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**Datasheet for the decision
of 4 June 2014**

Case Number: T 0680/10 - 3.5.04

Application Number: 00960674.0

Publication Number: 1133869

IPC: H04N5/45

Language of the proceedings: EN

Title of invention:
USER INTERFACE GENERATION

Applicant:
Koninklijke Philips N.V.

Headword:

Relevant legal provisions:
EPC 1973 Art. 84, 113
RPBA Art. 15(3), 15(6)

Keyword:
Claims - clarity (no)
Right to be heard - non-attendance at oral proceedings

Decisions cited:
T 0602/03, T 0991/07, T 1867/07

Catchword:



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Case Number: T 0680/10 - 3.5.04

**D E C I S I O N
of Technical Board of Appeal 3.5.04
of 4 June 2014**

Appellant: Koninklijke Philips N.V.
(Applicant) High Tech Campus 5
5656 AE Eindhoven (NL)

Representative: Damen, Daniel Martijn
Philips
Intellectual Property & Standards
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Decision under appeal: **Decision of the Examining Division of the
European Patent Office posted on 16 November
2009 refusing European patent application
No. 00960674.0 pursuant to Article 97(2) EPC.**

Composition of the Board:

Chairman C. Kunzelmann
Members: M. Paci
T. Karamanli

Summary of Facts and Submissions

- I. The appeal is against the decision of the examining division refusing European patent application No. 00960674.0 published as international patent application WO 01/24518 A1.
- II. In the decision under appeal the following prior-art documents were considered:

D1: US 5,651,107 A and
D5: EP 0869421 A2.

The application was refused on the grounds that the subject-matter of claim 1 did not involve an inventive step (Article 56 EPC) in view of D1 and D5.

- III. With the statement of grounds of appeal the appellant filed amended claims according to a single request, replacing the claims previously on file.
- IV. In a communication under Article 15(1) RPBA (Rules of Procedure of the Boards of Appeal, OJ EPO 2007, 536), annexed to the summons to oral proceedings, the board expressed the preliminary opinion that claim 1 filed with the statement of grounds of appeal did not meet the requirements of clarity and support by the description of Article 84 EPC 1973 because the amended wording of claim 1 resulted in the claimed subject-matter covering two alternative arrangements, one of which being inconsistent with the description and drawings of the application. The board further expressed the provisional opinion that the subject-matter of claim 1 (for the alternative arrangement not objected to under Article 84 EPC 1973) did not involve an inventive step in view of D1.

V. In its reply, dated 1 May 2014, to the board's communication, the appellant filed amended claims and amended description pages according to a main request and first and second auxiliary requests and requested that a patent be granted on the basis of the main request or the first or second auxiliary requests.

The appellant repeated the wording of claim 1 of the main request and of the first auxiliary request on pages 2 and 4 of the reply, respectively, and submitted the following explanations/arguments:

- a) Claim 1 of the main request was based on claims 1, 2 and 3 in conjunction with page 7, lines 12 to 17 of the application as filed. The subject-matter claimed in the main request corresponded to that of the request filed with the statement of grounds of appeal, except that the wording "*only one of the first and second portions*" was replaced by "*only the second portion*" and that, consequently, the wording "*the portion other than that specified as transparent*" was replaced by "*the first portion*". Also for clarification, the wording "*transparent*" and "*transparency*" was consistently used in the amended claims and description of the main request. The amendments clarified the appellant's main request and addressed the clarity objections raised in the board's communication.
- b) The subject-matter as claimed in claim 1 of the first auxiliary request was based on claims 1, 2 and 7, 8, 9 in conjunction with page 7, lines 12 to 17 of the application as filed and, for clarification, the wording "*transparent*" and

"*transparency*" was consistently used in the amended claims and description.

- c) The independent claims of the second auxiliary request included the features of original claims 7, 8 and 9 in addition to all features claimed in the main request (including the features of original claim 3).

No further submissions were made with regard to the amendments and Articles 84 and 123(2) EPC.

- VI. The board held oral proceedings on 4 June 2014. The appellant was not represented. When contacted by telephone by the Registrar on the day of the oral proceedings, the representative confirmed his non-attendance and apologised for not having informed the board in advance. The board's decision was announced at the end of the oral proceedings.
- VII. The appellant's final requests are that the decision under appeal be set aside and that a patent be granted on the basis of the main request or the first or second auxiliary requests, all requests filed with letter dated 1 May 2014.
- VIII. Claim 1 according to the appellant's **main request** reads as follows [for the sake of clarity, the amendment discussed under points 2 and 11 *infra*, i.e. the deletion of the expression "at least partially", is shown between brackets]:

