

Internal distribution code:

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

**Datasheet for the decision
of 22 June 2011**

Case Number: T 1608/09 - 3.5.03

Application Number: 05009445.7

Publication Number: 1592209

IPC: H04M 1/02

Language of the proceedings: EN

Title of invention:

Double sliding-type portable communication apparatus

Applicant:

SAMSUNG ELECTRONICS CO., LTD.

Opponent:

-

Headword:

Portable communication apparatus/SAMSUNG

Relevant legal provisions:

EPC Art. 56, 84, 123(2)

Relevant legal provisions (EPC 1973):

-

Keyword:

"Clarity (main request) - no"

"Added subject-matter (main request) - yes"

"Inventive step (first auxiliary request) - yes"

Decisions cited:

-

Catchword:

-



Case Number: T 1608/09 - 3.5.03

D E C I S I O N
of the Technical Board of Appeal 3.5.03
of 22 June 2011

Appellant: SAMSUNG ELECTRONICS CO., LTD.
416 Maetan dong
Yeongtong-gu
Suwon-city
Gyeonggi-do (KR)

Representative: Grünecker, Kinkeldey
Stockmair & Schwanhäusser
Anwaltssozietät
Leopoldstrasse 4
D-80802 München (DE)

Decision under appeal: Decision of the Examining Division of the
European Patent Office posted 24 February 2009
refusing European patent application
No. 05009445.7 pursuant to Article 97(2) EPC.

Composition of the Board:

Chairman: A. S. Clelland
Members: A. J. Madenach
M.-B. Tardo-Dino

Summary of Facts and Submissions

I. The present appeal is against the decision of the examining division to refuse application No. 05009445.7, which claims priority from KR 2004-30021 A of 29 June 2004, on the ground that claim 1 of the application did not fulfil the requirement of novelty (Articles 52(1), 54(1) and 54(2) EPC) in the light of

D2: WO 03/050665 A.

II. In the statement of grounds the appellant requested that the decision of the examining division be set aside and a patent be granted on the basis of an amended claim 1 according to a main request, a first or a second auxiliary request filed with the grounds of appeal, and claims 2-20 as filed with the letter dated 23 October 2008. As an auxiliary measure, oral proceedings were requested.

III. In a communication of 25 February 2011 pursuant to Article 15(1) of the Rules of Procedure of the Boards of Appeal, accompanying a summons to oral proceedings, the board gave its preliminary opinion.

IV. With letter of 19 May 2011 the appellant submitted a new claim 1 according to a main and first auxiliary request.

V. Oral proceedings took place on 22 June 2011.

During the oral proceedings, the appellant submitted a modified claim 1 according to the first auxiliary request and requested that the decision under appeal be set aside and that a patent be granted on the basis of

claim 1 of the main request filed with the letter dated 19 May 2011, or, alternatively on the basis of claim 1 of the first auxiliary request filed during the oral proceedings, or of claim 1 of the second auxiliary request filed with the statement of grounds, together with claims 2-20 as filed with the letter of 23 October 2008.

VI. Independent claim 1 according to the main request reads as follows:

"A double sliding-type portable communication apparatus (10) comprising:

a main housing (20) having a first key array (26) including a plurality of keys (26a) aligned on an upper surface of the main housing (20); and

a sliding housing (30) slidably movable lengthwise along the main housing (20), while facing the main housing (20), wherein the sliding housing (30) is also slidably movable widthwise along across the main housing (20), and wherein the sliding housing includes a display unit (31) aligned on an upper surface of the sliding housing (30)

characterized by

a separate double sliding member (40) arranged between the main housing (20) and the sliding housing (30) facilitating the sliding housing (30) to be slidably moved away from the main housing (20) in a longitudinal direction and back to its initial position, and to be slidably moved away from the main housing (20) in a lateral direction and back to its initial position, selectively

wherein the main housing (20) further has a second key array (27) positioned adjacent to the first key array (26) and including a plurality of keys (27a), wherein a longitudinal dimension of the double sliding member (40) faced with the main housing (20) is smaller than a corresponding dimension of the upper surface of the main housing (20) so that

when the sliding housing (30) is moved lengthwise, the second key array (27) is exposed or covered, and

when the sliding housing (30) is moved widthwise, the first key array (26) and a portion of the second key array (27) are exposed or covered."

Claim 1 according to the first auxiliary request differs from claim 1 according to the main request in that the characterising part reads as follows:

"characterized by

a double sliding member (40) arranged between the main housing (20) and the sliding housing (30) facilitating the sliding housing (30) to be slidably moved away from the main housing (20) in a longitudinal direction and back to its initial position, and to be slidably moved away from the main housing (20) in a lateral direction and back to its initial position, selectively

wherein the main housing (20) further has a second key array (27) positioned adjacent to the first key array (26) and including a plurality of keys (27a),

when the sliding housing (30) is moved lengthwise with respect to the double sliding member (40), the second key array (27) is exposed or covered, and

when the sliding housing (30) is moved widthwise together with the double sliding member (40), the first

key array (26) and a portion of the second key array (27) are exposed or covered."

In view of the board's decision it is not necessary to go into the details of Claim 1 according to the second auxiliary request.

Reasons for the decision:

1. *Main request: amendments and clarity (Articles 84 and 123(2) EPC):*

1.1 The term "separate" in respect of the double sliding member (40) in claim 1 according to the main request is not clear (Article 84 EPC) in that it does not define from what, or how, the double sliding member is separated. In particular, it is unclear whether "separate" implies a physical separation in the sense that elements do not touch or merely that elements are not made of one piece and not formed together or fixed to each other. It is also unclear whether the double sliding member is "separate" from the main housing or the sliding housing or from both or from other elements. The term "separate" does not have a literal basis in the original application documents, so that the description cannot serve to clarify the meaning of the term.

