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**Datasheet for the decision  
of 6 November 2018**

**Case Number:** T 1334/13 - 3.5.05

**Application Number:** 10165327.7

**Publication Number:** 2264616

**IPC:** G06F3/048

**Language of the proceedings:** EN

**Title of invention:**

Methods for browsing image data and systems using the same

**Applicant:**

HTC Corporation

**Headword:**

Browsing image data/HTC

**Relevant legal provisions:**

EPC Art. 56, 84, 123(2)

RPBA Art. 12(4), 13(1), 13(3)

**Keyword:**

Late-filed request - amendments after arrangement of oral proceedings - main request (not admitted) - request identical to request not admitted in first instance proceedings - seventh and eighth auxiliary requests (not admitted)  
Inventive step - first to fourth auxiliary requests (no)  
Claims - clarity - fifth and sixth auxiliary requests (no)  
Amendments - added subject-matter - fifth and sixth auxiliary requests (yes)



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Case Number: T 1334/13 - 3.5.05

**D E C I S I O N**  
**of Technical Board of Appeal 3.5.05**  
**of 6 November 2018**

**Appellant:**  
(Applicant)

HTC Corporation  
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**Representative:**

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**Decision under appeal:**

**Decision of the Examining Division of the  
European Patent Office posted on 9 January 2013  
refusing European patent application No.  
10165327.7 pursuant to Article 97(2) EPC**

**Composition of the Board:**

**Chair** A. Ritzka  
**Members:** R. de Man  
D. Prietzel-Funk

## **Summary of Facts and Submissions**

I. The applicant (appellant) appealed against the decision of the examining division refusing European patent application No. 10165327.7.

II. The decision cited, *inter alia*, the following documents:

D1: US 2009/002335 A1, 1 January 2009; and

D5: US 2007/220045 A1, 20 September 2007.

The examining division decided that the subject-matter of claim 1 of the main request and of the second, third and fourth auxiliary requests was not new and that the subject-matter of claim 1 of the first auxiliary request was not inventive over document D5. The subject-matter of claim 1 of the fifth and sixth auxiliary requests was not inventive over document D1. It decided not to admit the seventh and eighth auxiliary requests into the proceedings under Rules 116 and 137(3) EPC.

III. In the statement of grounds of appeal, the appellant maintained its requests.

IV. In a communication accompanying a summons to oral proceedings, the board raised objections under Articles 84 and 123(2) EPC. It expressed the preliminary view that the subject-matter of claim 1 of the main request and the second to fourth auxiliary requests was not new over document D5, that the subject-matter of claim 1 of the first auxiliary request lacked inventive step over document D5 and that the subject-matter of claim 1 of the fifth and sixth auxiliary requests lacked inventive step over

document D1. It noted that the appellant had not given reasons why the seventh and eighth auxiliary requests should be admitted into the appeal proceedings and expressed doubts on the allowability of those requests.

V. In its written submissions, the appellant replaced the main request with a new main request. It did not comment on the board's observations with respect to the auxiliary requests.

VI. In a letter dated 23 October 2018, received by fax on 25 October 2018, the appellant informed the board that it "would not like to attend the oral proceedings" and requested that a decision be taken on the basis of the documents as filed.

VII. Oral proceedings were held on 6 November 2018 in the appellant's absence. At the end of the oral proceedings, the chair announced the board's decision.

VIII. The appellant requested that the decision under appeal be set aside and that a patent be granted on the basis of the claims according to the following requests:

- main request submitted with the letter dated 5 October 2018;
- first auxiliary request submitted with the letter dated 30 November 2012;
- second auxiliary request submitted with the letter dated 13 November 2012 as first auxiliary request;
- third auxiliary request submitted with the letter dated 13 November 2012 as second auxiliary request;
- fourth auxiliary request submitted with the letter dated 13 November 2012 as third auxiliary request;
- fifth auxiliary request submitted with the letter dated 13 November 2012 as fourth auxiliary request;

- sixth auxiliary request submitted with the letter dated 13 November 2012 as fifth auxiliary request;
- seventh auxiliary request submitted during the oral proceedings before the examining division on 13 December 2012; and
- eighth auxiliary request submitted during the oral proceedings before the examining division on 13 December 2012.

