**Internal distribution code:**
(A) [ - ] Publication in OJ
(B) [ - ] To Chairmen and Members
(C) [ - ] To Chairmen
(D) [ X ] No distribution

# Datasheet for the decision
# of 2 August 2018

| | |
|---|---|
| **Case Number:** | T 2489/11 - 3.5.05 |
| **Application Number:** | 08103901.8 |
| **Publication Number:** | 1993032 |
| **IPC:** | G06F3/048 |
| **Language of the proceedings:** | EN |

**Title of invention:**
Electronic devices with touch-sensitive navigational
mechanisms, and associated methods

**Applicant:**
HTC Corporation

**Headword:**
Panning and scrolling/HTC

**Relevant legal provisions:**
RPBA Art. 12(4)
EPC Art. 84, 83
EPC R. 42(1)(e)

**Keyword:**
Amendments - appeal proceedings
Claims - clarity (no)
Sufficiency of disclosure - (no)

**Decisions cited:**

G 0010/93, T 0996/12

**Catchword:**

Case Number: **T 2489/11 - 3.5.05**

# D E C I S I O N
## of  Technical Board of Appeal 3.5.05
### of 2 August 2018

**Appellant:**

(Applicant)

HTC Corporation
No. 23, Xinghua Road
Taoyuan District
Taoyuan City 330 (TW)


**Representative:**

2K Patentanwälte Blasberg Kewitz & Reichel
Partnerschaft mbB
Schumannstrasse 27
60325 Frankfurt am Main (DE)

**Decision under appeal:** **Decision of the Examining Division of the
European Patent Office posted on 11 July 2011
refusing European patent application No.
08103901.8 pursuant to Article 97(2) EPC**


Composition of the Board:

| | |
|---|---|
| **Chair** | A. Ritzka |
| **Members:** | E. Konak |
| | F. Blumer |

**Summary of Facts and Submissions**

I.      The appeal is against the decision of the examining
        division to refuse the application for violating the
        requirements of Articles 84 and 83 EPC.

II.     With its statement setting out the grounds of appeal,
        the appellant filed claims of a main and seven
        auxiliary requests, amended pages 1 and 2 of the
        description and an amended figure 7. It requested that
        the decision be set aside and a patent granted on the
        basis of these requests, auxiliarily with figure 7 as
        originally filed. As a further auxiliary measure it
        requested oral proceedings.

III.    In its preliminary opinion annexed to the summons to
        oral proceedings the board questioned the admissibility
        of the requests under Article 12(4) RPBA and raised
        objections under Articles 123(2), 84, 83 and 56 and
        Rule 42(1)(e) EPC.

IV.     In reply to the summons to oral proceedings the
        appellant merely informed the board that it would not
        be attending the oral proceedings. Oral proceedings
        were thus held in its absence.

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

        "An electronic device (100), comprising a display (108)
        presenting a user interface (120) to a user, a sensing
        component (109) sensing a first touch from an input
        mechanism (118), an input circuitry (110) measuring at
        least one parameter of the first touch via the sensing
        component (109), and a processor (114) performing an
        analysis of the measured at least one parameter of the

detected first touch and causing the user interface
(120) to navigate on the display (108) based on the
performed analysis, wherein
the input circuitry (110) is configured for measuring a
duration of the first touch, and
the processor (114) is configured for comparing the
measured duration of the first touch to a threshold and
recognizing a navigational input based on said
comparison,
characterized in that the processor (114) indicates
that the first touch is an input for panning if the
measured duration of the first touch is greater than
the threshold and that the first touch is a click if
the measured duration of the first touch is less than
the threshold, wherein panning means unidirectional
shifting of an entire screen of the user interface
(120) and displaying a next frame of the user interface
(120)."

