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**Datasheet for the decision
of 26 April 2018**

Case Number: T 1989/12 - 3.5.01

Application Number: 01130078.7

Publication Number: 1217532

IPC: G06F15/02

Language of the proceedings: EN

Title of invention:
System and method for optimizing user notifications for small
computer devices

Applicant:
Microsoft Technology Licensing, LLC

Headword:
Calendar-based profile switching / MICROSOFT

Relevant legal provisions:
EPC R. 99(2)
RPBA Art. 12(2)
EPC Art. 56

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It can be changed at any time and without notice.

Keyword:
Admissibility (main request) (no - unsubstantiated grounds)
Statement of grounds of appeal - reference to submission
before the first instance
Inventive step (auxiliary request) - calendar-based profile
switching (no - obvious)

Decisions cited:
T 0641/00

Beschwerdekammern

Boards of Appeal

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Case Number: T 1989/12 - 3.5.01

D E C I S I O N
of Technical Board of Appeal 3.5.01
of 26 April 2018

Appellant: (Applicant)	Microsoft Technology Licensing, LLC One Microsoft Way Redmond, WA 98052 (US)
Representative:	CMS Cameron McKenna Nabarro Olswang LLP Cannon Place 78 Cannon Street London EC4N 6AF (GB)
Decision under appeal:	Decision of the Examining Division of the European Patent Office posted on 18 April 2012 refusing European patent application No. 01130078.7 pursuant to Article 97(2) EPC.

Composition of the Board:

Chairman	W. Chandler
Members:	A. Wahrenberg
	C. Schmidt

Summary of Facts and Submissions

I.   This is an appeal against the decision of the examining
        division to refuse the European patent application No.
        01130078.7 according to the state of the file for the
        reasons as set out in the communication dated
        29 February 2012.

II.   In that communication, the examining division objected
        that the subject-matter of claims 1, 5 and 8, of the
        main request filed with letter dated 22 March 2010
        extended beyond the content of the application as
        filed, lacked clarity, and did not involve an inventive
        step in view of D3 (Nokia 9110 Communicator User's
        Manual). The subject-matter of the independent claims
        of the "Auxiliary request" filed on 22 March 2010 was
        found to be unclear, and to lack an inventive step in
        view of the combination of D3 and D1 (WO 99/21101 A).

III.   The appellant requested that the decision of the
        examining division be set aside and, as a main request,
        that a patent be granted on the basis of the "Auxiliary
        request" filed on 22 March 2010, or, in the
        alternative, that a patent be granted on the basis of
        the auxiliary request filed with the statement setting
        out the grounds of appeal dated 28 August 2012.

IV.   For the main request, the grounds of appeal referred to
        the arguments made in a letter to the examining
        division dated 22 March 2010.

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

        A method of notifying a user of a notification event
        occurring in a small computer device comprising a

calendar-type application program storing calendar-related events, the small computer device having a memory, the method comprising:

storing (410) a plurality of profiles of notification events in the memory of the small computer device, wherein the notification events are associated with at least one notification type and wherein each of the plurality of profiles is configured to provide different notification types for different notification events;

associating each profile with a unique notification mode;

receiving (806) a selection signal to select one notification mode; and

applying (808) the selected notification mode to the small computer device and wherein the device remains in the selected mode until another mode is selected and wherein the user is notified of events according to the selected notification mode;

wherein if the user has selected an automated profile switching, the method further comprises:

upon occurrence of a calendar-related event, determining (902) whether a notification mode has been set for the calendar-related event;

if no notification mode has been set, remaining (908) in the current notification mode;

if a notification mode has been set, automatically applying (904) the selected notification mode;

upon ending of the calendar-related event, automatically switching back (906) to the current notification mode;

wherein if the user has not selected the automated profile switching, the method further comprises:

receiving (802) an indication to select a notification mode;

displaying (804) a notification mode menu;

wherein the received selection signal relates to a
selection from the displayed notification mode menu;
and

remaining (808) in the selected mode until another
indication to select a different notification mode is
received (802).

