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**Datasheet for the decision
of 14 June 2018**

Case Number: T 1861/11 - 3.5.05

Application Number: 08008195.3

Publication Number: 2003538

IPC: G06F3/048

Language of the proceedings: EN

Title of invention:

Method for operating user interface and recording medium for storing program applying the same

Applicant:

HTC Corporation

Headword:

3D Motion User Interface/HTC

Relevant legal provisions:

RPBA Art. 10(2), 13(1)

EPC Art. 83

EPC R. 42(1)(e)

Keyword:

Decisions cited:

T 1860/11

Catchword:



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Case Number: T 1861/11 - 3.5.05

D E C I S I O N
of Technical Board of Appeal 3.5.05
of 14 June 2018

Appellant: HTC Corporation
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Taoyuan District
Taoyuan City 330 (TW)

Representative: Becker, Eberhard
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Decision under appeal: Decision of the Examining Division of the
European Patent Office posted on 6 April 2011
refusing European patent application No.
08008195.3 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. With the consent of the appellant, the board dealt with appeals T 1861/11 and T 1860/11 in consolidated proceedings (Article 10(2) RPBA).
- II. The two appeals are against the decisions of the examining division to refuse the applications for lack of inventive step (Article 56 EPC).
- III. With its statements setting out the grounds of appeal, the appellant filed claims 1 to 6 of one sole request for T 1861/11 and claims 1 to 9 of one sole request for T 1860/11. It requested that the decisions be set aside and patents granted on the basis of the above requests. Oral proceedings were requested as an auxiliary measure.
- IV. In its preliminary opinion annexed to the summonses to oral proceedings the board raised objections under Articles 123(2), 84, 83 and 56 and Rule 42(1)(e) EPC and asked the appellant for its consent to consolidate the two appeals.
- V. In reply to the summonses to oral proceedings the appellant filed claims 1 to 5 of a first auxiliary request and claims 1 to 5 of a second auxiliary request for T 1861/11 as well as claims 1 to 7 of a first auxiliary request and claims 1 to 7 of a second auxiliary request for T 1860/11.
- VI. At the oral proceedings the appellant gave its consent to consolidating the two appeals. The second auxiliary requests in both appeals were withdrawn.

VII. Claim 1 of the main request in T 1861/11 reads as follows:

"A method for operating a user interface (400, 300), suitable for an electronic device (200) having a touch display (210), the method comprising:
displaying a first user interface (400, 300) having a first plurality of finger-touchable icons;
detecting a touch of an input tool;
determining whether or not the touch is generated on a specific area (215, 230, 213) of the touch display;
characterized in that the method further comprises:
determining whether or not the position of the touch on the touch display (210) is changed if the touch is generated on the specific area (215, 230, 213); and
if the position of the touch on the touch display (210) is changed, switching the first user interface (400, 300), which has the first plurality of finger-touchable icons, to a second user interface (300, 400), which has a second plurality of finger-touchable icons, according to a moving direction of the touch, wherein the second user interface (400, 300) and the first user interface (300, 400) are adjacent;
wherein when the first user interface (300, 400) is switched to the second user interface (400, 300), the second user interface (400, 300) is dragged out from a display edge (217) of the touch display (210, 710) opposite to the moving direction."

Claim 1 of the main request in T 1860/11 is for the corresponding device.

VIII. Claim 1 of the first auxiliary request in T 1861/11 differs from claim 1 of the main request in that

- (a) the expression "suitable for an electronic device" in its preamble" is replaced by the expression "suitable for a handheld electronic device",
- (b) the statement "wherein the second user interface (400, 300) and the first user interface (300, 400) are adjacent" is deleted and
- (c) the subsequent part is amended to read (additions underlined)

"wherein when the first user interface (300, 400) is switched to the second user interface (400, 300), the second user interface (400, 300) is dragged out from a display edge (217) of the touch display (210, 710) located opposite to an edge of the display (210, 710) to which the moving direction is directed."

Claim 1 of the first auxiliary request in T 1860/11 is for the corresponding device.

- IX. The passages of the description and the drawings of both applications which are relevant to the reasoning of the appeals are identical.

