Internal distribution code:

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

Datasheet for the decision of 24 August 2017

Case Number: T 0152/14 - 3.5.05

Application Number: 11186690.1

Publication Number: 2477099

IPC: G06F3/041, G06F1/16

Language of the proceedings: EN

Title of invention:
Touch screen protector

Applicant:
Aevoe Corp.

Headword:
Touch-screen protector

Relevant legal provisions:
EPC Art. 56
RPBA Art. 15(3)

Keyword:
Inventive step - (no)
Oral proceedings - non-attendance of the party

Europäisches Patentamt
European Patent Office
Office européen des brevets

Beschwerdekammern
Boards of Appeal
Chambres de recours

European Patent Office
D-80298 MUNICH
GERMANY
Tel. +49 (0) 89 2399-0
Fax +49 (0) 89 2399-4465

Case Number: T 0152/14 - 3.5.05

D E C I S I O N
of Technical Board of Appeal 3.5.05
of 24 August 2017

Appellant: (Applicant)	Aevoe Corp. 491 East Evelyn Avenue Sunnyvale, CA 94086 (US)
Representative:	Holme Patent A/S Valbygårdsvej 33 2500 Valby (DK)
Decision under appeal:	**Decision of the Examining Division of the European Patent Office posted on 12 August 2013 refusing European patent application No. 11186690.1 pursuant to Article 97(2) EPC.**

Composition of the Board:

Chair	A. Ritzka
Members:	K. Bengi-Akyuerek
	F. Blumer

Summary of Facts and Submissions

I. The appeal is against the decision of the examining division to refuse the present European patent application for lack of inventive step (Article 56 EPC) with respect to the claims of a main request and three auxiliary requests, having regard to the disclosures of

D1: "Moshi - Zubehör der Extraklasse (inkl. iVisor AG", p. 1, 23 July 2010;

D2: "iVisor Matte iPad Protector with a Bubble Free Guarantee"; pp. 1-3, 16 December 2010;

D3: "Appletell reviews the iVisor AG for iPad", pp. 1-2; 15 September 2010;

combined with the disclosure of

D4: JP-A-2002-328613 (with its certified translation labelled as **D4'**).

Moreover, the examining division did not admit the claims of a fourth auxiliary request into the examination proceedings under Rule 137(3) EPC on the grounds that they were late-filed, lacked convergence with regard to the former claim requests and were not clearly allowable under Article 56 EPC.

II. With the statement setting out the grounds of appeal, the appellant requested that the decision of the examining division be set aside and that a patent be granted on the basis of the main request or the first auxiliary request, both filed during the first-instance oral proceedings, or a second auxiliary request representing "a combination of claim 1 and 3 of the main request". In addition, oral proceedings were

requested as an auxiliary measure.

III. In a communication annexed to the summons to oral proceedings pursuant to Article 15(1) RPBA, the board gave its preliminary opinion on the appeal. In particular, it raised objections under Articles 56, 84 and 83 EPC. Furthermore, prior-art document

D5: US-B-7 070 837,

which is cited in the present application, was introduced into the appeal proceedings by the board under Article 114(1) EPC due to its relevance for the assessment of novelty and inventive step.

IV. With a letter of reply, the appellant informed the board that it would not be attending the scheduled oral proceedings and that it requested "a decision according to the state of the file". It did not submit any comments on the substance of the board's communication under Article 15(1) RPBA.

V. Oral proceedings were held as scheduled on 24 August 2017 in the absence of the appellant. The board established from the file that the appellant's final requests were that the decision under appeal be set aside and that a patent be granted on the basis of a main request or a first auxiliary request, both filed on 10 July 2013, or of a second auxiliary request, specified as "a combination of claim 1 and 3 of the main request".

After due deliberation on the basis of those final requests and the written submissions, the board announced its decision at the end of the oral

proceedings.

VI. Claim 1 of the **main request** reads as follows:

"A touch screen protector (10) for a hand held electronic device having a front face that includes a touch screen portion and an outer perimeter comprising:

a plastic film (30) having front and back sides, an outer perimeter that corresponds to that of the device, and a transparent window (20) that corresponds in size to the touch screen portion; and

a spacer (40) provided on the back side of the plastic film (30) along the outer perimeter of the plastic film (30) continuously surrounding the transparent window (20), having a thickness of between about 0.05 and about 1 mm sufficient to space the plastic film (30) near but not in contact with the touch screen portion, and an exposed adhesive (50) for removably mounting the protector (10) upon the outer perimeter of the front face of the hand held device to form an enclosed air space between the transparent window (20) of the plastic film (30), the spacer (40) and the touch screen portion of the device, wherein the exposed adhesive (50) has sufficient adhesiveness to mount the protector (10) onto the front face of the hand held device but to enable its removal without leaving adhesive residue on the device;