VI.     Claim 1 of the first auxiliary request is identical to
        claim 1 of the second auxiliary request and differs
        from claim 1 of the main request in that it has the
        following additional features:

        "wherein said sensing component (109) includes boundary
        portions (109a-109d) extending beyond the display
        (108), wherein the input circuitry (110) is further
        configured for measuring a duration and a position of
        the first touch, and wherein the processor (114) is
        further configured for comparing the measured position
        of the first touch to a location of the display (108),
        and
        the processor (114) indicates that the first touch is
        an input for continuous panning if the measured
        duration of the first touch is greater than the

threshold and the measured position of the first touch
extends beyond the display (108) and
that the first touch is an input for panning once if
the measured duration of the first touch is greater
than the threshold and the measured position of the
first touch does not extend beyond the display (108)."

VII.   Claim 1 of the third auxiliary request differs from
       claim 1 of the first and second auxiliary requests in
       that it has the following additional features:

       "wherein the processor (114) is further configured
       for causing the user interface (120) to continue said
       step of continuous panning or panning once as long as
       the first touch is not released and
       for causing the user interface (120) to selectively
       change between said step of continuous panning and said
       step of panning once in accordance with the measured
       position of the first touch and as long as the first
       touch is not released."

VIII.  Claim 1 of the fourth auxiliary request and claim 1 of
       the fifth auxiliary request differ respectively from
       claim 1 of the third auxiliary request and claim 1 of
       the first or second auxiliary request in that they have
       the following additional features:

       "wherein the input circuitry (110) is further
       configured for measuring a position of the first touch
       as a function of time and the processor (114) is
       further configured for calculating a positional change
       of the first touch based on the measured position of
       the first touch, wherein the processor (114) indicates
       an input for scrolling if the calculated positional
       change of the first touch exceeds a positional
       threshold and the first touch is released, wherein

scrolling means an act of sliding a horizontal or vertical presentation of text, drawings, images and/or content across the display (108)."

IX.     Claim 1 of the sixth auxiliary request differs from claim 1 of the fourth auxiliary request in that it has the following additional features:

"wherein the processor (114) is further configured for calculating the positional change of the first touch by differentiating the position of the first touch with respect to time, wherein the positional change of the first touch is calculated over a predetermined period of time before the first touch is released."

X.      Claim 1 of the seventh auxiliary request differs from claim 1 of the sixth auxiliary request in that it has the following additional features:

"wherein the input circuitry (110) is further configured for measuring a position of a second touch, subsequent to said first touch, as a function of time, and wherein the processor (114) is further configured for calculating a positional change of said second touch based on the measured position of the second touch, wherein the processor (114) indicates an input for stopping scrolling if the calculated positional change of the second touch is less than a second threshold."

**Reasons for the Decision**

1.      Main request - admissibility (Article 12(4) RPBA)

1.1     Even though claim 1 as originally filed had a rather
        broad scope, the appellant replaced the claims as
        originally filed on three occasions during the
        examination proceedings, with its submissions of
        17 December 2009 and 10 November 2010 and during the
        oral proceedings on 8 April 2011. Claim 1 of all of
        these new main requests or sole requests specified that
        the touch parameters comprised **"a duration and a
        position of the touch"** and were directed to the
        detection of the input for so-called **"continuous
        panning"** or **"panning once"** by means of both the
        duration and the location of the touch.

1.2     Thus at an early stage in the course of the examination
        proceedings the appellant replaced and withdrew its
        requests seeking protection for any subject-matter
        broader than distinguishing "continuous panning" or
        "panning once" by means of both the duration and the
        location of the touch (see T 996/12, Reasons 4, first
        four paragraphs).

1.3     Claim 1 of the main request filed with the appeal,
        however, merely comprises the measurement of the
        **"duration of the touch"** and the detection of the input
        as an input for either **"panning"** or **"click"** based on
        that duration, thereby attempting to reopen examination
        based on claims 1 and 2 as originally filed and
        creating a fresh case. Whether the main request is
        taken into consideration with amended figure 7 or with
        figure 7 as originally filed has no bearing on this
        finding.

