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**Datasheet for the decision
of 21 November 2012**

Case Number: T 1691/10 - 3.5.03

Application Number: 08152005.8

Publication Number: 1944951

IPC: H04M 1/02

Language of the proceedings: EN

Title of invention:
Slide type portable terminal

Applicant:
LG Electronics, Inc.

Headword:
Slide type terminal/LG

Relevant legal provisions:
EPC Art. 76(1)
RPBA Art. 12(4), 13(1)

Keyword:
"Extension beyond the content of the earlier application (main and first auxiliary requests) - yes"
"Admissibility (second auxiliary request) - no"



Case Number: T 1691/10 - 3.5.03

D E C I S I O N
of the Technical Board of Appeal 3.5.03
of 21 November 2012

Appellant:
(Applicant)

LG Electronics Inc.
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Representative:

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Decision under appeal:

**Decision of the Examining Division of the
European Patent Office posted 23 March 2010
refusing European patent application
No. 08152005.8 pursuant to Article 97(2) EPC.**

Composition of the Board:

Chairman: F. van der Voort
Members: B. Noll
M.-B. Tardo-Dino

Summary of Facts and Submissions

I. European patent application No. 08152005.8 was filed as a divisional of the earlier application No. 04004707.8 in accordance with Article 76 EPC. The application was refused on the ground that the subject-matter of claims 1 of a main request and an auxiliary request lacked an inventive step (Article 56 EPC).

II. In the notice of appeal the appellant requested that the decision under appeal be set aside and a patent be granted.

With the statement of grounds the appellant filed three sets of claims according to a main request and first and second auxiliary requests. The main request and the first auxiliary request were said to be identical to the requests on which the impugned decision was based.

III. In a communication accompanying a summons to oral proceedings the board gave its preliminary view, *inter alia* on an extension of the subject-matter beyond the content of the earlier application as filed (Article 76(1) EPC).

IV. With a letter dated 15 October 2012 the appellant filed, by way of replacement, amended sets of claims of a main request and a single auxiliary request.

V. Oral proceedings before the board were held on 21 November 2012. In the course of the oral proceedings the appellant filed a modified set of claims as a new first auxiliary request and made the previous auxiliary request the second auxiliary request.

VI. The appellant requested that the decision under appeal be set aside and that a patent be granted on the basis of the main request as filed with the letter dated 15 October 2012, or, in the alternative, on the basis of the first auxiliary request as filed during the oral proceedings or the second auxiliary request which was filed with the letter dated 15 October 2012 by way of an auxiliary request.

VII. At the end of the oral proceedings the board's decision was announced.

VIII. Claim 1 of the main request reads as follows:

"A slide type portable terminal, comprising:

a main unit (30) that includes separated first and second key sections (31, 33) exposed on a surface of the main unit, wherein the first key section performs a first functionality and the second key section performs a second functionality different than the first functionality; and

a display unit (40) that includes a display screen (41) exposed to a front surface of the display unit and a third separate input section (43) being function button on one surface of the display unit,

wherein the display unit is configured to slide relative to the main unit to cause the first and second key sections of the main unit to be exposed,

wherein the display unit selectively slides to a first position where both the first and second key sections of the main unit are not exposed, and a third position where the first key section is exposed,

characterized in that

the display unit is configured to slide to a second position where the second key section (33) is exposed,

the slide type portable terminal further comprises a stopper mechanism (53, 63) to stop and maintain the display unit at exactly the second position, wherein the stopper mechanism includes a stopper groove (53) affixed to one of the display unit and the main unit, and a stopper spring (63) coupled to the other one of the units to correspond to the stopper groove, wherein the stopper spring is selectively seated in the stopper groove, and in that

the second key section (33) comprises keys for performing multimedia functions, the keys are disposed in a row at an end of the surface of the main unit (30)."

Claim 1 of the first auxiliary request differs from claim 1 of the main request in that:

- in the third paragraph the wording "being function button on one surface of the display unit" is replaced by "being function buttons on an upper surface of the display unit";
- in the fourth paragraph the wording "to cause the first and second key sections" is replaced by "to cause the first or second key section";
- in the fifth paragraph the wording "a third position where the first key section is exposed" is replaced by "a third position where only the first key section is exposed";
- in the seventh paragraph the wording "a second position where the second key section (33) is exposed" is replaced by "a second position where only the second key section (33) is exposed"; and

- a new feature "wherein the first key section (31) is a number key section" is added.