VI.   The appellant's arguments concerning the auxiliary
        request can be summarised as follows:

        The combination of D1 and D3 did not lead to the
        claimed invention, because D1 taught to first determine
        whether a meeting had begun and second whether the
        meeting mode had been set. Conversely, in the claimed
        invention, it was first determined wether the automatic
        profile switching was set, and only then would the
        calendar-related events be checked. This saved one
        operation step.

        D1 taught to do nothing when the meeting mode was not
        set. By contrast the invention provided the user with
        the option to manually set the notification profile. In
        other words, D1 had two modes (meeting mode on or off)
        whereas the claimed invention had three: the
        notification that was being applied during a calendar
        event, the notification mode that was being applied
        before or after the calender event, and the
        notification mode that was being applied independently
        of the calender-related event when the automatic
        profile switching was not set.

VII.   In a communication accompanying a summons to oral
        proceedings, the Board set out its provisional view
        that the main request was inadmissible and the
        auxiliary request unallowable for lack of inventive
        step in the light of D3 and D1.

VIII.   The appellant did not reply to the Board's
        communication. Instead, it informed the Board that
        nobody would attend the oral proceedings. The Board
        nevertheless held oral proceedings in the appellant's
        absence.

Reasons for the Decision

1.   *Background*

        Mobile phones and other small computer devices provide
        notifications of events, such as incoming telephone
        calls, text messages and emails. The notifications may
        be presented to the user in different ways, for example
        by means of a sound, a blinking LED light, or a
        vibration.

        Depending on the situation, the user may prefer one
        type of notification to another. For example, during a
        meeting, the user may not want his phone to ring. Then,
        a blinking LED light might be a more appropriate form
        of notification.

        The application describes that, in the prior art, the
        user could control the notifications by putting the
        phone on silent mode. However, the silent mode is
        inflexible in that it applies to all types of
        notifications and events. Thus, if the user is
        expecting an important telephone call during a meeting,
        it is not possible to receive a sound notification for
        that important call when the pone is on silent.

The invention addresses this problem by providing a plurality of notification profiles, for example "normal" and "meeting". In each profile, a notification type is defined for each event. Thus, in the "meeting" profile, telephone calls may be notified using sound whereas other, less important events may be notified by a blinking LED.

The notification profile can be set manually by the user. The phone may also switch profiles automatically based on a calendar-related event. For example, if there is a meeting in the user's calendar between 1pm and 2pm, the phone will go into "meeting" mode at 1pm, and switch back to "normal" at 2pm (see paragraph [0049] of the published application).

2.   *Admissibility of the main request*

2.1   The statement setting out the grounds of appeal shall indicate the reasons why the decision under appeal shall be set aside (Rule 99(2) EPC and Article 12(2) RPBA). It is generally not sufficient to simply refer to submissions made before the department that issued the decision (see Case Law of the Boards of Appeal, 8th ed., IV.E.2.6.4 a)).

2.2   For the main request, the statement setting out the grounds of appeal does not explicitly deal with the objections set out in the communication of 29 February 2012. It merely refers to a letter dated 22 March 2010, which was submitted to the examining division. Apart from the question of the validity of such a reference in appeal proceedings, this letter cannot normally contain the reasons necessary to overcome objections raised two years later. Indeed, it does not address the

subsequently raised ground of lack of clarity.

For these reasons, the Board holds the main request
inadmissible.

3.   *Auxiliary request, inventive step*

3.1   The examining division assessed inventive step starting
          from D3 and the Board agrees that this is a reasonable
          starting point. D3 discloses a mobile phone having a
          plurality of notification profiles (for example
          "General", "Silent", and "Meeting" - see pages 53 and
          54, as well as the table on page 142). The user can
          select a profile from the settings menu (pages 146 and
          147).

3.2   It is common ground that the method of claim 1 of the
          auxiliary request differs from D3 by the automated
          profile switching:

              "if the user has selected an automated profile
          switching, the method further comprises:
              upon occurrence of a calendar-related event,
          determining whether a notification mode has been set
          for the calendar-related event;
              if no notification mode has been set, remaining in
          the current notification mode;
              if a notification mode has been set, automatically
          applying the selected notification mode;
              upon ending of the calendar-related event,
          automatically switching back to the current
          notification mode".

