auxiliary request.

Second Auxiliary Request

- (vii) With respect to the second auxiliary request, D1 teaches that when no response is received, an additional action is taken - either the automatic extending of the time period, or the automatic return to the previous profile. Thus, D1 would lead the skilled person away from the generation of an additional notification as recited in the second auxiliary request.

Third Auxiliary Request

- (viii) The amendments introduced in the third auxiliary request emphasize the timing of the selections. The selection of a timed profile and the selection of the prompt on return option are made from the same screen, thus avoiding the need to invoke another screen at some other time.

XVI. Oral proceedings were held as scheduled on 1 February 2012. Nobody attended on behalf of the appellant. The chairperson summarised the relevant facts as appearing from the file. After the board had deliberated on the basis of the appellant's requests and written submissions, the chairperson proceeded to announce the decision.

Reasons for the Decision

1. The appeal is admissible.
2. *Non-attendance at oral proceedings*
 - 2.1 In the present case, the board decided in the interests of procedural economy to hold the oral proceedings as scheduled in the absence of the appellant as foreseen by Rule 115(2) EPC.
 - 2.2 By not attending the proceedings the appellant effectively chose not to avail of the opportunity to present comments orally before the board but instead to rely on its written case (cf. Article 15(3) RPBA) which corresponds to that presented in the written statement setting out the grounds of appeal and in the letter of reply to the board's communication which was received at the EPO on 30 December 2011.
 - 2.3 In view of the foregoing, the board was in a position to announce a decision at the conclusion of the oral proceedings as foreseen by Article 15(6) RPBA. The reasons on which this decision are based do not constitute a departure from grounds or evidence

previously put forward which would require that the appellant be given a further opportunity to comment.

Main request

3. *Inventive step*

3.1 D1 discloses a method for providing timed profile changes on a mobile device, for example a telephonic device or pocket PC (cf. D1: [0003], [0005]). According to D1 (cf. D1: [0022], [0023] and [0027]), a first notification setting (a so-called "standard profile") is maintained. In a preferred embodiment, this first notification setting is a default setting which is active during periods where no second notification setting ("timed profile") is active. A second notification setting is selected and temporarily activated on the device for a user-configurable period of time ("profile period").

3.2 On this basis D1 is found to disclose a method for temporarily modifying a notification setting in an electronic device which comprises:

maintaining a first notification setting;
temporarily activating a second notification setting associated with a period of time, thereby switching from said first notification setting to said second notification setting;

wherein a notification is generated in accordance with the second notification setting if an event is determined to occur while said second notification setting is active, otherwise said notification is generated in accordance with the first notification setting.

3.3 According to D1, the user is prompted prior to the expiration of the profile period whether to extend the profile time period and may increase the profile period in response to the prompt. In a preferred embodiment, the profile period is not extended without an input by the user to extend the profile (cf. D1: [0037], right-hand col. 1.1-2). In the board's judgement, the disclosure of D1 in this regard implies that the device returns to the first notification setting if the user does not choose to extend the period of time for the second notification setting. On this basis, D1 is found to disclose, at least implicitly, prompting the user to choose between extending said period of time and returning to the first notification setting.

3.4 The method of claim 1 is thus distinguished over D1 in that it specifies:

- (i) receiving a user-selected option to prompt or not to prompt the user upon expiry of the period of time after the second notification setting is activated;
- (ii) if the option to prompt the user is selected, upon expiry of said period of time, prompting the user to choose between extending said period of time and returning to the first notification setting;
- (iii) if the option to prompt the user is not selected, activating the first notification setting without notifying the user upon expiry of said period of time.

3.5 With reference to the distinguishing feature group (i) (cf. 3.4 above), the board judges that providing a

user-selectable option to selectively enable/disable the prompt function does not require the exercise of inventive skill in the given context for the reasons given below.