Claim 1 of the second auxiliary request reads as follows:

"A slide type portable terminal, comprising:

a main unit (30) that includes separated first and second key sections (31, 33) exposed on a surface of the main unit, wherein the first key section performs a first functionality and the second key section performs a second functionality different than the first functionality; and

a display unit (40) that includes a display screen (41) exposed to a front surface of the display unit and a third separate input section (43) being function button on one surface of the display unit,

wherein the display unit is configured to slide relative to the main unit to cause the first and second key sections of the main unit to be exposed,

wherein the display unit selectively slides to a first position where both the first and second key sections of the main unit are not exposed, and a third position where the first key section is exposed,

characterized in that

the display unit is configured to slide to a second position where the second key section (33) is exposed,

the display unit further comprises a camera (45) rotatably mounted on an end portion of the display unit (40),

the second key section (33) includes a key for operating the camera,

the camera (45) is configured to be not blocked by the main unit (30) when the display unit (40) is at the second position and the camera (45) is rotated to look towards the main unit (30) for capturing an image,

the slide type portable terminal further comprises a stopper mechanism (53, 63) to stop and maintain the display unit at exactly the second position,

a first plate (50) provided on the main unit (30) and a second plate (60) provided on the display unit (40) such that the first plate is slideable with respect to the second plate, wherein the stopper mechanism includes a stopper groove (53) affixed to the first plate (50) of the main unit, and a stopper spring (63) coupled to the second plate (60) of the display unit to correspond to the stopper groove, wherein the stopper spring is selectively seated in the stopper groove,

outwardly protruding front ends of the stopper springs (63) can be securely but not fixedly seated into the stopper grooves (53), rear ends of the stopper springs (63) can be held on one side of the second plate (60),

first and second magnets are mounted on the first and second plates, respectively, so that the same poles of the magnets face each other to provide a repulsive force when they are positioned to face close to each other, and

the first and second magnets cross over each other at an intermediate position between the first and third positions, and an elastic force of the stopper spring is greater than the repulsive force between the magnets."

Reasons for the Decision

1. *Claim 1 of the main request - basis in the earlier application (Article 76(1) EPC)*

1.1 The earlier application relates to a slide type portable terminal in which a display unit is attached to a second unit by an interlinking mechanism. The second unit, which in the terminology of the application is the "main unit", comprises two sets of keys at its surface ("first and second key sections"). The display unit comprises a further set of keys ("a third separate input section"). The interlinking mechanism is configured such that the display unit can selectively be positioned in one of three different positions with respect to the main unit. The positions are specified by indicating which of the key sections at the main unit is "exposed", i.e. accessible by the user, and which of them is concealed or covered by the display unit and thereby inaccessible. In a first position, the terminal is closed which means that both key sections on the main unit are "not exposed", i.e. concealed by the display unit (cf. figure 6A). In a second position only the second key section 33 is exposed (cf. figure 7A) whereas the first key section 31 (cf. figure 8A) is concealed, and in a third position (cf. figure 8A) both the first and second key sections 31, 33 are exposed.

1.2 In present claim 1, the second position is defined such that the second key section is exposed and the third position is defined such that the first key section is exposed. Thus, the claim covers an embodiment of the terminal in which the second and third positions

respectively correspond to a position of the display unit in which only the second key section is exposed, i.e. the first key section is concealed, and another position in which only the first key section is exposed, i.e. the second key section is concealed. There is however no basis in the earlier application for this embodiment. As indicated at point 1.1 above, the earlier application discloses a terminal in which the second key section may be exposed alone or together with the first key section. However, there is no disclosure of the first key section being exposed and, at the same time, the second key section being concealed.

- 1.3 The appellant argued that a basis for the above-mentioned embodiment could be found in paragraphs [0057] and [0020] of the earlier application as published. Paragraph [0057] (first two sentences) reads as follows: "As described above, for example, the sliding operation of the display unit can be performed in two steps by the stopper mechanism, so that the slide type portable terminal can be used either in a state where only the multimedia keys are exposed or in a state where the number keys as well as the multimedia keys are exposed. However, the present invention is not intended to be so limited." The skilled person would conclude from these two sentences that the terminal could be brought into a position in which only the number keys, i.e. the first key section, were exposed. Furthermore, in paragraph [0020] of the earlier application the phrase "so that the first and second key sections of the main unit are selectively covered and exposed" (underlining by the board) would provide a basis for a slide type terminal in which either of the first and second key sections

might be exposed whilst the other key section was concealed.

