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**Datasheet for the decision  
of 5 December 2012**

**Case Number:** T 0446/09 - 3.5.06

**Application Number:** 06121142.1

**Publication Number:** 1912109

**IPC:** G06F 1/16, G06F 3/01

**Language of the proceedings:** EN

**Title of invention:**

System and method for adjusting icons, text and images on an electronic device

**Applicant:**

Research In Motion Limited

**Headword:**

Adjusting Icons/RESEARCH IN MOTION

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

EPC Art. 56

**Keyword:**

"Inventive step - all requests (no)"

**Decisions cited:**

J 0006/98



Case Number: T 0446/09 - 3.5.06

**D E C I S I O N**  
of the Technical Board of Appeal 3.5.06  
of 5 December 2012

**Appellant:** Research In Motion Limited  
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Waterloo, ON N2L 3W8 (CA)

**Representative:** Moore, Barry  
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**Decision under appeal:** Decision of the Examining Division of the  
European Patent Office posted 8 September 2008  
refusing European patent application  
No. 06121142.1 pursuant to Article 97(2) EPC.

**Composition of the Board:**

**Chairman:** A. Teale  
**Members:** M. Müller  
C. Heath

## Summary of Facts and Submissions

I. The appeal lies against the decision of the examining division, dispatched on 8 September 2008, to refuse European patent application 06121142.1 for lack of novelty or inventive step, Articles 54 (1,2) and 56 EPC 1973 in view of the following document:

D1: US 2005/0212911 A1.

II. A notice of appeal was filed on 10 November 2008, the appeal fee being paid on the same day, and a statement of grounds of appeal on 7 January 2009. The appellant requested that the decision be set aside and a patent be granted based on claims according to a main or two auxiliary requests filed with the grounds of appeal.

III. In an annex to a summons to oral proceedings the board introduced under Article 114 (1) EPC 1973 as D4 a document from the European Search report which had not been discussed during examination, namely:

D4: US 2005/0154798 A1,

and argued that D4 was more appropriate than D1 as a starting point for assessing inventive step. The board also set out its preliminary opinion that *inter alia* the claimed invention lacked an inventive step over D4.

IV. In reply to the summons, on 26 October 2012, the appellant filed amended claims according to a main request and 1st to 3rd auxiliary requests.

V. Claim 1 according to the main request reads as follows:

"A display management system to provide an automatically adjusted size for an icon (304) displayed in a display (14) of an electronic device (10) to facilitate readability of an [sic] icon, the system being responsive to ambient movements of the device, the system comprising:

a sensor (238,242) providing a sensor signal responsive to an ambient movement of the device;

a movement detection module (204) connected to the sensor analyzing the sensor signal and providing a movement detection signal when the sensor signal is determined to exceed a value predetermined to represent a significant ambient movement of the device (10);

a graphical user interface module for generating the icon (304) on the display (14) in a default size; and

a displayed element adjustment module (222F) for automatically changing the size of the icon (304) to a larger size and adjusting a background pattern associated with the icon (304) on the display (14) to facilitate readability of the icon after receiving the movement detection signal."

Claim 1 according to the 1st-3rd auxiliary requests, respectively, is identical to that of the main request except that in the last phrase relating to the background pattern between reference numeral (14) and the word "to" additional features are introduced, namely in claim 1 of the 1st auxiliary request:

"... such that the background pattern flashes ...",

in claim 1 of the 2nd auxiliary request:

"... such that the geometric shape of the background pattern changes ...",

and in claim 1 of the 3rd auxiliary request:

"... such that the geometric shape of the background pattern changes and the background pattern flashes ...".

All requests contain a further independent method claim, the wording of which corresponds closely to the respective system claim 1.

VI. The appellant has pointed out that the relevance of D4 was first emphasized by the board in the annex to the summons to oral proceedings and therefore requests, as a matter of fair procedural treatment, that the board exercise its discretion under Article 111 (1) EPC to remit the case to the first instance for further prosecution. Should the board choose not to remit the case, the appellant requests that the board admit amended claims 1 to 24 according to the main request and 1st to 3rd auxiliary requests as filed on 26 October 2012, that the oral proceedings be cancelled and that a patent be granted based on one of the four requests.

VII. In a letter received on 28 November 2012 the appellant's representative informed the board that he was instructed not to attend the oral proceedings.

VIII. On 5 December 2012 the oral proceedings were held as scheduled in the absence of the appellant, and at the

end of the oral proceedings the chairman announced the decision of the board.