- 3.6 Providing the aforementioned option permits a user to choose between an "interactive" return to the first notification setting (the "standard profile" of D1), i.e. a return involving a "prompt" requiring user interaction as disclosed in D1, and an automatic return requiring no user interaction. The technical effect of providing such an option is to extend the customisability of the user interface of the device by permitting the user to selectively enable/disable the prompt function.
- 3.7 The objective technical problem underlying the aforementioned distinguishing feature group (i) may thus be formulated as extending the customisability of the user interface of the device in relation to temporary modifications of the notification setting.
- 3.8 In the board's judgement, extending the customisability of the user interface of mobile telephony and computing devices is a general design aim of the skilled person (cf. observations under 4.4 below).
- 3.9 In the given context, the board judges that a motivation to modify the implementation of the prompt function of D1 to permit the selective enabling/disabling thereof arises out of readily recognisable practical needs.

The board takes the view that the skilled person would not require the exercise of inventive skill to recognise that there are situations in which the prompt function of D1 would be superfluous or even undesirable and that requiring the prompt function to be always activated upon expiry of the profile period results in a lack of flexibility.

Illustrative examples of situations which can be readily envisaged and in which the prompt function would be superfluous or undesirable are meetings or events of an informal nature where a reversion to the default profile after the scheduled time had elapsed would not be unduly disruptive and could therefore be tolerated and meetings or events whose duration is predictable in advance. Likewise there are situations in which it would be desirable to automatically re-enable disruptions after a pre-determined amount of time had elapsed. For example, a user desiring to be undisturbed, e.g. in order to take a rest or to concentrate on a particular task, might want the device to operate in "Quiet" mode during a specified period of time but to return automatically to default mode upon expiry of the specified period.

- 3.10 On the basis of the foregoing, the board finds that providing a user-selectable option to enable/disable the prompt function of D1 represents a design variation which is freely available to the skilled person and whose choice in the given circumstances does not require the exercise of inventive skill, in particular having regard to the fact that the resulting technical effects can be readily foreseen.

3.11 With respect to the further distinguishing feature groups (ii) and (iii) (cf. 3.4 above), the board judges that these feature groups represent obvious solutions to the additional partial technical problems of how to configure the device to operate in the particular cases where:

- (a) the user has opted to enable the prompt function;
- and
- (b) the user has opted to disable the prompt function.

3.12 In the case where the user has opted to enable the prompt function, the board judges that it would be a further obvious design choice to prompt the user to choose between extending said period of time and returning to the first notification setting.

As noted under 3.3 above, D1 discloses prompting a user to choose between extending a period of time associated with a second notification setting and returning to a first notification setting. In the preferred embodiment, the prompting takes place at a predetermined time prior to the expiration of the profile period (cf. D1: [0036]). D1 further discloses, albeit in the context of the commencement of a profile period, that a prompt associated with a pending profile change can be made at the time that the profile change is about to occur, or at a predetermined time prior thereto (cf. D1: [0032]). The board judges that the skilled person would recognise without the exercise of inventive skill that substantially the same timing options are available in relation to a prompt associated with a pending profile change upon expiry of a profile period.

Thus, the board finds that the aforementioned distinguishing feature group (ii) represents an obvious solution to the partial technical problem of configuring the operation of the device in the case where the user has opted to enable the prompt function.

- 3.13 In the case where the user has opted to disable the prompt function, the board judges that it would be an obvious design choice to restore the first notification setting automatically, i.e. without requiring any user interaction when the specified time period has expired. If the device were not configured to operate in this manner, the second profile would remain permanently active until manually disabled by the user. Such behaviour would clearly be undesirable in the context of a change in notification settings which is intended to be of a temporary duration as may be inferred from [0004] of D1.

Thus, the board finds that the aforementioned distinguishing feature group (iii), represents an obvious solution to the partial technical problem of configuring the operation of the device in the case where the user has opted to disable the prompt function.

4. *Appellant's submissions*

- 4.1 Referring to the appellant's submissions relating to D1 (cf. Facts and Submissions, item XV(ii) above), the board notes that it does not concur with the arguments advanced to the effect that the disclosure of said document would lead the skilled person away from providing the aforementioned user-selected option.

