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**Datasheet for the decision
of 19 September 2013**

Case Number: T 0781/10 - 3.5.05

Application Number: 07109920.4

Publication Number: 1865408

IPC: G06F 3/048

Language of the proceedings: EN

Title of invention:

Portable device and method of providing menu icons

Applicant:

Samsung Electronics Co., Ltd.

Headword:

Portable device and method of providing menu icons/SAMSUNG

Relevant legal provisions:

EPC Art. 123(2)

Relevant legal provisions (EPC 1973):

EPC Art. 56

Keyword:

"Added subject-matter - no (after amendment)"

"Inventive step - yes (after amendment)"

Decisions cited:

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Catchword:

-



Case Number: T 0781/10 - 3.5.05

DECISION
of Technical Board of Appeal 3.5.05
of 19 September 2013

Appellant: Samsung Electronics Co., Ltd.
(Applicant) 129, Samsung-ro
Yeongtong-gu
Suwon-si, Gyeonggi-do, 443-742 (KR)

Representative: Grootscholten, Johannes A.M.
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Decision under appeal: Decision of the Examining Division of the
European Patent Office posted 8 December 2009
refusing European patent application
No. 07109920.4 pursuant to Article 97(2) EPC.

Composition of the Board:

Chairwoman: A. Ritzka
Members: M. Höhn
G. Weiss

Summary of Facts and Submissions

- I. This appeal is against the decision of the examining division, posted on 8 December 2009, refusing European patent application No. 07109920.4 on the grounds of Article 123(2) EPC. In an obiter dictum, objections under Article 56 EPC 1973 were also made.
- II. The following decision is based on prior-art documents
- D7: US 5687331 A1 and
D8: EP 1303114 A2.
- III. The notice of appeal was received on 4 February 2010. The appeal fee was paid on the same day. The statement setting out the grounds of appeal was received on 30 March 2010. The appellant requested that the appealed decision be set aside and that a patent be granted on the basis of the three sets of claims filed as main request and first and second auxiliary request with the statement setting out the grounds of appeal. Oral proceedings were requested on an auxiliary basis.
- IV. A summons to oral proceedings, to be held on 19 September 2013, was issued on 17 May 2013. In an annex accompanying the summons the board expressed the preliminary opinion that the subject-matter of independent claim 1 according to the main request appeared *inter alia* not to fulfil the requirements of Article 123(2) EPC and that the subject-matter of independent claim 1 of all requests did not appear to involve an inventive step (Article 56 EPC 1973) in view of the disclosure of D7 combined with D8 and with regard to the skilled person's common general knowledge.

The board gave its reasons for its objections and explained why it did not consider the appellant's arguments convincing.

- V. With a letter dated 19 August 2013 the appellant submitted amended claims according to a main request and auxiliary requests 1 to 3, replacing the previous requests, together with arguments supporting their patentability.
- VI. Oral proceedings were held on 19 September 2013. The appellant requested that the decision under appeal be set aside and that a patent be granted on the basis of claims 1 to 9 submitted as main request at the oral proceedings of 19 September 2013. The sets of claims filed with letter dated 19 August 2013 as main request and first auxiliary request were withdrawn.
- VII. Independent claim 1 according to the main request reads as follows:
- "1. A portable device (100) for providing menu icons (221, 222), comprising:
- a display unit (160) which displays the menu icons (221, 222) and a focus (230) located on a menu icon (221, 222);
 - a button signal input unit (110), which receives a button signal generated by a user's manipulation of a button (310);
 - a button signal determination unit (120) which, when the input button signal is received from the user, determines whether the input button signal is a signal of a function button or a signal of a direction button;

- a focus location checking unit (130) which determines the location of a focus (230) located on the menu icon (221, 222);
- a background screen management unit (140) for management of the background screen (210) comprising an image in front of which the menu icons (221, 222) are displayed; and
- an icon management unit (150) which changes a size of a menu icon (221, 222) based on the location of the focus (230),

CHARACTERISED IN THAT

the background screen management unit (140) is configured to change a view point of the background screen (210), when the focus is moved, in accordance with a direction in which the focus (230) is moved."

Independent claim 5 is directed to a corresponding method of controlling a portable device.

