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Datasheet for the decision of 29 November 2016

Case Number: T 1205/13 - 3.5.05

Application Number: 09251664.0

Publication Number: 2144146

IPC: G06F3/044, G06F3/041

Language of the proceedings: EN

Title of invention:
Organic light emitting display and touch sensing device

Applicant:
Samsung Display Co., Ltd.

Headword:
Organic light emitting display and touch sensing device/ SAMSUNG

Relevant legal provisions:
EPC Art. 111(1), 116(1)

Keyword:
Oral proceedings - right to be heard in oral proceedings
Remittal to the department of first instance - (yes)

Decisions cited:
T 0042/90, T 1434/06

Catchword:

Europäisches Patentamt
European Patent Office
Office européen des brevets

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Case Number: T 1205/13 - 3.5.05

D E C I S I O N
of Technical Board of Appeal 3.5.05
of 29 November 2016

Appellant: (Applicant)	Samsung Display Co., Ltd. 17113, 1, Samsung-ro Giheung-Gu Yongin-si Gyeonggi-do (KR)
Representative:	Mounteney, Simon James Marks & Clerk LLP 90 Long Acre London WC2E 9RA (GB)
Decision under appeal:	**Decision of the Examining Division of the European Patent Office posted on 21 December 2012 refusing European patent application No. 09251664.0 pursuant to Article 97(2) EPC.**

Composition of the Board:

Chair	A. Ritzka
Members:	M. Höhn
	G. Weiss

Summary of Facts and Submissions

I. This appeal is against the decision of the examining division of the European Patent Office, posted on 21 December 2012, refusing European patent application No. 09251664.0 pursuant to Article 97(2) EPC.

II. The notice of appeal was received on 7 February 2013. The appeal fee was paid on the same day. The statement setting out the grounds of appeal was received on 30 April 2013.

The appellant requested that the appealed decision be set aside and that a patent be granted on the basis of the main request or first to third auxiliary requests, all filed with the statement setting out the grounds of appeal. Oral proceedings were requested as an auxiliary measure.

III. By communication dated 5 July 2016 the board summoned the appellant to oral proceedings on 17 November 2016.

IV. By communication dated 12 September 2016 the board expressed its opinion that, after a first assessment of the case oral proceedings no longer appeared necessary, and informed the appellant that it intended to cancel the oral proceedings and to issue a decision in the written procedure setting the decision under appeal aside and remitting the case to the department of first instance for further prosecution on the basis of the main request filed with the statement setting out the grounds of appeal.

The appellant was invited to submit its comments before the date set for oral proceedings.

V. By letter dated 17 October 2016 the appellant confirmed its willingness to comply with the proposal from the board to remit the case to the department of first instance for further prosecution.

VI. The oral proceedings were then cancelled by the board.

Reasons for the Decision

1. Admissibility

The appeal complies with Articles 106 to 108 EPC (see Facts and Submissions, point II above). It is therefore admissible.

Main request

2. This request corresponds to the set of claims filed for the first time in the first-instance proceedings on 16 June 2011 as the then sole request and dealt with in the annex to the summons to oral proceedings before the department of first instance dated 23 August 2012.

2.1 The claims of this request were already discussed and objected to under Article 56 EPC in the first-instance proceedings in the annex to the summons for oral proceedings before the first instance (see items 2.1 to 2.4). The applicant, of its own volition, subsequently replaced those claims with two new sets of claims including amendments aimed at overcoming the objection of lack of inventive step. On the basis of those amended sets of claims the application was refused because of deficiencies under Articles 123(2) and 84 EPC introduced by the amendments.

2.2 It follows that the claims of the present main request filed with the statement setting out the grounds of appeal were already presented during the first-instance proceedings and were thereafter replaced. That prevented them from being decided on as to their merits by the examining division. The appellant is not adversely affected by the decision under appeal with regard to this set of claims.

2.3 The requirement of Article 56 EPC has not yet been decided upon for the subject-matter of the independent claims on file, nor was it discussed during the oral proceedings before the department of first instance.

2.4 According to Article 111(1) EPC the board may exercise any power within the competence of the examining division (which was responsible for the decision under appeal) or remit the case to that department for further prosecution. It is thus at the board's discretion whether it examines and decides on the case or whether it remits the case to the department of first instance.

2.5 For the aforementioned reasons (see point 2.4), the board considers that in the present case remittal is the more appropriate course of action.

3. Regarding the appellant's auxiliary request for oral proceedings submitted with the statement setting out the grounds of appeal (see page 1, second paragraph), it is clear from the mandatory wording of Article 116(1) EPC that a party which requests oral proceedings is in principle entitled to such proceedings (see for example T 19/87 of 16 April 1987, OJ EPO 1988, 268). However, in the present case the request for oral

proceedings was made on an auxiliary basis and reads: "We request oral proceedings in lieu of any adverse decision". Since the board does not intend to refuse the application according to the appellant's request, oral proceedings are not necessary. The board notes that remitting the case does not fall under the conditions set in this request, since the objections under Articles 123(2) and 84 EPC on which the appealed decision was based are not maintained for the main request, and no further objections are raised by the board.

The appellant requested grant of a patent on the basis of the main request. However, as stated in decision T 42/90 of 25 February 1991, point 5, the decision to remit the case to the department of first instance is not to be considered as being adverse to that party, so that no oral proceedings before the board need to be appointed (see also T 1434/06 of 12 April 2010, point 3 and "Case Law of the Boards of Appeal of the EPO", 8th edition, 2016, III.C.2.5).

4. For these reasons, and since the appellant confirmed its willingness to comply with the proposal from the board to remit the case to the department of first instance for further prosecution, the decision can be taken in writing.

Order

For these reasons it is decided that:

The case is remitted to the department of first instance for further prosecution on the basis of the main request.

The Registrar: The Chair:

K. Götz-Wein A. Ritzka

Decision electronically authenticated

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Case Number: T 1205/13 - 3.5.05

D E C I S I O N
of 3 February 2017 correcting an error in the decision of the Technical Board of Appeal 3.5.05 of 29 November 2016

Appellant: (Applicant)	Samsung Display Co., Ltd. 17113, 1, Samsung-ro Giheung-Gu Yongin-si Gyeonggi-do (KR)
Representative:	Mounteney, Simon James Marks & Clerk LLP 90 Long Acre London WC2E 9RA (GB)
Decision under appeal:	**Decision of the Examining Division of the European Patent Office posted on 21 December 2012 refusing European patent application No. 09251664.0 pursuant to Article 97(2) EPC.**

Composition of the Board:

Chair	A. Ritzka
Members:	M. Höhn
	G. Weiss

In application of Rule 140 EPC, the decision of the Technical Board of Appeal given on 29 November 2016 is hereby corrected as follows:

on page 5, **Order**, the following sentence is inserted:"The decision under appeal is set aside."

The order thus reads:

For these reasons it is decided that:
The decision under appeal is set aside. The case is remitted to the department of first instance for further prosecution on the basis of the main request.

The Registrar: The Chair

K. Götz-Wein A. Ritzka

Decision electronically authenticated