4.2 As discussed in 3.9 to 3.10 above, the board judges that providing a user-selectable option to selectively enable/disable the prompt function is a design variation with respect to D1 which does not go beyond the normal design considerations of the skilled person notwithstanding the absence of an express hint in D1 to provide such an option.

In this regard, the board finds that the absence of an express hint in D1 does not amount to a technical prejudice against providing such an option nor can it be otherwise said to deter the skilled person from attempting to do so in the context of extending the customisability of the user interface.

4.3 Referring to the appellant's submissions concerning the technical effect of a reduction in the consumption of device resources allegedly provided by the claimed invention (cf. Facts and Submissions, item XV(iii) above), the board notes that the appellant has not indicated any basis in the application as originally filed for the proposed redefinition of the technical problem.

Moreover, even if it were to be accepted for the sake of argument that the provision of the aforementioned user-selected option would result in a reduction in the consumption of device resources as argued by the appellant, the board judges that in the given circumstances such an effect would not contribute to an inventive step because it would be at most an incidental bonus effect arising as a straightforward and obvious consequence of the design choice to permit the selective disabling of the prompt function.

- 4.4 Referring to the appellant's submissions disputing that customisability is a general aim of the skilled person (cf. Facts and Submissions, item XV(iv) above), the board notes that its assertion that extending the customisability of the user interface of mobile telephony and computing devices is a general design aim of the skilled person finds support in [0001] and [0002] of D1 according to which mobile devices are increasingly expected to have a greater level of "user presentation options" and "user interface options" which a user is able to individually select according to their preferences.
- 4.5 The appellant has submitted that there are instances in which providing customisability may not be desirable to the skilled person. However, the specific example on which the appellant's argumentation relies, *viz.* setting the frequencies used by a device's radio transmitter, relates to what D1 terms the "radio interface layer" (cf. D1: [0020]) which, in the board's judgement, is a layer of hardware-level functionality that would not normally be exposed for configuration by the user. The alleged undesirability of permitting user customisation of such functionality is judged by the board to be of no immediate relevance to the issue of extending the customisability of user interface functionality such as the prompt function of D1.
- 4.6 The arguments advanced by the appellant thus failed to convince the board that providing a user-selected option to enable/disable the prompt function goes beyond a design variation which is freely available to the skilled person and whose choice, in the given

circumstances, does not involve the exercise of inventive skill.

- 4.7 The board is likewise not convinced by the appellant's submissions to the effect that the decision when to receive the user-selected option is more than a further obvious design choice (cf. Facts and Submissions, item XV(v) above).
- 4.8 The appellant asserts that D1 provides no guidance in this respect because it does not contemplate providing the aforementioned user-selected option. However, the board takes the view that once the initial design choice to provide such an option has been made, the skilled person is in practice obliged to decide when the option is to be received.
- 4.9 Claim 1 specifies that the user-selected option to prompt or not to prompt the user is received "after said second notification setting is activated". In the light of the description (cf. published application: [0036], col.8 l.26-30; Fig.8 Step 72), the board finds that the wording of the claim in this respect is to be interpreted as specifying that the user-selected option is received more or less immediately after the activation of the second notification setting, i.e. at the time that the selected profile is initiated.
- 4.10 In [0005] of D1 it is disclosed that a parameter associated with the management of the profile change, viz. the length of time the selected profile is active, is selectable by the user at the time that the selected profile is initiated. Given that the aforementioned user-selected option is a further parameter associated

with the management of the profile change, the board judges that it would be obvious in the light of D1 to receive it at the time that the profile change is initiated, i.e. at a point in time when the user is actively interacting with the device to configure the profile change.

It is further noted in this regard that in the context of D1 the second notification setting is typically activated prior to events (e.g. meetings) during which the user is likely to be constrained from actively interacting with the device and thus not capable of providing input. Consequently, the skilled person can be expected to recognise without the exercise of inventive skill that it would make little sense to attempt to receive the user-selected option at a point in time substantially later than that at which the selected profile is initiated, i.e. when the user is likely to be constrained from providing input.