IX. Independent claim 1 of the main request reads as follows:

"A method for browsing image data on an electronic device (100), comprising:

    providing the image data (D1-D15), wherein each of the image data comprises attribute data;

    displaying and browsing all or a part of the image data (D1-D15) in a display unit (110, 300);

    detecting a movement of an object on the display unit (S210), and;

    moving each of the image data (D1-D15) displayed on the display unit in response to the movement (S220);

    determining one of the image data (D1, D4), which is moved to a specific position in the display unit;

    obtaining the attribute data (310) of the determined image data (D1, D4); and

    displaying the obtained attribute data (310) in the display unit (110, 300), wherein the obtained attribute data (310) is displayed adjacent to a contact point of the object corresponding to the movement, the determined image data (D1, D4) is displayed at the specific position, and the specific position, where the determined image data (D1, D4) locates, is different from the contact point and does not overlap with the obtained attribute data (310) displayed adjacent to the contact point."

X. Claim 1 of the first auxiliary request reads as follows:

"A method for browsing image data for use in an electronic device, comprising:

    providing a plurality of image data, wherein each of the image data comprise attribute data;

    browsing all or a part of the image data in a touch-sensitive display unit (S220);

    detecting one of the image data displayed in the touch-sensitive display unit at a specific position (S230);

    obtaining the attribute data of the detected image data (S240);

    displaying the obtained attribute data in the touch-sensitive display unit (S250);

    wherein the obtained attribute data is displayed at a position corresponding to a contact point of an object on the touch-sensitive display unit."

XI. Claim 1 of the second and third auxiliary requests reads as follows:

"A method for browsing image data for use in an electronic device, comprising:

    providing a plurality of image data, wherein each of the image data comprise attribute data;

    browsing all or a part of the image data in a display unit (S220);

    determining one of the image data displayed in the display unit (S230);

    obtaining the attribute data of the determined image data (S240);

    displaying the obtained attribute data in the display unit (S250);

filtering the image data according to the obtained attribute data; and

displaying all or a part of the filtered image data in the display unit;

wherein the determined image data is displayed at a specific position of the display unit;

wherein the obtained attribute data is displayed at a position corresponding to a contact point of an object in the display unit."

XII. Claim 1 of the fourth auxiliary request reads as follows:

"A method for browsing image data for use in an electronic device, comprising:

providing a plurality of image data, wherein each of the image data comprise attribute data;

browsing all or a part of the image data in a display unit (S220);

detecting a first image data at a specific position on a display unit of the electronic device (Fig. 3A)

obtaining a first attribute data of the first image data (S240);

displaying the first attribute data at a position corresponding to a contact point of an object in the display unit (Fig. 3A and 3B);

filtering the image data according to the first attribute data."

XIII. Claim 1 of the fifth auxiliary request reads as follows:

"A method for browsing image data for use in an electronic device, comprising:



providing a plurality of image data, wherein each of the image data comprise attribute data;  
browsing all or a part of the image data in a touch sensitive display unit (S220);  
determining one of the image data displayed in the display unit (S230), although an [sic] contact point of an object is not contacting the image data but is contacting the display unit close to the image data;  
obtaining the attribute data of the determined image data (S240);  
displaying the obtained attribute data in the display unit (S250) at a position corresponding to the contact point. [sic]  
wherein the determined image data is displayed at a specific position of the display unit."

XIV. Claim 1 of the sixth auxiliary request differs from claim 1 of the fifth auxiliary request in that the following text has been inserted before "wherein the determined image data":

"filtering the image data according to the obtained attribute data; and  
displaying all or a part of the filtered image data in the display unit;"

XV. Claim 1 of the seventh auxiliary request differs from claim 1 of the fifth auxiliary request in that "close to the image data" has been removed and "at a specific position" has been replaced with "at a touch specific position".