1.4     This is contrary to the purpose of ex parte appeal
        proceedings, which "are primarily concerned with
        examining the contested decision" (see G 10/93,
        Reasons 4, OJ EPO 1995, 172). The boards have held that

the purpose of examination appeal proceedings cannot be
to completely reopen the examination proceedings and
that submission of a fresh case, particularly based on
requests withdrawn during examination, is not
admissible during appeal proceedings (see Case Law of
the Boards of Appeal, 8th edition 2016, IV.E.4.3.3.c,
pages 1150 and 1151 of the English version).
Accordingly, the board exercises its discretion under
Article 12(4) RPBA and does not admit the main request,
either with amended figure 7 or with figure 7 as
originally filed.

2.      Auxiliary requests - clarity (Article 84 EPC) and
        sufficiency of disclosure (Article 83 EPC)

2.1     Claim 1 of all auxiliary requests on file refers to
        **"panning",** and claim 1 of the fourth to seventh
        auxiliary requests refers to **"scrolling".** The board
        fully agrees with the assessment of the contested
        decision that these terms do not have a clear-cut
        distinction in the relevant art and hence lack clarity
        (Article 84 EPC).

2.1.1   The appellant submits that the application does not
        necessarily have to make use of the general conventions
        of "scrolling" and "panning" in the prior art and that
        the application may represent a dictionary of its own.

2.1.2   The definition of the term **"panning"** in the application
        is to be found in paragraph [0043], where it is stated
        that **"panning ... refers to unidirectional (e.g.
        vertical or horizontal) shifting of an entire screen of
        a display (e.g. the user interface 120)".** As a result
        the device would **"display the next 'page' of the
        message list 124"** [applicant's quotation marks around
        "page"]. There is an additional sentence in [0028]

stating that the user interface is panned **"by displaying the next frame of the user interface"**. Although one passage refers to the next "page" and the other to the next "frame" of the user interface, the appellant seems to have merged these passages into a definition, as **"panning means unidirectional shifting of an entire screen of the user interface and displaying a next frame of the user interface"** in the claim language.

2.1.3    The definition of the term **"scrolling"** in the application is to be found in paragraph [0046], where it is stated that **"scrolling ... refers to an act of sliding a horizontal or vertical presentation text, drawings, images, and/or other content screen across a screen"**. As a result the device would **"slide each of the email messages 125 vertically across the display 108"**. The appellant seems to have incorporated this definition from paragraph [0046] into the claim language.

2.1.4    The board concurs with the contested decision that these definitions do not render the unclear terms "panning" and "scrolling" clearer. The definition of "panning" relies on technically unclear metaphors of "pages" or "frames", as also suggested by the use of "pages" in quotation marks in the description. The transitions in the user interface also rely on movement metaphors such as "sliding" and "shifting", which are almost impossible to distinguish in the context of user interfaces.

2.1.5    Furthermore, the application does not describe how an example user interface is to be "panned" or "scrolled", contrary to the provisions of Rule 42(1)(e) EPC, according to which the description has to describe in

detail at least one way of carrying out the invention
using examples. The lack of examples and the
difficulties the skilled person encounters when trying
to follow the various flowcharts (see 2.3 below) lead
to a situation where the skilled person cannot carry
out the claimed invention without undue burden,
contrary to the provisions of Article 83 EPC.

2.2     Claim 1 of all auxiliary requests further refers to
        **"continuous panning"** and **"panning once"**, which the
        board also judges to be unclear (Article 84 EPC).

2.2.1   The appellant submits that the definition of "panning"
        is **"unidirectional shifting of an entire screen of the
        user interface and displaying a next frame of the user
        interface"**, and therefore "panning once" clearly means
        shifting the entire screen only once, whereas
        "continuous panning" means shifting an entire screen
        continuously.