"Display generation apparatus comprising:
two or more independent sources of data for display;

a windows controller arranged to generate and periodically update a respective display panel for each source based at least partially on data from that source;

first storage means holding data for generated display panels including specification that at least a part of one panel is transparent; and

a display controller configured to generate output pixel values for display based at least partially on contributions from two or more of said display panels, with certain pixels having contributions from two display panels where a first panel is positioned to at least partially overlie a second and the overlying part of the first panel is specified as [~~at least partially~~] transparent, characterized in that the windows controller is arranged to generate each display panel as a first portion and a second, attached, portion with only the second portion being specified as transparent, the first portion is a content portion, the second portion is a title bar portion, the second portion comprises the title bar of the corresponding display panel; and wherein one of said sources comprises a source of video image frame sequences and the display panel for that source displays the video image frames in the first portion."

- IX. Claim 1 according to the appellant's **first auxiliary request** reads as follows [for the sake of clarity, the amendment discussed under points 2 and 11 *infra*, i.e. the deletion of the expression "at least partially", is shown between brackets]:

"Display generation apparatus comprising:

two or more independent sources of data for display;

a windows controller arranged to generate and periodically update a respective display panel for each source based at least partially on data from that source;

first storage means holding data for generated display panels including specification that at least a part of one panel is transparent; and

a display controller configured to generate output pixel values for display based at least partially on contributions from two or more of said display panels, with certain pixels having contributions from two display panels where a first panel is positioned to at least partially overlie a second and the overlying part of the first panel is specified as [~~at least partially~~] transparent, characterized in that the windows controller is arranged to generate each display panel as a first portion and a second, attached, portion with only the second portion being specified as transparent, the first portion is a content portion, the second portion is a title bar portion, the second portion comprises the title bar of the corresponding display panel; and

said display controller is arranged to generate a two dimensional image of a three dimensional environment, based on stored data defining said environment, from a predetermined viewpoint within said environment, and with said display panels mapped onto surfaces within said environment, further comprising user-operable input means by operation of which the user is enabled to manoeuvre the location and/or direction of said viewpoint within the three dimensional environment, wherein the stored data defining the environment defines a plurality of generally prismatic bodies each having at least a planar face onto which a respective display panel is

mapped and an adjacent surface onto which said overlying part is mapped."

- X. Claim 1 according to the appellant's **second auxiliary request** reads as follows [for the sake of clarity, the amendment discussed under points 2 and 11 *infra*, i.e. the deletion of the expression "at least partially", is shown between brackets]:

"Display generation apparatus comprising:

two or more independent sources of data for display;

a windows controller arranged to generate and periodically update a respective display panel for each source based at least partially on data from that source;

first storage means holding data for generated display panels including specification that at least a part of one panel is transparent; and

a display controller configured to generate output pixel values for display based at least partially on contributions from two or more of said display panels, with certain pixels having contributions from two display panels where a first panel is positioned to at least partially overlie a second and the overlying part of the first panel is specified as [~~at least partially~~] transparent, characterized in that the windows controller is arranged to generate each display panel as a first portion and a second, attached, portion with only the second portion being specified as transparent, the first portion is a content portion, the second portion is a title bar portion, the second portion comprises the title bar of the corresponding display panel; and wherein one of said sources comprises a source of video image frame sequences and the display

panel for that source displays the video image frames in the first portion,

and said display controller is arranged to generate a two dimensional image of a three dimensional environment, based on stored data defining said environment, from a predetermined viewpoint within said environment, and with said display panels mapped onto surfaces within said environment, further comprising user-operable input means by operation of which the user is enabled to manoeuvre the location and/or direction of said viewpoint within the three dimensional environment, wherein the stored data defining the environment defines a plurality of generally prismatic bodies each having at least a planar face onto which a respective display panel is mapped and an adjacent surface onto which said overlying part is mapped."

Reasons for the Decision

1. The appeal is admissible.

Procedural matters

2. The present claims according to the main request and the first and second auxiliary requests were submitted with the letter of 1 May 2014, i. e. approximately one month before the date of the oral proceedings.

In its letter of 1 May 2014, the appellant discussed several amendments, but did not mention the deletion of "at least partially" in claim 1 of all requests.