XVI. Claim 1 of the eighth auxiliary request differs from claim 1 of the fifth auxiliary request in that the following text has been added at the end of the claim:

"wherein the first determined image data is shown in one corner, or the upper position or lower position on the touch-sensitive display unit; and wherein when moving the contact point also the determined image data is re-determined and the relating attribute data is displayed."

XVII. The appellant's arguments, where relevant to the decision, are discussed in detail below.

### **Reasons for the Decision**

1. The appeal complies with the provisions referred to in Rule 101 EPC and is therefore admissible.
2. The duly summoned appellant, having been absent from the oral proceedings, is treated - in accordance with its request that a decision be taken on the basis of the documents as filed - as relying only on its written case (Article 15(3) RPBA).
3. *The invention*
  - 3.1 The application relates to browsing image data on an electronic device. Examples of image data include photos, thumbnails of photos, videos and representative images of videos (paragraph [0017]). Such image data typically comprises attribute data such as "name, dat[e] information, and capturing information, such as EXIF (EXchangable Image File) information" (paragraph [0017]). When the user browses image data, all or part of the image data is displayed in a display unit of the electronic device, which can be a touch-sensitive display unit (paragraphs [0018] and [0019]).

3.2 The application proposes displaying attribute data of a "determined" displayed image data. The determined image data may, for example, be the image data displayed in the upper-left corner of the display unit (paragraph [0019]). According to paragraph [0021], the attribute data may be displayed "at a position corresponding to the contact position of the finger F of [sic] the touch-sensitive display unit".

3.3 The invention is illustrated in Figures 3A and 3B:

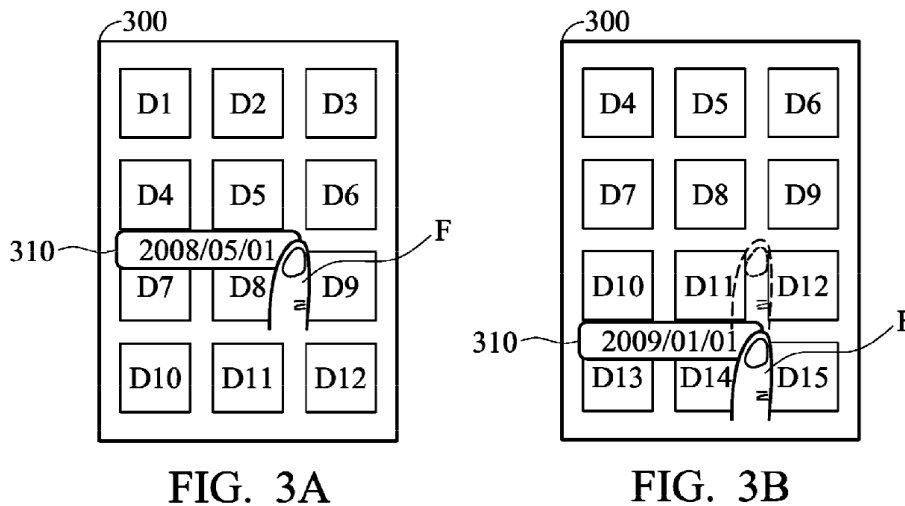


FIG. 3A

FIG. 3B

4. *Main request - admission - Article 13(1) and (3) RPBA*

4.1 The main request was filed after oral proceedings had been arranged. Its admission is therefore at the board's discretion under Article 13(1) and (3) RPBA.

4.2 When filing new claims at this late stage of the proceedings, the appellant is normally expected to indicate on which of its pending requests the new claims are based and which objections or observations contained in the board's communication the amendments are intended to address.

