

**Internal distribution code:**

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

**Datasheet for the decision  
of 13 July 2012**

**Case Number:** T 1218/08 - 3.5.05

**Application Number:** 00929667.4

**Publication Number:** 1282850

**IPC:** G06F 3/00

**Language of the proceedings:** EN

**Title of invention:**

Processing system for interactive, personal and idiosyncratic control of images and devices

**Applicant:**

Macri, Vincent J.

**Headword:**

User controlled image for simulating physical movements/MACRI

**Relevant legal provisions (EPC 1973):**

EPC Art. 56

**Keyword:**

"Inventive step - Yes (after amendments)"

**Decisions cited:**

-

**Catchword:**

-



Case Number: T 1218/08 - 3.5.05

**D E C I S I O N**  
of the Technical Board of Appeal 3.5.05  
of 13 July 2012

**Appellant:** Macri, Vincent J.  
(Applicant) 5 Timber Brook Lane  
Durham, NH 03824 (US)

**Representative:** Greenwood, John David  
Graham Watt & Co LLP  
St Botolph's House  
7-9 St Botolph's Road  
Sevenoaks  
Kent TN13 3AJ (GB)

**Decision under appeal:** Decision of the Examining Division of the  
European Patent Office posted 8 February 2008  
refusing European patent application  
No. 00929667.4 pursuant to Article 97(2) EPC.

**Composition of the Board:**

**Chair:** A. Ritzka  
**Members:** P. Cretaine  
G. Weiss

## Summary of Facts and Submissions

I. This appeal is against the decision of the examining division to refuse European patent application 00 929 667.4, published as WO 01/90869. The decision was announced in oral proceedings held on 13 September 2007 and written reasons were dispatched on 8 February 2008.

II. The decision was based on the ground that the subject-matter of the independent claims of each of a main request and an auxiliary request did not involve an inventive step (Articles 52(1) and 56 EPC 1973) having regard to the disclosure of

D4: WO 97/40471

and the common general knowledge of the skilled person.

III. The notice of appeal was submitted on 1 April 2008 and the appeal fee was paid on the same day. The statement setting out the grounds of appeal was submitted on 16 June 2008. The appellant (applicant) requested that the decision under appeal be set aside, that the case be remitted to the department of first instance and that the appeal fee be reimbursed because of a substantial procedural violation. The appellant also requested that, in the event that the board did not allow the above-mentioned request, a patent be granted based on one of a main request and four auxiliary requests, filed with the statement of grounds of appeal. Oral proceedings were requested on an auxiliary basis.

IV. A summons to oral proceedings to be held on 13 July 2012 was issued on 2 April 2012. In an annex accompanying the summons the board expressed the preliminary opinion that no substantial procedural violation had occurred in examination proceedings and that, as a consequence, the reimbursement of the appeal fee would not be ordered if the appeal were allowed. The board also expressed the preliminary opinion that the subject-matter of the independent claims of the main request and of the second auxiliary request did not involve an inventive step having regard to the disclosure of D4 or

D2: US 5 890 906,

cited during the examination proceedings,

and that the subject-matter of the independent claims of the first and third auxiliary requests was not new having regard to the disclosure of D4 or D2.

V. With a letter dated 13 June 2012, the appellant filed an amended main request and an amended first auxiliary request to replace the previous main and first auxiliary requests.

VI. With a letter dated 6 July 2012, the appellant filed a second auxiliary request.

VII. Oral proceedings were held as scheduled on 13 July 2012. The appellant requested that a patent be granted on the basis of claims 1 to 18 (new main request) submitted at the oral proceedings. He withdrew all previous requests

including the request for reimbursement of the appeal fee.

VIII. Claim 1 of the appellant's main and sole request reads as follows:

"A method of providing at least one user with at least one user controllable image for simulating physical movements, said method comprising the steps of:

generating, storing and maintaining in a memory means (210) of a processing system apparatus (200) at least one user controllable image responsive to inputs from said at least one user, said user controllable image being constructed to perform movements which simulate physical movements instead of said at least one user performing corresponding actual physical movements;

receiving, at said processing system apparatus, said inputs (206) from said at least one user to control said at least one user controllable image;

sending outputs from said memory means, such that said constructed user controllable images performs said simulated movements on a display means (204); the method being characterized by:

said inputs being input controls;

maintaining a maintained record being a pre-stored summarization of past user controls together with pre-programmed controls for constructing image movements which maintained record is retained as an antecedent maintained record for modification by subsequent user input controls; and

synchronously augmenting the maintained record by replacing the maintained record by a new record being the maintained record which has been integrated with

subsequent input controls input by said at least one user, thereby obtaining a maintained record that is idiosyncratic of the user."

The request includes a further independent claim seeking protection for a corresponding apparatus (claim 10).

IX. At the end of the oral proceedings the chair announced the board's decision.

### **Reasons for the Decision**

1. The appeal is admissible.
2. *Admissibility of request filed at oral proceedings*

Although the new main request was filed late, during oral proceedings, the board exercised its discretion to admit it into the proceedings since it had been submitted in reaction to objections raised by the board and was convergent with the claims submitted before.