- 4.11 Under these circumstances, the board concludes that the specification in claim 1 as to when the user-selected option is to be received does not go beyond the normal design considerations of the skilled person.
- 4.12 The appellant's submissions thus failed to convince the board of the alleged inventive merits of claim 1 of the main request.
- 5. In view of the foregoing, the board concludes that the modifications to the teaching of D1 required to arrive at the subject-matter of claim 1 represent an aggregation of design choices each of which is obvious in itself and which, considered as an ensemble, do not

involve any non-obvious technical interrelationship or provide any non-obvious combinatory effect. On this basis, the subject-matter of claim 1 of the main request is found to lack an inventive step. A similar finding applies *mutatis mutandis* to the further independent claims of said request.

First Auxiliary request

6. *Inventive step*

- 6.1 Claim 1 of the first auxiliary request is found to differ from claim 1 of the main request in that it additionally specifies receiving the selection of at least one further option relating to prompt notification behaviour of the electronic device" and "prompting ... the user according to the at least one further option".
- 6.2 The additional feature group of claim 1 of the first auxiliary request thus relates to the customisation of the "prompt notification" which notifies the user of the expiry of the timer substantially as disclosed in [0031] to [0033] of the published application.
- 6.3 The technical effect of said additional feature group is to enable the user to specify the manner in which the prompt is to be notified upon expiry of the timer.
- 6.4 Said additional feature group is thus found to address a further partial technical problem of permitting the user to customise the prompt notification.

- 6.5 In this regard, it is noted that it is known to permit a user to customise the manner in which notifications are delivered (cf. for example, D1: [0023]; D5: [0026]). Taking account of the fact that a "prompt" is effectively a form of notification indicating the expiry of the timer and the pending change in the notification setting, the board judges that permitting the user to customise the notification mode associated with the prompt represents an obvious desideratum.
- 6.6 The disclosure of the application in this respect does not appear to go beyond allowing the user to specify the preferred notification mode by which the prompt is to be delivered. The notification modes referred to in the application such as visual screen-based or LED-based notifications and vibration-based notifications are known *per se* in the context of mobile devices (cf. for example D1: [0019], [0023], [0035]; D5: [0026]). The board judges that, in the given context, permitting the user to customise the delivery of the prompt by selecting from among a plurality of known notification modes is a further obvious design choice which lies within the routine competence of the skilled person and does not require the exercise of inventive skill.
- 6.7 Accordingly, it is found that the contribution of the additional feature group of claim 1 of the first auxiliary request is merely aggregative in nature and that said feature group does not make an inventive contribution to the claimed subject-matter.

7. *Appellant's submissions*

7.1 The appellant has submitted that D1 does not mention the configuration of prompts, and thus there is no evidence that the skilled person would be led to receive the options governing prompt notification behaviour as recited in claim 1 of the first auxiliary request (cf. Facts and Submissions, item XV(vi) above).

7.2 The board, however, takes the view that at the claimed priority date permitting customisation of the manner in which notifications were delivered was a known, conventional technical measure. D1, for example, refers to the customisation of "user presentation options"/"user presentation options" (cf. D1: [0002]) and the present application likewise acknowledges the known practice of providing different user-selectable modes of notification such as vibration and visual alerts (cf. published application: [0005]). In the board's judgement, permitting a user to customise the manner in which the prompt is to be delivered represents a straightforward and obvious application of the general principle of permitting customisation of the mode of notification which does not involve the exercise of inventive skill in the given context.

8. In view of the foregoing, the board judges that the subject-matter of claim 1 of the first auxiliary request lacks an inventive step. A similar finding applies *mutatis mutandis* to the further independent claims of said request.

Second Auxiliary request

9. *Inventive step*

9.1 Claim 1 of the second auxiliary request is found to differ from claim 1 of the main request in that it additionally specifies "generating an additional notification if the user does not respond" to the prompt.