Reasons for the Decision

1. Main requests

- 1.1 The invention underlying both applications relates to user interfaces. When filing the present applications, the appellant chose to disclose the invention by means of a conceptual metaphor, a so-called "3D motion user interface" (610 in figure 6). The relevant disclosure is very brief and is limited to paragraphs [0036] and [0049] of the description and figure 6. Figure 6 depicts as a "3D motion user interface" an abstract three-dimensional object, seemingly a cube, and three axes of rotation, but no user interfaces. The only link

between this abstract conceptual metaphor and user interfaces is the statement in paragraphs [0036] and [0049] that the user interfaces are located on its surfaces. The user interfaces may be on adjacent surfaces, which seems to be the case in claim 1 of the main requests. It is nowhere described, let alone shown in any of the figures, how the user interfaces are placed on the surfaces of the "3D motion user interface". Nor is it disclosed how the "3D motion user interface" depicted in figure 6 is displayed on the display of an actual electronic device.

- 1.2 In its preliminary opinion the board objected that an application relying to such an extent on abstract conceptual metaphors, without making it clear how these metaphors should be given a concrete technical implementation, was unlikely to be regarded as disclosing the invention in a manner sufficiently clear and complete for it to be carried out by a person skilled in the art (Article 83 EPC). The board further noted that the description does not describe in detail at least one way of carrying out the invention claimed using examples (Rule 42(1)(e) EPC).
- 1.3 The appellant claimed in its reply to the summons, and reiterated at the oral proceedings, that each surface of the "3D motion user interface" carries exactly one user interface filling the entire display area of the touch display, and that the dragging operation of the invention is identical to a 2D projection of a rotation of a cube or cuboid caused by tipping or dragging the cube or cuboid.
- 1.4 This does not convince the board, as these and other details that the skilled person would need to carry out the invention are not disclosed in the application, not

even the number of user interfaces on one surface of the so-called "3D motion user interface". The appellant does not dispute that the application does not explicitly state that one surface carries exactly one user interface, but claims this to be implicit in the disclosure that the user interface activated later is located on an adjacent surface. When asked how this could be reconciled with figure 4, which seemingly depicts four user interfaces next to each other, the appellant submitted that figure 4 is not related to the invention. In the board's judgement, the fact that the application contains figures of user interfaces which do not fit the explanation of the conceptual metaphor in figure 6 given by the appellant only confirms its doubts with respect to the clarity and completeness of the disclosure of this metaphor.

1.5 Therefore the main requests are not allowable, as the invention is not disclosed in a manner sufficiently clear and complete for it to be carried out by a person skilled in the art (Article 83 EPC).

2. *First auxiliary requests*

2.1 The first auxiliary requests in both appeals were filed in reply to the summons, and thus after the appellant had 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 is whether the requests address still outstanding objections (see Case Law of the Boards of Appeal, 8th edition 2016, IV.E.4.4.1).

2.3 The appellant submitted at the oral proceedings that the invention claimed in amended claim 1 of the first auxiliary requests no longer comprised the feature of the user interfaces being "adjacent". Hence the sufficiency of the disclosure of figure 6 and paragraphs [0036] and [0049], i.e. the parts of the application disclosing user interfaces located on adjacent surfaces of a "3D motion user interface", had no bearing on whether the "invention" was disclosed in a manner sufficiently clear and complete for it to be carried out by the person skilled in the art, as required by Article 83 EPC, and could be ignored. The appellant argued that the first auxiliary requests thus addressed still outstanding objections and should therefore be admitted.

2.4 As a matter of principle, the board cannot accept that a deficiency in disclosure concerning the conceptual fundamentals of the invention can ever be remedied without violating the restrictions codified in Article 123(2) EPC. The remedy sought by the appellant does not go so far, but is effectively attempting to abandon altogether the conceptual fundamentals of the invention, when the sufficiency of their disclosure fails to satisfy the board. This is not only unacceptable, but would also clearly not overcome the outstanding objections of the board, as the amended claim still involves "switching" and "dragging" user interfaces. The requirement of sufficiency of disclosure can clearly not be met for such transitions of the user interfaces of the invention if the conceptual fundamentals and hence the topological relationships of the user interfaces are themselves insufficiently disclosed.

2.5 As claim 1 does not overcome still outstanding objections, the first auxiliary requests in both appeals are clearly not allowable. Therefore the board exercises its discretion under Article 13(1) RPBA not to admit them into the appeal proceedings.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chair:



K. Götz-Wein

A. Ritzka

Decision electronically authenticated