3. *Article 123(2) EPC*

The board is satisfied that the amendments to the claims, with respect to the claims on which the decision under appeal was based, are supported by the application documents as originally filed. In particular, the features of maintaining a record of pre-stored summarization of past user controls together with pre-programmed controls and augmenting the maintained record by replacing it with a new record

which is the maintained record which has been integrated with subsequent user input controls, as substantially defined in the characterizing part of claim 1, are disclosed, inter alia, in the passage from page 24, line 15 to page 25, line 8 in combination with Figure 14F of the published application.

The claims therefore meet the requirements of Article 123(2) EPC.

#### 4. *Novelty and inventive step*

##### 4.1 Prior art

4.1.1 D4 discloses a system and method for providing a user with an on-screen animated character (see Figure 7) which simulates physical movements upon commands input by the user. These movements are obtained by combining playback motion data (i.e. pre-programmed movements of the character) with joint angle commands generated from user input (see Figure 1). High-level motor tasks (20, Figure 1) are generated in response to user input commands (9, Figure 1) e.g. like "open the door". The motor task is broken down into lower-level task commands that activate and co-ordinate behaviours (12, Figure 1) e.g. like "jump", "walk", "wave the right hand"...etc. Behaviours (12, Figure 1) set goals for the next lower level, synergies (14, Figure 1) which in turn provide joint angle commands for the body kinematics and image subsystem (16, Figure 1) to graphically render the joint angle commands on the video image as motion data. For instance, a goal input by the user such as "wave the right hand while the character is walking" (see page 38, last paragraph) is

thus interpreted by the system which then calculates the commands to be applied to the animated character in order to reach the user's goal. The user commands in D4 therefore do not directly control the movement of the image but they rather define goals (or what kind of movements the animated character should make) that the processing system of D4 has to process for determining the commands required to provide the required goals. The resulting sequence of movements of the animated character represents thus the combination of non-interactive motion data (i.e. the pre-programmed movements of the character) with interactive control (i.e. the goal input by the user). This resulting sequence of movements being determined by the goal(s) input by the user, it is, by virtue only of this relationship, "idiosyncratic" to the user. The resulting sequence is stored in memory as a video sequence for further viewing. However there is no disclosure in D4 of a maintained record of the user inputs (i.e. the goals) or of the integration of the user inputs which led to the resulting sequence of movements of the animated character.

- 4.1.2 D2 discloses a computer system and method wherein a user is provided with an animated image of an "ideal" hockey player juxtaposed on a screen to a user-controllable image of a hockey player. The user can manipulate the second image by using an input device (joystick, keyboard, virtual reality device) in order to approximate the movements of the "ideal" hockey player. The final animation can be stored in memory but there is no record of the user's input which led to the final animation. The system may be used for training purposes or as a game.



- 4.2 The differences between the subject-matter of claim 1 and the disclosure of D4 or D2 are the features of maintaining a record of pre-stored summarization of past user controls together with pre-programmed controls and augmenting the maintained record by integrating subsequent user input controls into the maintained record.

The technical effects of these differences are that not only the movements of the user-controllable image are recorded but also the integration of pre-programmed controls, past user controls and subsequent user controls which led to the stored movements. This enables further refinements of the whole sequence of movements of the image by integrating further input controls, entered by the user during a further session, with the maintained record, using a variety of algorithms for calculating how the further input controls are integrated into the maintained record (see page 24, lines 4 to 13 of the published application). For instance, a weighted average of the user input controls giving more importance to the last session may be considered.

The objective technical problem, based on these technical effects, can thus be seen as how to enable the user to refine a stored sequence of movements of the user-controllable image. In that respect, the board notes that the fact that the claimed invention may be used mainly for user training purposes, or for user amusement, does not preclude it from being technical and solving a technical problem.

Said technical problem is not addressed in D4 or D2 since the systems disclosed in these documents do not provide the user with the ability to modify a sequence of movements of the user-controllable image once it has been generated.

Therefore, the skilled person, starting from D4 or D2 as closest prior art, would not find any hint in these documents to maintain a record of integrated input controls, as defined in the characterizing part of claim 1. Although it may be considered as obvious for the skilled person to record the collection of the user input controls leading to a stored sequence of movements, recording the integration of these user input controls with the previously record of integrated user input controls is not derivable from the teaching of D4 or D2, or from the common general knowledge of the skilled person. In particular, the skilled person was not able to derive such features by analogy with the "save" function of text processing systems, as mentioned in the decision under appeal (see Grounds for the decision, section 3.5). In that respect, the board considers that such a save function maintains a record of the last version of a text document, but does not store the commands input by the user in the text processing system and, a fortiori, does not store the integration of all the user commands leading to the last version of the text document.

For these reasons the board judges that the subject-matter of claim 1 involves an inventive step (Article 56 EPC 1973), having regard to the prior-art documents on file.

Independent claim 10 contains the same feature as claim 1 but is worded as a claim for an apparatus and, as such, also meets the requirements of Article 56 EPC 1973.

## Order

### For these reasons it is decided that:

1. The decision under appeal is set aside.
2. The case is remitted to the department of first instance with the order to grant a patent on the basis of
  - claims 1 to 18 submitted at the oral proceedings,
  - the description: pages 1, 2, 5 to 7, 10 to 13, 15 to 22 and 24 as originally filed, pages 3, 4, 8, 9, 14, 23 and 25 as filed with letter of 24 October 2005, and
  - drawings sheets 1/19 to 19/19 as originally filed.

The Registrar:

The Chair:

K. Götz

A. Ritzka