- 4.3 In the present case, the appellant gave no such explanations. It did submit a marked-up copy of the new claims, presumably intended to show the amendments made, but it is immediately evident that this copy does not in fact indicate the amendments made vis-à-vis any of the previously or still pending requests.
- 4.4 Moreover, a comparison of the text of the claims of the new main request with the text of the claims of the previously or still pending requests shows that various amendments to both the independent and the dependent claims, including the addition of new dependent claims 2 and 5, were made for no apparent reason. Such amendments raise new issues, if only because their compliance with Articles 84 and 123(2) EPC needs to be verified. The appellant should at the very least have given reasons justifying their filing at this late stage in the proceedings.
- 4.5 The board further notes that the new main request does not address the board's objection raised in its communication that it is not clear from the wording of claim 1 alone that "object" and "a contact point of the object" refer to, respectively, the user's finger and the point where the user's finger touches the display unit. The wording of claim 1 rather suggests that the "object" is an object displayed on the display unit and that "contact point" refers to a point on the display unit where the "object" overlaps an unspecified further display object.
- 4.6 Nor does the request address the board's concern expressed in respect of claim 1 of the fifth auxiliary request that the incorporation into the claim of features reflecting merely incidental properties of Figures 3A and 3B infringes Article 123(2) EPC.

Although the finger shown in Figures 3A and 3B indeed happens not to contact the "determined image data (D1, D4)", the skilled reader of the application understands that the finger could as well have been placed on the determined image data.

4.7 Since the appellant has not given sound reasons for filing the new main request in response to the board's communication, and the board is not aware of any such reasons, and since the request in any event is *prima facie* not allowable, the board exercises its discretion under Article 13(1) and (3) RPBA and does not admit the new main request into the appeal proceedings.

5. *First auxiliary request - inventive step*

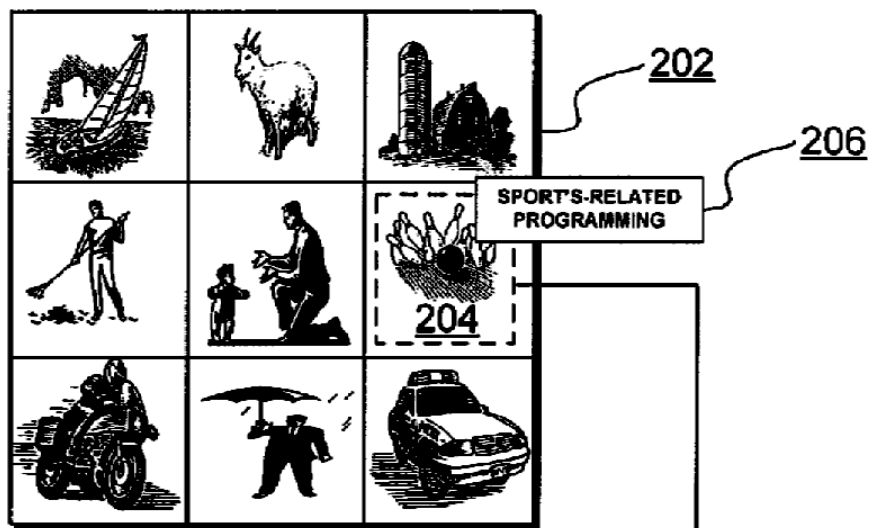
5.1 Document D5 discloses a method of browsing arrays of media items on the display of an electronic device (Figures 1 to 3 and paragraph [0031]). Each array contains a collection of visual entries, which may be small-sized pictures representing media items such as photographs and videos (paragraphs [0033] and [0034]). The board therefore agrees with the examining division that the document is a suitable starting point for assessing inventive step.

5.2 The series of arrays is referred to as a "Media Discovery Module" or MDM (paragraph [0031]). Figure 12 shows that the MDM may be implemented in a client media device. According to paragraph [0098], the client media device may be a portable personal media device.