## **Reasons for the Decision**

### *The admissibility of the appeal*

1. In view of the facts set out under points I to II above, the appeal is admissible.

### *The request for remittal in view of D4*

2. The appellant cites a number of board of appeal decisions in order to show that "in ex parte appeal proceedings, if a document is relied upon during the appeal proceedings and it is admitted because it is relevant, the case has often been remitted to the department of first instance" and argues that the board should do the same in this case as a matter of fair procedural treatment. The appellant does not argue that the boards systematically decide in favour of remittal in such cases, nor is this actually the case.
  - 2.1 Under Article 114 (1) EPC 1973 the board shall not be restricted to the facts provided by the appellant, and thus may introduce a new document of its own motion, and under Article 111 (1) EPC 1973 the board has discretion to exercise any power within the competence of the department responsible for the decision appealed, which includes the competence to assess the patentability of the claimed invention in view of the new document. While this alone contradicts an unconditional right of the appellant to have all issues decided upon

by two instances (see e.g. J 0006/98, reasons 4), the board agrees with the appellant that the board shall exercise its discretion in a fair manner in view of the circumstances of the individual case.

- 2.2 In the present case, although document D4 was not referred to in examination, it was mentioned as one of three documents in the European Search Report. Given that D4 is neither very long nor very complex, the board would have expected the appellant to have studied D4 already on receipt of the search. The board also considers that the need to study D4 as a document newly introduced during the appeal procedure does not constitute an undue burden on the appellant and, in particular, does not affect the appellant's right to be heard.
- 2.3 The board further notes that, as argued in the summons (points 5 and 7.1), D4 relates to the same field as the invention and addresses the same technical problem as that discussed in the present application. The introduction of D4 thus did not necessitate a change in perspective on the invention nor a substantial change of the technical problem to be considered.
- 2.4 The board therefore cannot see any specific circumstances in the present case which would make it appropriate, let alone necessary, to remit the case for further prosecution to the department of first instance and therefore refuses the appellant's request to this effect.

*Admissibility of the new requests*

3. The independent claims of the main request were amended to specify that, in addition to increasing the size of

an icon, the background pattern associated with the icon is adjusted. The auxiliary requests also contain this feature and specify it in more detail. The board considers this as a reasonable reaction to the board's preliminary assessment of inventive step, especially in view of newly introduced document D4. The new features, not being of particular complexity, can be dealt with by the board without undue delay. Moreover, since they were, in general terms, already addressed by original claim 6, which specified that "a background feature associated with said icon" be adjusted, there is no doubt that it has been searched. The board thus exercises its discretion under Article 13 (1) (3) RPBA to admit the new requests.

*The appellant's request not to hold oral proceedings*

4. Under Article 116 (1) EPC 1973, oral proceedings shall take place not only at the appellant's request but also at the instance of the board if it considers this expedient. In view of its decision not to remit the case to the first instance, the board indeed considers it to be expedient to hold oral proceedings in order to bring the case to a conclusion, and therefore refuses the appellant's request to cancel the oral proceedings.

*The appellant's absence from the oral proceedings*

5. The appellant was duly summoned, but did not attend the oral proceedings. According to Article 15 (3) RPBA, the board is not 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.

*Article 123 (2) EPC*

6. The board is satisfied that the amended claims do not go beyond the application as originally filed.

*The invention*

7. The application is concerned with the problem that information displayed on a mobile device is less readable when used while the user is moving or travelling (see the published description, paragraph 4). As a solution it is proposed to equip the device with a sensor for measuring ambient motion and, if this sensor measures motion above a certain, configurable threshold, to enlarge display elements such as icons and/or text. Alternative or additional ways to improve legibility are also disclosed, in particular that the background element associated with an icon may be selected from different geometric shapes or that it may flash (see paragraph 59). When the device stops moving the display elements are redrawn in their smaller default size (see e.g. paragraphs 63-70).

*The prior art*

8. Document D4 discloses a mobile device and is concerned with the problem of facilitating user input when the device is in motion because the user is walking or sitting in a vehicle (paragraph 8). As a solution it is proposed to equip the device with at least one sensor for sensing motion of the environment and, depending on

the signal from the sensor, to enlarge icons or control elements such as a scroll bar on the user interface. When the sensor signal indicates that the device has stopped moving, the user interface returns to its normal mode of operation. *Inter alia* this means that icons enlarged during "mobile mode" will be displayed at a normal size again (see paragraphs 22, 24, 29 and 31).