9.2 The aforementioned additional feature of claim 1 of the second auxiliary request finds support in the passages of the description disclosing the issuing of a "repeat notification" if the user does not respond to the initial "prompt notification" on the device screen (cf. application: [0031] final sentence; [0036] final sentence).

9.3 This additional feature is found to address a further partial technical problem of configuring the operation of the device in the case where the user fails to respond to the initial prompt.

9.4 As noted previously with regard to D1, the second notification setting is typically activated prior to events during which the user is likely to be constrained from actively interacting with the mobile device. Consequently, the skilled person can be expected to recognise without the exercise of inventive skill that the user may not be in a position to respond immediately to the initial prompt upon expiry of the timer. Under these circumstances, the board takes the view that an obvious requirement arises in practice to

configure the operation of the device in cases where the user does not respond to the initial prompt.

9.5 In the board's judgement, configuring the device to issue a "repeat notification" in such cases does not go beyond the normal design considerations of the skilled person and does not provide any non-obvious technical effects which could be invoked in support of an inventive step.

9.6 Accordingly, it is found that the contribution of the additional feature of claim 1 of the second auxiliary request is merely aggregative in nature and that said feature group does not make an inventive contribution to the claimed subject-matter.

10. *Appellant's submissions*

10.1 According to the appellant, D1 teaches that when no response is received, an additional action is taken - either the automatic extending of the time period, or the automatic return to the previous profile. On this basis, the appellant submits that D1 would lead the skilled person away from the generation of an additional notification as recited in the second auxiliary request (cf. Facts and Submissions, item XV(vii) above).

10.2 The board does not, however, concur with the appellant's submissions in this regard because it takes the view that the required modification to the teaching of D1 is a design option freely available to the person skilled in the art which does not provide any non-obvious technical effects.

10.3 The appellant argues to the effect that D1 merely discloses that, when no response is received from the user, either the time period is automatically extended, or the device is automatically returned to the previous profile. However, neither of the aforementioned alternatives excludes the possibility of issuing a repeat notification before any final action is taken.

10.4 The board judges that the absence of an express hint in D1 to provide a repeat notification does not amount to a technical prejudice against undertaking such a modification nor can it be otherwise said to deter the skilled person from attempting to do so in the given circumstances.

11. In view of the foregoing, the board judges that the subject-matter of claim 1 of the second auxiliary request lacks an inventive step. A similar finding applies *mutatis mutandis* to the further independent claims of said request.

Third Auxiliary request

12. *Preliminary observation*

12.1 Claim 1 of the third auxiliary request is found to differ from claim 1 of the main request in the following respects:

- (i) An additional step of "generating a screen on a display of the electronic device, the screen including a timed profile option and a prompt on return option" has been introduced; and

(ii) In the context of prompting the user, it is specified that the first and second options between which the user is prompted to choose are "generated on a display of the electronic device".

13. *Non-admittance of request pursuant to Article 13 RPBA*

13.1 The aforementioned additional step of generating a screen on a display of the electronic device which has been introduced into claim 1 of the third auxiliary request (cf. 12.1 above), precedes the step of receiving a selection of a second notification setting in connection with the timed profile option.

13.2 In the board's view, such a definition of the matter for which protection is sought is not consistent with the disclosure of the invention in [0035] and [0036] of the description and the accompanying Fig. 8 according to which a second notification setting is selected and activated prior to the generation of a screen including a "prompt on return" option.

13.3 The aforementioned amendment to claim 1 of the third auxiliary request which was made after oral proceedings had been arranged thus raises new issues under Article 84 EPC which the board was not in a position to deal with without adjournment of the oral proceedings (cf. Article 13(3) RPBA), in particular due to the fact that the appellant, despite having been duly summoned, had chosen not to be represented at said oral proceedings.

13.4 Referring to the discretion accorded to it under Article 13(1) RPBA and having regard to the provisions

of Article 13(3) RPBA, the board decided not to admit the third auxiliary request into the proceedings.

Conclusions

14. 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