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**Datasheet for the decision  
of 8 May 2018**

**Case Number:** T 1428/11 - 3.5.05

**Application Number:** 07251889.7

**Publication Number:** 1988447

**IPC:** G06F3/041

**Language of the proceedings:** EN

**Title of invention:**  
In glass touch screen

**Applicant:**  
BlackBerry Limited

**Headword:**  
In Glass/BLACKBERRY

**Relevant legal provisions:**  
RPBA Art. 12(4), 13(1)  
EPC Art. 56

**Keyword:**  
Amendments - appeal proceedings - broadening of claim (yes)  
Inventive step - (no)  
Late-filed auxiliary requests - request clearly allowable (no)

**Decisions cited:**

T 1472/08, T 2000/09

**Catchword:**



**Beschwerdekammern**  
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Case Number: T 1428/11 - 3.5.05

**D E C I S I O N**  
**of Technical Board of Appeal 3.5.05**  
**of 8 May 2018**

**Appellant:** BlackBerry Limited  
(Applicant) 2200 University Avenue East  
Waterloo, ON N2K 0A7 (CA)

**Representative:** Roberts, Gwilym Vaughan  
Kilburn & Strode LLP  
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**Decision under appeal:** Decision of the Examining Division of the  
European Patent Office posted on 10 February  
2011 refusing European patent application No.  
07251889.7 pursuant to Article 97(2) EPC.

**Composition of the Board:**

**Chair** A. Ritzka  
**Members:** E. Konak  
D. Prietzel-Funk

## Summary of Facts and Submissions

- I. The appeal is against the decision of the examining division to refuse the application for lack of inventive step (Article 56 EPC) over the following documents:
- D1: US 6 459 424 B1  
D3: US 2007/165006
- II. With its statement setting out the grounds of appeal, the appellant filed claims 1 to 16 of one sole request. It requested that the decision be set aside and a patent granted on the basis of this request. Oral proceedings were requested as an auxiliary measure.
- III. In an annex to the summons to oral proceedings the board questioned the admissibility of the sole request on file and gave its preliminary opinion that claim 1 did not involve an inventive step (Article 56 EPC).
- IV. In reply to the summons to oral proceedings the appellant submitted claims 1 to 16 of a first auxiliary request.
- V. The appellant informed the board in advance that it would not be attending the oral proceedings. Oral proceedings were thus held *in absentia*.
- VI. Claim 1 of the main request reads as follows:
- "A touch sensitive screen for an electronic device comprising:

a display assembly having a display panel wherein an image is produced in an active area of the display panel, wherein the display panel has an inactive area, wherein no image is displayed in the inactive area;

a sensor assembly and a plurality of detectors comprising a first plurality of detectors and a second plurality of detectors, each detector structured to detect a touch to provide an output signal identifying the position of the touch;

wherein the first plurality of detectors has a first dispersion density and is disposed over at least part of the active area;

wherein the second plurality of detectors has a second dispersion density greater than the first dispersion density and is disposed over at least part of the inactive area."

- VII. Claim 1 of the first auxiliary request is identical to claim 1 of the main request except that the expression "display panel" is replaced by the expression "LCD panel" throughout the claim.

### **Reasons for the Decision**

1. Main request
  - 1.1 The board has discretion under Article 12(4) RPBA not to admit requests which could have been presented in the first instance proceedings, but were not. The boards have held that the purpose of examination appeal proceedings cannot be to reopen the examination proceedings by admitting claims defining features more broadly, if those claims could already have been

presented in the examination proceedings and the broader definitions are not apt to overcome objections raised in the contested decision or by the board (see T 1472/08; T 2000/09; Case Law of the Boards of Appeal, 8<sup>th</sup> edition, IV.E.4.3.3.b).

1.2 In the present case, it was only on filing the appeal that the appellant broadened the feature of "an LCD panel" in claim 1 to "a display panel", without providing any reasons for this amendment. In its preliminary opinion on the appeal, the board questioned the admissibility of the main request in view of the pertinent case law. The appellant submitted in reply that the amendment in question "clarif[ies] the nature of the distinction over the prior art". The board, however, is not convinced that the broadening of a feature can address the inventive step objection raised in the contested decision, the type of display technology never having been an issue in the examination proceedings. Therefore the board exercises its discretion under Article 12(4) RPBA not to admit the main request.