*Inventive step, main request*

9. D4 does not explicitly mention the detection of a "significant ambient movement" by determining that the sensed signal exceeds a "predetermined value". However, the board notes that the device of D4 must be able to distinguish between "normal mode" and the "moving mode" on the basis of the sensed signal (see e.g. paragraphs 22 and 29). On the assumption that the sensor will in many situations measure some residual motion even in "normal mode", the board regards it as implicit that the device of D4 will switch to "moving mode" only when the sensed signal is above a given threshold. This argument was set out in the annex to the summons to oral proceedings (point 8.1) and was not challenged by the appellant.
10. According to the claims and the description (see e.g. paragraphs 4 and 35), the adjustment of the icon size and of the associated background pattern is meant to "facilitate readability" of the display elements.
- 10.1 The board is of the opinion that increasing the size of an icon automatically and in an immediate sense facilitates its readability too. In this respect, hence,

- easier readability does not constitute a difference of claim 1 over D4.
- 10.2 This notwithstanding, the board considers that to "facilitate readability" is not a feature of the claimed invention but rather states its intended effect. The appellant apparently shares this view when it proposes, in its reply dated 25 October 2012 (4th page, 6th paragraph), that a suitable objective technical problem solved by the invention is *"how to facilitate readability of an icon on a display of a mobile device in a moving environment."*
- 10.3 The board also considers that many adjustments of the background pattern of an icon do not facilitate readability at all. A background pattern may also distract the user from the icon itself and thus even reduce the icon's readability. The board considers that this may in particular be the case for background patterns which are rendered in specific geometric shapes or which flash. Hence the board is not convinced that the adjustments of the background patterns specifically disclosed (and claimed in the auxiliary requests) actually facilitate readability.
- 10.4 The board considers that the skilled person would understand the adjustment of the background patterns as constituting a form of highlighting of display elements so as to make them more easily visible.
11. In view of the foregoing, the board concludes that the subject-matter of claim 1 of the main request differs from the disclosure of D4 in that

a) *in response to the detection of ambient movement, the background pattern associated with the icon is adjusted,*

and that this difference solves the problem over D4 of

*"how to facilitate visibility of an icon on a display of a mobile device in a moving environment."*

11.1 The appellant argues (see response of 25 October 2012, page 4, 8th paragraph) that D4 focuses entirely on increasing the icon size and offers nothing to motivate the skilled person to modify the teaching of D4 towards the invention. Moreover the appellant argues that D4, by accepting the drawback of enlarged icons reducing the available display space, rather discourages the skilled person from considering the alternative option according to the invention which makes better use of the available display space.

11.2 The board notes that the claimed invention requires *both* the increased icon size *and* the adjusted background patterns, so that the alleged saving of display space when adjusting the background pattern *instead* of increasing the icon size is not an effect of the invention as claimed.

11.3 Beyond that, the board disagrees with the appellant's implied suggestion that D4 contains no hint for the skilled person to modify the disclosed user interface. D4 discloses adapting the user interface of an electronic device in response to ambient motion. D4 discloses some specific such adaptations, especially that the size of the icons or other display control elements is

increased (paragraph 31; claim 8) and that the "display contents" can be re-arranged or that display elements can be removed or added (paragraph 29; claim 10). In the board's view, the variety of alternatives disclosed in D4 would prompt the skilled person to consider which further adaptations of the user interface might serve the same overall purpose of making the device easier to use when in motion. The board therefore considers that the above technical problem is one which the skilled person would naturally address in an attempt to improve the teaching of D4.

11.4 The board further considers that at the priority date it was common practice in the art to increase the visibility of elements on a computer display by some form of highlighting. Textual elements, for example, were often highlighted by underlining or framing. In the board's view, underlining and framing are adjustments of the background pattern of the textual element. The board considers that the skilled person would, by analogy, also apply such standard highlighting methods to icons so as to increase their visibility.

11.5 Hence the board concludes that the subject-matter of claims 1 and 15 of the main request lacks an inventive step over D4 in view of common knowledge in the art, Article 56 EPC 1973.

*Inventive step, auxiliary requests*

12. The independent claims of the auxiliary requests differ from those of the main request by requiring specific adjustments of an icon's background pattern, namely flashing and/or changing its geometric shape.

12.1 The board considers that these two adjustments, separately and in combination, are obvious - and, in fact, commonly used - ways of highlighting display elements on a computer screen, so that, in the board's judgment, the above assessment of the main request also applies to the auxiliary requests.

12.2 As a consequence, the board also finds that the subject-matter of claims 1 and 15 of the auxiliary requests lacks an inventive step over D4 in view of common knowledge in the art, Article 56 EPC 1973.

*Summary*

13. There not being an allowable request, the appeal has to be dismissed.

**Order**

**For these reasons it is decided that:**

The appeal is dismissed.

The Registrar:

The Chairman:

B. Atienza Vivancos

A. Teale