wherein the window (20) can be pressed against the touch screen portion for operation of the electronic device while preventing direct contact of a user's fingers with the touch screen portion,

micro-particles are present on the back side of the plastic film (30) without adversely affecting quality of images viewed through the window (20), wherein the micro-particles are made of a transparent material and cover more than 5% up to 50% of the back side of the

plastic film (30) to prevent the interference patterns arising when the transparent window (20) is pressed against the touch screen portion of the electronic device during operation and to ensure that the protector will bounce back or pull away from the touch screen portion once it is no longer pressed against the touch screen portion."

Claim 1 of the **first auxiliary request** comprises all the features of claim 1 of the main request, and adds the following:

"and wherein the micro-particles are not in physical contact with the touch screen portion unless the screen protector is pressed against the touch screen portion".

Claim 1 of the **second auxiliary request** is understood to represent a combination of claims 1 and 3 of the main request (cf. point V above). Claim 3 of the main request reads as follows:

"The touch screen protector (10) of claim 1, wherein the plastic film (30) also includes micro-particles adhered to the front side of the window (20) in an amount effective for providing anti-glare and anti-static effects to the window (20)".

Reasons for the Decision

1. *Non-attendance of the appellant at oral proceedings*

1.1 The appellant decided not to attend the scheduled oral proceedings before the board (see point IV above). Pursuant to Article 15(3) RPBA, the board is not

"obliged to delay any step in the proceedings, including its decision, by reason only of the absence at the oral proceedings of any party duly summoned who may then be treated as relying only on its written case."

1.2 In the present case, the appellant filed no comments in support of the patentability of its application in response to the objections raised in the board's communication under Article 15(1) RPBA. The board reconsidered the claim requests on file and maintained its objections raised in its communication (see points 2 to 4 below). So, in the exercise of its discretion under Article 15(3) RPBA, the board took a decision at the end of the oral proceedings, in the absence of the duly summoned appellant.

2. MAIN REQUEST

Claim 1 of the main request comprises the following features (as labelled by the board):

A touch screen protector for a hand-held electronic device having a front face that includes a touch-screen portion and an outer perimeter comprising:

A) a plastic film having front and back sides, an outer perimeter that corresponds to that of the device, and a transparent window that corresponds in size to the touch-screen portion;
B) a spacer provided on the back side of the plastic film along the outer perimeter of the plastic film continuously surrounding the transparent window, having a thickness of between about 0.05 and about 1mm sufficient to space the plastic film near but not in contact with the touch-screen portion, and

an exposed adhesive for removably mounting the protector upon the outer perimeter of the front face of the hand-held device to form an enclosed air space between the transparent window of the plastic film, the spacer and the touch-screen portion of the device,

C) wherein the exposed adhesive has sufficient adhesiveness to mount the protector onto the front face of the hand-held device but to enable its removal without leaving adhesive residue on the device;

D) wherein the window can be pressed against the touch-screen portion for operation of the electronic device while preventing direct contact of a user's fingers with the touch-screen portion,

E) [wherein] micro-particles are present on the back side of the plastic film without adversely affecting quality of images viewed through the window,

F) wherein the micro-particles are made of a transparent material and cover more than 5% up to 50% of the back side of the plastic film to prevent the interference patterns arising when the transparent window is pressed against the touch screen portion of the electronic device during operation and to ensure that the protector will bounce back or pull away from the touch screen portion once it is no longer pressed against the touch-screen portion.

2.1 *Novelty and inventive step (Articles 54 and 56 EPC)*

The board holds that present claim 1 does not meet the requirements of Article 56 EPC, for the reasons set out below.

2.1.1 It is common ground that **D1**, **D2** or **D3** disclose all the limiting features of claim 1 except features E) and F).

2.1.2 As to distinguishing feature E), the appellant argued that the micro-particles defined therein were smaller than what can be viewed by the human eye, contrary to the teaching of **D4** where the size of the dots negatively influenced the appearance of the images viewed.

However, it is apparent to the board that feature E) merely specifies that the micro-particles are supposed not to adversely affect the quality of images viewed through the window. This does not necessarily mean that the micro-particles have to be smaller than what can be viewed by the human eye since neither "adversely affect" nor "quality of images" is further defined in the present application. Nonetheless, D4 also teaches that the dots do not impede visibility of the display screen beneath the cover sheet (see D4', [0022], first sentence).

