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**Datasheet for the decision
of 10 October 2018**

Case Number: T 0554/14 - 3.5.05

Application Number: 11196148.8

Publication Number: 2610720

IPC: G06F3/048, H04M1/725

Language of the proceedings: EN

Title of invention:

Method and apparatus pertaining to the presentation of
scrolling icons

Applicant:

BlackBerry Limited

Headword:

Presentation of scrolling icons/BLACKBERRY

Relevant legal provisions:

EPC Art. 56

RPBA Art. 13(1), 12(2)

Keyword:

Inventive step - main request and first auxiliary request (no)
Late-filed auxiliary requests - third and fourth auxiliary
requests - admitted (no)

Decisions cited:

T 0391/11, T 0713/11, T 2501/10, T 0162/12, T 1836/12



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Case Number: T 0554/14 - 3.5.05

D E C I S I O N
of Technical Board of Appeal 3.5.05
of 10 October 2018

Appellant: BlackBerry Limited
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Decision under appeal: **Decision of the Examining Division of the
European Patent Office posted on 7 October 2013
refusing European patent application
No. 11196148.8 pursuant to Article 97(2) EPC**

Composition of the Board:

Chair A. Ritzka
Members: P. San-Bento Furtado
G. Weiss

Summary of Facts and Submissions

I. The appeal lies from the decision of the Examining Division to refuse European patent application No. 11196148.8 for lack of inventive step, Articles 52(1) and 56 EPC, of the subject-matter of the claims of a main request and two auxiliary requests over the disclosure of either of prior art documents: D1: US 2006/0277490 A1, published on 7 December 2006 or D2: EP 1 777 611 A1, published on 25 April 2007.

In the decision under appeal, some features of the claimed invention were considered to relate to presentation of information as such and hence to lack technical character. Some distinguishing features were considered to be disclosed in document D5: US 2008/0155474 A1, published on 26 June 2008.

II. In its statement setting out the grounds of appeal, the appellant requested that the decision be set aside and that a patent be granted on the basis of the main request or of one of the two auxiliary requests filed with the grounds of appeal. The three requests correspond to those submitted with letter of 16 August 2013 and considered in the appealed decision.

III. In a communication accompanying a summons to oral proceedings, the board expressed its preliminary opinion that the subject-matter of the independent claims of the three requests lacked inventive step over document D1.

IV. With a letter of reply the appellant filed two new requests as third and fourth auxiliary requests. The appellant did not provide any further reasons with regard to the requests dealt with in the board's

communication, but argued in favour of the newly filed third auxiliary request and provided some comments with regard to the fourth auxiliary request. In a further letter the appellant informed the board that it would not be represented at the oral proceedings.

- V. Oral proceedings were held in the absence of the appellant. At the end of the oral proceedings, the chair pronounced the board's decision.
- VI. The appellant's final requests were that the decision under appeal be set aside and that a patent be granted on the basis of the main request or one of the first or second auxiliary requests, all three requests filed with the statement setting out the grounds of appeal, or the third or fourth auxiliary requests, both filed with letter dated 10 September 2018.
- VII. Claim 1 of the main request reads as follows:
"1. A computer-implemented method of operating a portable electronic device (400) comprising:
 applying (101) at least one prioritization metric (102) to select for highlighting and/or non-highlighting some icons of a plurality of icons (201) to provide selected icons (302);
 scrolling (103) a display of a plurality of icons, in response to a user input;
 while scrolling the display of the plurality of icons (104):
 displaying the selected icons of the plurality of icons in a highlighted form;
 displaying the non-selected icons (303) of the plurality of icons in a non-highlighted form;
 detecting halting scrolling the display of the plurality of icons; and, in response:

within a predetermined time of detecting halting scrolling the display of the plurality of icons, displaying all presently-displayed icons of the plurality of icons in a default form;

wherein the non-highlighted form of the non-selected icons (303) is an abridged form of the default form."

Claim 1 of the first auxiliary request differs from that of the main request in that the following text was added at the end:

"and the non-highlighted form comprises at least one of:

a reduced-color form;
a grayscale form;
a reduced-resolution form;
a reduced clarity;
a reduced size;
an altered depth;
an altered relative orientation; and
a modified transparency."

VIII. Claim 1 of the second auxiliary request differs from that of the first auxiliary request in that, apart from a minor editorial amendment, the following text was added after the text "displaying the selected icons ... in a highlighted form":

"wherein the highlighted form comprises a default presentation of the icon;".

IX. Claim 1 of the third auxiliary request adds the following text at the end of claim 1 of the main request:

"and wherein the plurality of icons are displayed in a non-sequential order of presentation relative to the at least one prioritization metric."