2. First auxiliary request

2.1 The first auxiliary request was filed after the appellant filed its grounds of appeal and may thus be admitted at the board's discretion (Article 13(1) RPBA).

2.2 Among the criteria used by the boards of appeal to decide on the admissibility of such requests are whether there are sound reasons for filing a request at a later stage in the proceedings and whether the request addresses still outstanding objections (see

Case Law of the Boards of Appeal, 8<sup>th</sup> edition, IV.E.4.4.1).

- 2.3 In its reply to the board's preliminary opinion on the appeal, the appellant argued that "the claims of the first auxiliary request ... were the subject of the decision of the examining division ... and as such are prima facie admissible." As for the reasons for filing the first auxiliary request at this stage of the proceedings, the appellant submitted that the request "is presented ... to address the board's concerns regarding the admissibility of the main request." These submissions, however, do not provide reasons as to why, in the first place, the request, which was the subject of the contested decision, was not maintained at all on filing of the appeal. The fact that the board raised concerns regarding the admissibility of the sole request on file does not give the appellant carte blanche to re-file a request which it had previously chosen not to maintain.
- 2.4 Furthermore, irrespective of the doubts raised by the board with regard to the admissibility of the main request, its preliminary opinion was also not favourable with regard to the inventive step involved in that request. In particular:
- 2.4.1 In the statement setting out the grounds of appeal the appellant disputed whether the LCD panel in D1 discloses a visible inactive area at all. The appellant argued that "the skilled person would presume that, if D1 had an inactive area, D1's inactive area is under the display housing 12 because the entire screen between the display housing 12 appears to display information." The appellant then submitted that the "user would be unable to touch an inactive area located

under the display housing 12" and "without the ability for a user to touch" there would be no motivation to place touch detectors underneath the inactive area.

2.4.2 The board referred in its preliminary opinion to paragraph [0004] of the present application in the section "Description of the Related Art", explaining figure 1, which is entitled "Prior Art". This passage recites that "*because it is desirable to not have the image abut the frame, a portion of the inactive area is visible to the user. This area is also called the 'viewing area'*". The board asked the appellant to elucidate the contradiction between this passage on prior art and its subsequent submissions questioning the existence of a visible inactive area in D1. The appellant did not address this contradiction in its reply.

2.4.3 Hence the board sees no sound reason to change its preliminary opinion, concurring with the contested decision, that a skilled person reading D1 would consider a visible inactive area to be implicit in D1.

2.4.4 In the statement setting out the grounds of appeal the appellant further argued that providing less densely distributed detectors in an active area and more densely distributed detectors in an inactive area achieves the technical effect of providing a quality image across the active area while providing areas of higher touch sensitivity that do not negatively affect the image. The appellant then formulated the technical problem as how to provide a display comprising either display visibility or touch sensibility.

2.4.5 The board questioned in its preliminary opinion the credibility of the effect of "providing a quality image



across the active area" in the absence of any features in claim 1 objectively specifying the numerical densities of the detectors in the active area. The board further expressed doubts as to whether the mere density of detectors, in isolation from other factors including the geometric pattern of detector layout and the optical quality of the materials used in the manufacture of detectors, would have a decisive impact on the image quality. In reply, the appellant reiterated the effect and the problem it had submitted in the statement setting out the grounds of appeal and dismissed the relevance of the board's concerns.

2.4.6 Therefore the board sees no sound reason to change its preliminary opinion that the only credible technical effect of the distinguishing features of claim 1 might be that the inactive area of the LCD panel also has parts which are touch sensitive and that, as correctly reasoned in the contested decision, extending touch sensitive regions to the inactive area would, in light of the teaching of D3, be an obvious modification to D1 which would not require an inventive step (Article 56 EPC).

2.5 As claim 1 of the first auxiliary request does not address the outstanding inventive-step objections raised by the board, the first auxiliary request is clearly not allowable. Therefore the board exercises its discretion under Article 13(1) RPBA not to admit the first auxiliary request into the appeal proceedings.

3. As there are no further requests on file, the appeal must be dismissed.

**Order**

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

The appeal is dismissed.

The Registrar:

The Chair:



K. Götz-Wein

A. Ritzka

Decision electronically authenticated