2.1.3 As to distinguishing feature F), the appellant submitted that the specified pitch widths and the size of the dots made it impossible for the dots in D4 to cover between 5% and 50% of the cover sheet.

But D4 explicitly teaches that the dots may well be provided randomly (see D4', [0021], first sentence) and that the occurrence of Newton rings can effectively be prevented if the pitch width is about 1 to 10mm (see D4', [0021], second sentence). Therefore, the board agrees with the decision under appeal that a coverage of 5% to 50% of the display screen is indeed possible (see appealed decision, Reasons 2.5).

2.1.4 Again regarding distinguishing feature F), the appellant contended that the dots were required in D4 to prevent the plastic film from contacting the display screen by ensuring that the dots are in *permanent* contact with the display screen and that such a permanent contact of the dots could not ensure that the protector would bounce back or pull away from the touch-screen portion once it was no longer pressed against the touch-screen portion as claimed.

The board notes that D4 in fact teaches that spacer 12, on the one hand, generates a gap (via the dots) between the plastic film and the display screen and, on the other hand, prevents (again via the dots) the occurrence of interference patterns, i.e. Newton rings (see D4', [0020], first sentence). In the board's view, this does not automatically mean that the dots have to be in permanent contact with the display screen. The board also agrees with the decision under appeal that present claim 1 fails to specify that the micro-particles are not in physical contact with the display screen unless the protector is pressed against the touch-screen portion (see appealed decision, Reasons 2.7).

2.1.5 In view of the above, the board finds that the skilled person in the field of touch-screen devices, starting from any of documents D1 to D3 and faced with the objective technical problem of "how to provide an alternative solution for preventing Newton rings" as put forward by the appellant, would consult D4 with the aim of solving that problem and would arrive at the solution claimed without the exercise of any inventive skills.

2.2 Accordingly, the main request is not allowable under Article 56 EPC.

3. FIRST AUXILIARY REQUEST

3.1 Claim 1 of this auxiliary request differs from claim 1 of the main request in that it further specifies that

G) the micro-particles are not in physical contact unless the screen protector is pressed against the touch-screen portion.

3.2 As to added feature G), the appellant submitted that there was no passage in D4 supporting the conclusion that the dots were in contact with the display screen *only* when the screen was pressed.

The board accepts that feature G) is not directly and unambiguously disclosed in D4. However, document **D5** evidently teaches the use of micro-particles ("small particles") within "roughened surface 10" (such as a "resin coating") which are supposed to substantially minimise contact with the display screen in order to avoid Newton rings, while ensuring contact in operation ("in use") of the touch-screen portion (see e.g. column 2, lines 26-34; column 4, lines 29-41; column 6, lines 36-41; column 7, lines 19-21 in conjunction with Fig. 1), in full accordance with feature G) of present claim 1. The board holds that the subject-matter of claim 1 is not inventive over the combination of any of documents D1, D2 or D3 with D5.

3.3 In view of the above, the first auxiliary request is also not allowable under Article 56 EPC.

4. SECOND AUXILIARY REQUEST

4.1 Claim 1 of this auxiliary request is understood to differ from claim 1 of the main request in that it also incorporates the features of claim 3 of the main request, i.e. that it further specifies that (emphasis added by the board)

H) the plastic film also includes micro-particles adhered to the front side of the window in an amount effective for providing anti-glare and anti-static effects to the window.

4.2 The board notes that feature H) does not indicate which *amount* of micro-particles on the front side could indeed be effective for providing anti-glare and anti-static effects. In the absence of further details, the board finds that feature H) is - at least implicitly - anticipated by **D1** (see last paragraph: "*Au[ß]erdem reduziert seine spezielle EZ-Glide™ Oberfl[ä]chenbehandlung effektiv die Oberfl[ä]chenreibung der Fingerspitzen auf dem Screen und bringt so die Bedienbarkeit auf ein neues Niveau. Dar[ü]berhinaus werden durch die entspiegelnde Folie der zweiten Generation Glitzereffekte vermieden und die Klarheit der Anzeige verbessert ...*") or **D3** (see last paragraph: "*... It gives you all of the benefits of having a matte screen protector (removes glare, improves finger gliding, and protects screen from scratches) ...*"). Therefore, feature H) cannot contribute to an inventive step either.

4.3 In conclusion, the second auxiliary request likewise is not allowable under Article 56 EPC.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar: The Chair:

P. Cremona A. Ritzka

Decision electronically authenticated