2.2.2   In the board's judgement, however, the plain meaning of
        the words "once" and "continuously", contrary to what
        the appellant suggests, does not remedy the lack of
        clarity of the term "panning". The board even finds the
        word "continuously" to be vague and unclear, as in
        English it might mean either "unceasingly" or "at
        regular, frequent intervals". As there is no further
        explanation or example of the distinction between
        "panning once" and "continuous panning" in the
        description, let alone of "panning", contrary to the
        requirements of Rule 42(1)(e) EPC, it is unclear what
        kind of a change in the user interface is meant by
        "panning once" or "continuous panning".

2.2.3   Furthermore, claim 2 of the first auxiliary request and
        claim 1 of the third and fourth auxiliary requests

specify that the step of **"panning once"** or **"continuous panning"** is **"continued ...** as long as the first touch is not released". It is impossible to follow, even at an abstract, conceptual level and irrespective of what "panning once" and "continuous panning " should mean, how a **"continued" "panning once"** can ever be distinguished from a **"continuous panning"**.

2.3     The board further agrees with the contested decision that the skilled person would not be able to follow the boxes of figure 4 after box 216 in particular and figure 7 in its entirety:

2.3.1   The only way of leaving the flowchart of figure 6, which depicts the details of the so-called "pan" operation (box 216 in figure 4), is when the touch is released in box 238 in figure 6. In figure 4, after box 216 the invention executes boxes 218 and 220. In box 220, however, a further check is made as to whether the touch is released. But the touch should already have been released in box 238 in figure 6 in order to reach box 220 in figure 4 in the first place. Thus, it is impossible to follow why this subsequent check is made.

2.3.2   A "positional change" is calculated in box 218 and then compared to a threshold in box 221 in figure 4. Calculation of the positional change is described in paragraphs [0044] and [0045] and in figure 5 as the positional change between a final point of the touch and any previous point, i.e. starting point or intermediate point. As a touch follows a continuous curve with an infinity of points, there would be infinite possibilities for calculating the "positional change". Given that the application does not specify what a meaningful selection for a previous point of the touch or a meaningful threshold should be, and does not

give any examples, the skilled person is faced with
infinite possibilities for carrying out boxes 218, 221
and 222. Therefore claims 4 to 6 of the first auxiliary
request, claims 2 and 3 of the second and third
auxiliary requests, claims 2 to 4 of the fourth
auxiliary request and claim 1 of the sixth and seventh
auxiliary requests referring to this "positional
change" are unclear (Article 84 EPC), and the invention
is furthermore not clearly and completely disclosed
(Article 83 EPC).

2.3.3    In figure 7 and paragraphs [0048] to [0049], first a
         timer is started (box 240 in figure 7). If no touch is
         detected in box 242 of figure 7, the flowchart enters
         box 244 checking whether the timer has expired. As
         there is no loop in figure 7 before box 242 waiting for
         a touch to be detected and as the touch has already
         been released after box 220 in figure 4 in order to
         reach the flowchart of figure 7 in the first place (box
         224 in figure 4), the branch of the tree with "Yes"
         after box 242 in figure 7 should logically never be
         executed. Furthermore, as long as the timer started in
         240 does not expire extremely fast, there would always
         be a period during which it did not expire at the
         beginning which would direct the process at box 244 to
         box 246. Thus according to the original disclosure, the
         process depicted in figure 7 should always lead to and
         then end in box 246, which starts automatic scrolling
         at a first speed. Therefore, the board finds it to be
         almost impossible for the skilled person to make sense
         of the whole "scrolling" depicted in figure 7.

2.3.4    Therefore, 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).

2.4     The amendment to figure 7 has no bearing on the
        objections raised under 2.1 and 2.2 above. Therefore,
        none of the auxiliary requests on file meet the
        requirements of Articles 84 and 83 EPC.

**Order**

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

The appeal is dismissed.


The Registrar:                                 The Chair:


D. Magliano                                    A. Ritzka


Decision electronically authenticated