5.3 The MDM allows the user to review textual metadata associated with any media item in any array, for example by "rolling over a media item with a mouse device" or by "right-clicking on a media item with the

mouse device" (paragraph [0047]). When the user "rolls over" a visual entry, the MDM displays the metadata of the corresponding media item to the user (paragraph [0054]). The board notes that to allow the MDM to display the metadata, the metadata first needs to be "obtained".

5.4 This process is illustrated in Figure 2, where the textual metadata "sport's-related programming" is displayed near the selected ("rolled-over") visual entry 204:



In the board's view, visual entry 204 can be said to be "detected" at a "specific position", namely the position selected by the mouse. And the obtained metadata of the visual entry is displayed "at a position corresponding to" the mouse cursor.

5.5 Hence, the subject-matter of claim 1 differs from what is disclosed in document D5 only in that the display is a "touch-sensitive display unit" and in that a position on the display unit is selected not with a mouse, but by touching the display with a finger.

The objective technical problem solved by this difference may be seen in providing an alternative input mechanism.

- 5.6 Electronic devices comprising a touch screen and being suitable for image browsing were well-known at the priority date of the present application (19 June 2009), for example in the form of smartphones or other forms of portable media device. Such devices are also disclosed in document D1; see paragraphs [0070], [0071] and [0099] to [0103] and Figure 3.

Hence, the skilled person, starting from document D5 and faced with the objective technical problem, would modify the portable media device of document D5 to include a touch screen and to replace the mouse operations of document D5 with common touch-screen operations. He would thereby arrive at the subject-matter of claim 1 without the exercise of inventive skill.

- 5.7 In its statement of grounds of appeal, the appellant argued that in the claimed invention the contact point was "far away from the selected item to avoid coverage of the image" and that consequently the attribute data was displayed away from the selected item. Document D5 did not clearly disclose that difference. Nor did it contain an indication that the selection and the contact point were separate.

However, these arguments find no basis in the wording of claim 1.

- 5.8 The board therefore concludes that the subject-matter of claim 1 lacks inventive step (Article 56 EPC).

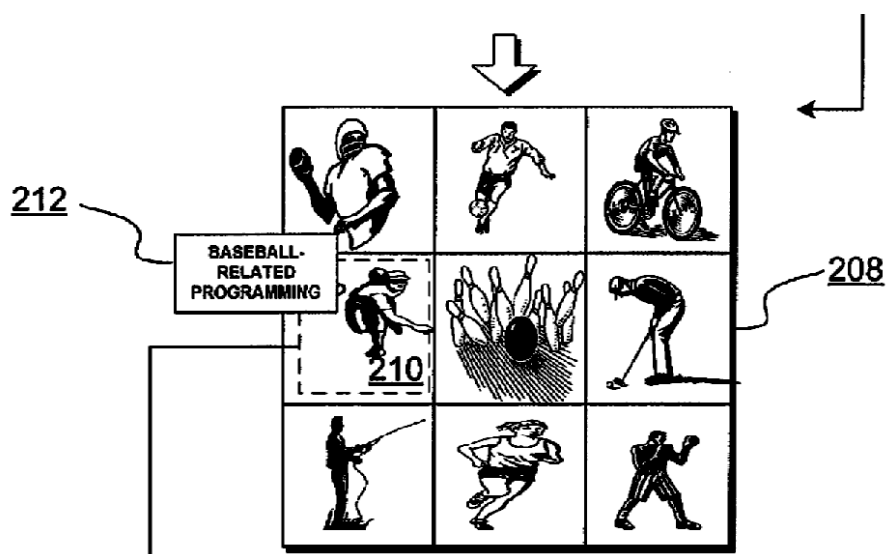
6. *Second and third auxiliary requests - inventive step*

6.1 Claim 1 of the second auxiliary request, which is identical to claim 1 of the third auxiliary request, differs from claim 1 of the first auxiliary request in that some features have been worded more generally and in that it includes steps of "filtering the image data according to the obtained attribute data" and "displaying all or part of the filtered image data in the display unit".