The board, however, came to the conclusion that this amendment was to be taken into consideration for the

present decision since it could not be considered as an unintentional result of a clerical error but had to be regarded as intentional for the following reasons:

- this amendment was present in claim 1 according to each of the appellant's three requests filed with said letter;
 - this amendment was present in the text of claim 1 of the main request and of the first auxiliary request cited on page 2 and page 4, respectively, of said letter; and
 - this amendment was consistent with the appellant's statement on page 1, point I.1, second paragraph, of its letter of 1 May 2014, that claim 1 of the main request was based on claims 1, 2 and 3 of the application as filed, because claim 1 of the application as filed did not use the expression "at least partially" in relation to the "overlying part of the first panel".
3. The amendments to claim 1 (according to all requests) overcame the objections of lack of clarity raised by the board in its communication annexed to the summons to oral proceedings. However, in the board's judgement, these amendments also created inconsistencies in the wording of claim 1, thereby giving rise to new objections under Article 84 EPC 1973.
 4. The duly summoned appellant did not attend the oral proceedings. The board only became aware of the appellant's non-attendance on the day of the oral proceedings because the representative had forgotten to inform the board in advance. The proceedings were continued without the appellant in accordance with Rule 71(2) EPC 1973 (corresponding to Rule 115(2) EPC).

The board thus had to consider during the oral proceedings whether, in view of Article 113 EPC 1973 (right to be heard), it could base its decision on objections of clarity which had not been communicated to the appellant.

5. According to Article 15(3) RPBA, the Board 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. Moreover, according to Article 15(6) RPBA, the Board shall ensure that each case is ready for decision at the conclusion of the oral proceedings, unless there are special reasons to the contrary.
6. It is established case law of the boards of appeal that an appellant who submits amended claims shortly before the oral proceedings and subsequently does not attend these proceedings must expect a decision based on objections which might arise against such claims in its absence (see e.g. T 602/03, point 7 of the Reasons). Therefore, an appellant who submits new claims after oral proceedings have been arranged but does not attend these proceedings must expect that the board might decide that the new claims are not allowable because of deficiencies, such as for example lack of clarity (see e.g. T 991/07, point 2.4 of the Reasons).
7. A duly summoned appellant who by his own volition does not attend the oral proceedings cannot be in a more advantageous position than he would have been if he had attended them. The voluntary absence of the appellant cannot therefore be a reason for the board not to raise issues it could and would have raised if the appellant

had been present, and not to decide accordingly (see T 1867/07, point 3.5 of the Reasons).

8. In the present case, due to the appellant's absence from the oral proceedings, relevant issues regarding Article 84 EPC 1973 could not be discussed with the appellant. Thus the board could only rely on the appellant's written submissions (i.e. the statement of grounds of appeal and the letter of 1 May 2014). These written submissions and the amendments made to claim 1 of all requests put the board in a position to decide at the conclusion of the oral proceedings. Hence the case was ready for decision (Article 15(5) and (6) RPBA).

Clarity

9. Claim 1 according to each of the main request and first and second requests contains the following wording:
 - (a) "a first panel is positioned to at least partially overlie a second and **the overlying part of the first panel is specified as transparent**" (emphasis added by the board), and
 - (b) "the windows controller is arranged to generate each display panel as a first portion and a second, attached, portion with **only the second portion being specified as transparent**, the first portion is a content portion, the second portion is a title bar portion, the second portion comprises the title bar of the corresponding display panel" (emphasis added by the board).
10. In the board's view, the above features (a) and (b) provide inconsistent information as to which portion of the panel(s) is specified as transparent.

According to feature (a), when a first panel at least partially overlies a second panel, the transparent portion is the portion of the first panel which overlies the second panel.

According to feature (b), for each of the first and second panels mentioned in feature (a), the **only** transparent portion is the title bar portion of the panel.

Features (a) and (b) thus provide contradictory information regarding the part of the first panel which overlies the second panel but is not in the title bar portion of the first panel. Indeed, according to feature (a) this part is transparent, whereas according to feature (b) this part is not transparent (because **only** the title bar portion is transparent).

This contradiction thus renders the wording of claim 1 unclear.

The only situation in which this contradiction would **not** exist would be if the first panel never overlaid the second panel with more than the title bar portion. However, there is no such limitation in claim 1. Nor is there any support in the description or drawings for such an interpretation of claim 1 because none of the embodiments of the invention disclose such a limitation of the overlap between panels (see figures 2 to 5).

11. The above lack of clarity arose from the amendments made to claim 1 of all requests filed with the letter of 1 May 2014. Indeed, feature (a) of present claim 1 according to all requests differs from claim 1 of the single request filed with the statement of grounds of appeal in that the expression "the overlying part of

the first panel is specified as at least partially transparent" has been replaced by "the overlying part of the first panel is specified as transparent". The former expression present in claim 1 of the single request filed with the statement of grounds of appeal could be construed as meaning that only part of the overlying part is specified as transparent ("at least partially transparent"). This, however, is no longer the case with the latter expression, in which "at least partially transparent" has been replaced by "transparent".

12. In view of the above, the board concludes that claim 1 of each of the main request and first and second auxiliary requests does not meet the requirement of clarity under Article 84 EPC 1973.

Hence these requests are not allowable and the appeal must be dismissed.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:



K. Boelicke

C. Kunzelmann

Decision electronically authenticated