- 1.4 In the board's view, the sentences in paragraph [0057] cited by the appellant are to be understood in the context of the directly subsequent sentences ("For example, embodiments according to the present invention may be configured in such a manner that the main unit and the display unit are slid against each other without using the first and second plates. The structure or mechanism for performing the sliding operation between the first and second plates can be implemented in various manners other than that illustrated in the accompanying drawings. Further, additional steps in the sliding operation may be desired.") in which an interlinking mechanism without first and second plates, as an alternative to the interlinking mechanism as shown in figures 4 and 5, is discussed. Thus, the statement "that the present invention is not intended to be so limited" cannot be equated with a direct and unambiguous disclosure of the embodiment referred to at point 1.2 above.

Regarding paragraph [0020] of the earlier application, the passage cited by the appellant is understood by the board as referring to two selectable positions, namely a first position in which the first and second key sections are covered and another position in which the first and second key sections are exposed. This interpretation is also in accordance with the wording of the claims of the earlier application as filed. In this respect, the board notes that paragraph [0020] corresponds to independent claim 10 and that claim 11, which is dependent on claim 10, explicitly specifies

the above-mentioned two selectable positions and an intermediate position in which only one of the key sections is exposed. In a similar way, each one of the remaining independent claims, i.e. claims 1, 8, 19 and 22, specifies only these three positions. Hence, the board concludes that paragraph [0020] does not provide a basis for a terminal in which alternatively another intermediate position may be selected in which only the other one of the key sections is exposed.

The appellant's arguments are therefore not convincing.

1.5 For the above reasons claim 1 of the main request defines subject-matter which extends beyond the content of the earlier application as filed and does not therefore meet the requirements of Article 76(1) EPC.

2. *The first auxiliary request*

2.1 Claim 1 of the first auxiliary request uses substantially the same wording as claim 1 of the main request as regards the specification of the first, second and third positions. The addition that "only" the first (or second) key section is exposed merely makes explicit what was already implicitly covered by claim 1 of the main request as discussed above at point 1.2. Accordingly, the objection raised against claim 1 of the main request (cf. point 1.2 above) applies, *mutatis mutandis*, to claim 1 of the first auxiliary request.

2.2 Hence, claim 1 of the first auxiliary request does not meet the requirements of Article 76(1) EPC. The first auxiliary request is therefore not allowable.

3. *The second auxiliary request*

3.1 Pursuant to Article 12(4) of the Rules of Procedure of the Boards of Appeal (cf. Supplement to OJ EPO 1/2012, pages 39 to 49) it is within the power of the board to hold inadmissible facts, evidence or requests which could have been presented in the first instance proceedings.

Further, Article 13(1) RPBA stipulates that any amendment to a party's case after it has filed its grounds of appeal may be admitted and considered at the board's discretion, and that this discretion shall be exercised in view of, inter alia, the need for procedural economy.

3.2 In claim 1 of the second auxiliary request the features

"the display unit further comprises a camera (45) rotatably mounted on an end portion of the display unit (40),
the second key section (33) includes a key for operating the camera,
the camera (45) is configured to be not blocked by the main unit (30) when the display unit (40) is at the second position and the camera (45) is rotated to look towards the main unit (30) for capturing an image"

were included in the claim for the first time only with the second set of claims as filed on 15 October 2012, i.e. the present second auxiliary request.

The claimed subject-matter is modified by these additional features such that the relative position of

the camera and its orientation with respect to the main unit becomes a new aspect of the claimed terminal. In the board's view, it is however not apparent that this aspect was adequately considered during the search procedure, it being noted that none of the claims as filed includes features relating to a camera. Such assertion can only be made by the department of first instance which has the resources for carrying out, if necessary, an additional search.

Thus, if the board were to admit the second auxiliary request, it would not be in a position to decide on the allowability of claim 1, but would be compelled to remit the case to the department of first instance, which would run counter to the principle of procedural economy. Further, in the board's view, the request could have been presented in the first instance proceedings, and the appellant did not argue otherwise.

- 3.3 In view of the above, the board made use of its discretion pursuant to Articles 12(4) and 13(1) RPBA and did not admit the second auxiliary request to the appeal proceedings.
4. There being no allowable request on file, the appeal must be dismissed.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:

L. Fernández Gómez

F. van der Voort