3.3   Thus, the invention involves settings at two levels.
          Firstly, there is a "global" setting that enables

automated profile switching. If automated profile switching has not been enabled, the user has to select the notification mode manually. Secondly, there is a setting, for each calendar event, that specifies the notification mode to be applied, automatically, for that calendar event. If no such notification mode has been set, then automated profile switching does not work, and the phone remains in the mode that was previously set.

3.4   The next step in the assessment of inventive step is to formulate the objective technical problem solved by the invention. This is often a crucial issue, because the problem defines what is given to the skilled person. A broadly formulated problem leaves a lot for the skilled person to solve. A narrowly formulated problem, on the other hand, puts the skilled person closer to the invention. The limit is the point just before elements of the solution enter into the problem (impermissible hindsight).

        In all cases, non-technical features cannot contribute to inventive step. Therefore, they may legitimately appear in the formulation of the problem to be solved without constituting such hindsight (T 641/00 - Two identities/COMVIK).

3.5   The examining division formulated the problem as "how to couple the notification modes with the calendar". Since this involves elements of the solution, namely the recognition that the notification mode should be coupled with calendar functionality, this can only be allowable if the concept is not technical.

3.6   The Board agrees that it is not. Moreover, the Board goes further than the examining division and considers

also the settings themselves to be non-technical. Those
settings do nothing more than provide the user with
options. The global setting allows the user to switch
the automatic profile switching on or off. The local
setting allows the user to specify a notification
profile for each event. The Board sees none of this as
technical. Therefore, all of it is part of the problem
to be solved in the form of a requirement specification
given to the skilled person. This is a narrow problem.
The only thing that is left for the skilled person to
do is to implement the requirements on the mobile
device. In the Board's view, this would have been
obvious.

3.7   Even considering the broader problem of "automating the
profile switching", the Board arrives at the conclusion
that the subject-matter of claim 1 lacks an inventive
step.

3.8   Document D1 discloses the automatic switching of
operational modes in a portable intelligent
communications device when the user is in a meeting. In
the Board's view, D1 teaches (see page 10, lines 1 to
11; page 12, line 17 to page 13, line 15; figure 6) the
following steps of claim 1:

upon occurrence of a calendar-related event,
determining wether a notification mode has been set for
the calendar-related event;

if no notification mode has been set, remaining in the
current notification mode;

if a notification mode has been set, automatically
applying the selected notification mode;

upon ending of the calendar-related event,
automatically switching back to the current
notification mode.

3.9   D1 discloses the second-level setting, which allows the
        user or the system to specify a notification mode for
        each calendar event. D1 does not disclose the first
        level-setting, which activates (or deactivates)
        automatic profile switching altogether. Therefore, the
        Board agrees with the appellant that the combination of
        D3 and D1 does not result in the complete invention.

3.10   However, the Board disagrees with the appellant that
        the teachings in D1 would have deterred the skilled
        person from including a global switch between manual
        and automatic profile switching. In the Board's view,
        the skilled person who finds a solution to a problem in
        the prior art would consider whether to adopt the
        solution as a mandatory feature or as an option.
        Furthermore, providing the user with options is always
        a consideration when developing end-user devices, such
        as mobile phones.

3.11   The appellant argued that the first-level setting saved
        checking steps. The Board considers that to be a mere
        consequence of providing the user with the option to
        activate automatic profile switching. It is evident
        that if automatic profile switching is off, the
        corresponding steps need not be carried out.

3.12   For these reasons, the Board judges that the subject-
        matter of claim 1 would have been obvious in view of
        the teachings of D3 and D1.

3.13   In conclusion, the subject-matter of claim 1 does not
        involve an inventive step (Article 56 EPC).

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar: The Chairman:

T. Buschek   W. Chandler

Decision electronically authenticated