Since the claims shall define the matter for which protection is sought and since, in the present case, the term "separate" makes this unclear, claim 1 according to the main request does not comply with the requirements of Article 84 EPC.

1.2 The amendment introducing the term "separate" also introduces subject-matter which extends beyond the content of the application as filed, contrary to the requirements of Article 123(2) EPC. As there is no literal basis for this term, the appellant relied on the Figures as a basis for this amendment. It is, however, not possible to deduce from the Figures what "separate" actually means in the present context (see point 1.1 above). Claim 1 does not, therefore, comply with the requirements of Article 123(2) EPC.

1.3 The board also notes that the feature "wherein a longitudinal dimension of the double sliding member (40) faced with the main housing (20) is smaller than a corresponding dimension of the upper surface of the main housing (20)" does not have a literal basis in the original application either. Again, the appellant relied on the Figures as a basis for this amendment. This feature is arguably apparent from the Figures (e.g. Figure 9) albeit not further specified. However, it is in the board's view impermissible to take a single feature out of context whilst omitting further features from the same Figures which are also relevant to the dimensions of the claimed communication apparatus.

The introduction of the longitudinal dimension of the sliding member alone amounts to an intermediate generalisation, contrary to the requirements of Article 123(2) EPC.

1.4 As a consequence, the main request cannot be allowed.

2. *Claim 1 according to the first auxiliary request, Inventive step (Article 56 EPC):*

2.1 The board is satisfied that the claims of the first auxiliary request are entitled to the priority date of 29 April 2004. Therefore, one of the documents considered by the board, US 2005/0091431 A, mentioned in the annex to the search report, which could have been considered relevant, does not constitute prior art in the sense of Article 54(2) or (3) EPC since this document was published on 28 April 2005, before the date of filing but after the claimed priority date.

2.2 Claim 1 according to the first auxiliary request no longer comprises the features objected to at points 1.1 - 1.3 above and complies with the requirements of Articles 84 and 123(2) EPC.

2.3 The examining division based its decision on document D2 and took the view that it showed all the features of claim 1 then under consideration.

Claim 1 according to the first auxiliary request essentially adds to claim 1 as considered by the examining division the underlined features.

"when the sliding housing (30) is moved lengthwise with respect to the double sliding member (40), the second key array (27) is exposed or covered, and when the sliding housing (30) is moved widthwise together with the double sliding member (40), the first key array (26) and a portion of the second key array (27) are exposed or covered".

These features are not present in D2. The hub 22, which the examining division considered to correspond to the

claimed double sliding member is fixed to the keyboard device 20 (see Figure 4) which, according to the examining division, corresponds to the claimed main housing and is in slidably and rotatably engaged with the housing 12 (page 4, lines 27-30). According to the examining division this latter housing corresponds to the claimed sliding housing. With this arrangement, the keyboard device, *i.e.* the main housing, is always moved together with the hub, *i.e.* the double sliding member, in the lengthwise as well as in the widthwise direction whereas the housing, *i.e.* the sliding housing, is always moved with respect to the hub in the lengthwise and in the widthwise direction. In other words, the keyboard or "main housing" is never moved with respect to the hub and the housing 12 or "sliding housing" is never moved with the hub or "double sliding member" contrary to the above features.

The subject-matter of claim 1 is therefore new with respect to the teaching of D2.

- 2.4 The board has also considered the question of whether the subject-matter of claim 1 is inventive with respect to the teaching of D2 considered alone or in combination with the other prior art documents cited in the European search report.

The above features allow a deliberate exposure in full or in part of first and second key arrays of a keyboard, as can best be seen in Figures 6 and 8 of the application.

D2 instead relates to an articulated, rotatable keyboard device in which a keyboard can be rotated from a storage

into a use position (see abstract). Although the movement of the keyboard along a channel 18 in the housing 12 (see Figure 3) comprises both rotation and translation components, the latter in two dimensions, and although various portions of the keyboard are exposed during the movement, it is not the intention of D2 to deliberately expose a particular part of the keyboard. This can be inferred from the fact that the keyboard has a standard typewriter keyboard layout (see Figure 4) and does not include a second key array.

The board concludes that the skilled person would have no reason to modify the hub/channel mechanism of D2 to allow a deliberate exposure in full or in part of first and second key arrays. There being no reason to modify the device of D2 for the above object the skilled person would have no motivation to consider the teaching of further documents in combination with D2 without knowing the present invention.

2.5 The subject-matter of claim 1 is thus new and inventive in view of the teaching of D2 considered alone or in combination with the further prior art documents cited in the European search report.

3. Claim 1 of the first auxiliary request thus fulfils the requirements of the EPC.

The board is also satisfied that the dependent claims 2-20 meet the requirements of the EPC.

The first auxiliary request is thus allowable.

It is therefore not necessary to consider the second auxiliary request.

Order

For these reasons it is decided that:

The decision under appeal is set aside.

The case is remitted to the department of first instance with the order to grant a patent on the basis of:

- Claim 1 of the first auxiliary request filed during the oral proceedings.
- Claims 2-20 as filed with the letter of 23 October 2008.
- Description pages 1 and 3 to 10 as originally filed.
- Description pages 2 and 2a, as filed with the letter of 23 October 2008.
- Figures 1 to 10 as originally filed.

The Registrar

The Chairman

G. Rauh

A. S. Clelland