Paragraph [0020] of the application's description explains that "in some embodiments, after the attribute data of the determined image data is obtained, the image data can be filtered according to the obtained attribute data, and all or a part of the filtered image data can be displayed in the display unit".

6.2 In document D5, the media items in an array are linked to other (sub)arrays by means of "rules" based on "linking criteria" (paragraphs [0037]). When the user activates a particular media item, the subarray to which the item is linked is invoked (paragraph [0036]). For example, by activating visual entry 204 (corresponding to "sport's-related programming") of array 202 in Figure 2, the following subarray 208 (containing nine items pertaining to sports programming) is invoked and displayed to the user (paragraph [0055]):





In the board's view, the disclosed selection and display of media items related via their attribute data to an activated media item falls within the scope of the steps "filtering the image data" and "displaying all or a part of the filtered image data".

6.3 Hence, compared with claim 1 of the first auxiliary request, the features added to claim 1 of the second and third auxiliary requests do not further distinguish the claimed subject-matter from the disclosure of document D5. The subject-matter of claim 1 of the second and third auxiliary requests therefore likewise lacks inventive step (Article 56 EPC).

7. *Fourth auxiliary request*

Claim 1 of the fourth auxiliary request corresponds essentially to claim 1 of the second and third auxiliary requests, except that the step of "displaying all or a part of the filtered image data in the display unit" is missing. Thus, its subject-matter, too, lacks inventive step over document D5 in view of the arguments set out in points 5 and 6 above (Article 56 EPC).

8. *Fifth and sixth auxiliary requests - clarity and added subject-matter*

8.1 Claim 1 of both the fifth and sixth auxiliary requests includes a feature specifying that one of the image data is determined "although an [sic] contact point of an object is not contacting the image data but is contacting the display unit close to the image data". In the proceedings at first instance, the appellant relied on paragraph [0021] and Figures 3A and 3B as a basis for this amendment (see the marked-up copy of then auxiliary request 4 filed on 13 November 2012).

The board notes that the image data being "determined" is the image data for which attribute data is obtained and displayed.

8.2 The amendment is not clear within the meaning of Article 84 EPC because it does not specify whether "the image data" refers to the "determined" image data, i.e. the particular image data for which attribute data is displayed, or to all of the displayed image data.

8.3 In either interpretation, the amendment infringes Article 123(2) EPC.

In particular, although the "contact point" in Figure 3A does not "contact" determined image data D1, it is also not "contacting the display unit close to" the image data D1. The same holds for Figure 3B and determined image data D4.

And if "the image data" is interpreted as referring to all of the displayed image data, i.e. image data D1 to D12 in Figure 3A and image data D4 to D15 in Figure 3B,

the board observes that, while the "contact point" in Figure 3A (if reduced to a single pixel) appears to be between image data D8 and D9 and the "contact point" in Figure 3B appears to be between image data D14 and D15, this "feature" of Figures 3A and 3B is merely incidental. Indeed, there is no technical necessity or other technical reason why the centre of the finger's touch area is between areas displaying image data rather than in an area displaying image data, and paragraph [0021] is silent in this respect; rather, the skilled reader of the application understands that the user is free to place his or her finger anywhere on the screen. The feature "not contacting the image data but ... contacting the display unit close to the image data" cannot therefore be extracted from these figures without infringing Article 123(2) EPC (see Case Law of the Boards of Appeal, 8th edition, 2016, II.E.1.12.1).

9. *Seventh and eighth auxiliary requests - admission - Article 12(4) RPBA*

Since the examining division decided not to admit the seventh and eighth auxiliary requests into the proceedings under Rule 137(3) EPC, their admission under Article 12(4) RPBA is at the board's discretion. The appellant having given no argument why these requests should be admitted into the appeal proceedings, the board has no reason to deviate from the examining division's decision. The seventh and eighth auxiliary requests are therefore not admitted into the appeal proceedings.

10. *Conclusion*

Since none of the requests admitted into the appeal proceedings is allowable, the appeal is to 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