VIII. After due deliberation, the board announced its decision.

Reasons for the Decision

1. Admissibility

The appeal complies with Articles 106 EPC 1973, 107 EPC and 108 EPC 1973 (see Facts and Submissions, point III above). It is therefore admissible.

Main request

2. Article 123(2) EPC

The decision under appeal is based on objections under Article 123(2) EPC against the characterizing portion of claims 1 and 5.

2.1 The feature "when the focus is moved, in accordance with a direction in which the focus (230) is moved" specifies the case where the focus is moved when selecting an upper-level icon. For this case, an original disclosure of changing the viewpoint of the background screen is found in figures 5B to 5D and the corresponding text of the description as filed (see page 16, line 6 to page 17, line 21 - corresponding to [0056] to [0061] of the application as published).

2.2 In order to specify that a background screen does not comprise the case of a blank screen which would not provide any effect when changing the viewpoint, claim 1 was amended to include the background screen comprising an image. This amendment is considered to have a basis on page 11, line 27 with reference to element 120 of figure 2, which element is also shown in figures 5A to 5D with a background image.

2.3 The requirements of Article 123(2) EPC are therefore fulfilled for independent claim 1 as well as for corresponding independent claim 5.

3. Article 56 EPC 1973 - Inventive step

D7 is considered to be the closest prior art relevant for independent claims 1 and 5.

3.1 The board agrees with the analysis with regard to D7 and the features of claim 1 in the communication dated 17 October 2008 (see point 3.1 of the communication). Hence, D7 discloses all the features of the preamble of claims 1 and 5. This was not under dispute during the appeal proceedings. The further feature "comprising an image" introduced by amendment to claims 1 and 5 is also disclosed in D7 (see e.g. column 34, lines 32 to 34).

3.2 The subject-matter differs from the disclosure in D7 by the features of the characterizing portion.

3.3 The underlying objective problem to be solved is considered to be to increase the user's awareness of the currently selected menu hierarchy, and thereby to achieve a more effective man-machine interface.

3.4 The board agrees with the appellant that the management screen background unit 140 specified in claim 1 constitutes a technical feature (see page 10, fourth paragraph of the statement setting out the grounds of appeal). The solution according to claim 1 is considered to provide a technical contribution over the teaching of prior art D7, because an emphasizing effect enhancing the precision of the input device is achieved by the manner of displaying background screen changes in accordance with the direction in which the focus is moved. This effect involves technical considerations by

providing direction information linked to the movement of the focus. It is therefore achieved by a different incentive, provided by technical means, in addition to a size change of the icon as defined in the preamble of claim 1. In the board's judgement, and contrary to the decision under appeal, this goes beyond a mere presentation of information according to Article 52(2)(d) EPC.

3.5 When looking for a solution of the objective problem the skilled person would consider D8. D8 discloses the principle of displaying a symbol on a background screen reminding a user of a category that belongs to a menu screen (see [0033] or [0039]). Hence, by varying the background screen depending on the menu level, the user is aware of the category of the displayed menu screen.

Starting with the disclosure of D7, the skilled person would realize that D7 does not propose moving the focus and, hence, does not hint at changing a background linked to movement of a focus. Even combining the teaching of D7 with the known basic principle of changing a background screen as disclosed in D8, the skilled person would end up with stationary background screens only at the lower level menu, without any perspective changes which are displayed when the lower level menu has been selected. D8 does not teach any change of the background screen while the focus is moved in the upper level menu. In particular, there is no motivation to be found in D7 and D8 for varying the angle of watching at the background image, called a change of the "viewpoint" in the terminology of the application, in accordance with a direction in which the focus is moved. In particular, there is no hint

either at linking the change of the angle to the movement of a focus, or at doing this for the upper level menu.

The same reasoning applies *mutatis mutandis* to corresponding independent claim 5.

- 3.6 The subject-matter of claims 1 and 5 therefore involves an inventive step in view of the disclosures of D7 and D8 (Article 56 EPC 1973). The same finding applies to the dependent claims which are limited to specific implementations thereof.

The other prior-art documents on file are more remote than D7 and D8 and do not render the claimed solution obvious.

4. Since the main request fulfils the requirements of the EPC, the board does not have to deal with the auxiliary requests.

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 9 as submitted as main request at the oral proceedings of 19 September 2013, and a description to be adapted thereto.

The Registrar:

The Chair:

I. Aperribay

A. Ritzka