X. Editorial amendments aside, claim 1 of the fourth auxiliary request differs from that of the third auxiliary request in that the following text was introduced at the end of the claim:

"the prioritization metric represents, at least in part, usage of an application associated with each icon of the plurality of icons."

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

Reasons for the Decision

Invention

1. The invention concerns the display of icons while scrolling on a display of a portable electronic device (paragraph [0013] and claim 1 of the application as filed and as published).
- 1.1 The method of displaying icons according to the invention relies on a prioritisation metric to select some icons of the plurality of icons (see paragraph [0021]). While scrolling the display of the plurality of icons in response to user input, the selected icons are automatically presented in a highlighted form while the non-selected icons are presented in a non-highlighted form (paragraph [0028]).
- 1.2 A prioritisation metric may represent usage of an application associated with the icon, e.g. frequency of use, run time or time elapsed since it was last launched (original claims 3 and 4, paragraphs [0023] to [0026]). The metrics can be pre-defined (for example, by the manufacturer of the control circuit) and/or can

be defined (at least in part) by the user as desired (paragraphs [0028] and [0029]).

- 1.3 After scrolling is halted, the method of the invention displays all presently-displayed icons in a default or ordinary form independently of whether while scrolling some were highlighted and some were not (paragraphs [0031], [0037] and original claim 7).
- 1.4 The non-highlighted form can comprise an abridged form where something has been redacted from the ordinary presentation form, for instance by using reduced colour, resolution, clarity or size, by altering depth or relative-orientation, or by modifying transparency (e.g. increased transparency). When using abridgement for the non-highlighted form, the highlighted form can comprise the default presentation form if desired (paragraphs [0033] and [0034]).
- 1.5 According to the description, the teaching of the invention displays prioritised icons in an eye-catching way when the user scrolls a display of a plurality of icons, which in turn makes it possible for the user to readily and easily identify those relatively important icons during scrolling (paragraph [0013]). Additionally, the description explains that "as the non-highlighted icons can require less information to be displayed, the processing resources needed to render the non-highlighted icon can be less than the resources needed to render the highlighted icons" (paragraph [0036]).

Main request

2. *Inventive step - claim 1*

- 2.1 Document D1 concerns graphical user interfaces that address the problem of information overload, in particular in the area of administration tools for configuring and monitoring search engines (paragraphs [0002], [0003], [0005] and [0008]).

The method of document D1 displays series of items and automatically highlights items of the series to emphasise relevant information (paragraph [0016]). Since item highlighting changes as each series is scrolled by the user (see paragraphs [0016] and [0018]), highlighting occurs during scrolling.

Document D1 is hence directed to the same problem of facilitating the identification of items during scrolling as the present invention and is an appropriate starting point for assessing inventive step. The appellant did not contest this.

- 2.2 Highlighting in document D1 is achieved by assigning each item an index value indicating the position of the item within the series, and rendering the items with an index value within a threshold range around a reference index with an appearance different from those outside the range (paragraphs [0016] and [0020]). The board further notes that "icon" within the meaning of the present application encompasses a text item (see paragraph [0003] of the present application).

From the above, the board concludes that the method of document D1 comprises the steps of applying at least one prioritisation metric to select icons for

highlighting, scrolling a display of a plurality of icons and, while scrolling, displaying the selected icons in highlighted form and the non-selected icons in a non-highlighted form as defined in claim 1.

In the method of document D1, the non-highlighted items are displayed in a different colour, e.g. grey, than the highlighted items (paragraph [0023]). Document D1 does not explicitly mention a default presentation form, but refers to the appearance of items and teaches that those items which are non-highlighted have a different appearance. The highlighted form can thus be seen as a default presentation form. Document D1 therefore also discloses the feature of the claim "wherein the non-highlighted form of the non-selected icons is an abridged form of the default form". A step of detecting halting scrolling is implicitly disclosed in document D1 (paragraph [0016]).

- 2.3 The subject-matter of claim 1 thus differs from the method of document D1 in that:
- within a predetermined time of detecting halting scrolling the display of the plurality of icons, all presently-displayed icons of the plurality of icons are displayed in a default form.

In other words, the claimed method differs from that of document D1 in that the non-highlighted/abridged form is only used during scrolling.

- 2.4 In the grounds of appeal, the appellant argued that the focus of the present invention was minimising resource consumption. As was described in paragraph [0036], the selection of icons and presentation of a selection of icons in highlighted and/or non-highlighted form in scrolling mode affected the overall resources required

and facilitated quicker and smoother presentation. The claimed solution provided a scrolling mode of operation in which non-highlighted icons were displayed in an abridged form having a lower information content than a default form for the same icon. That approach required less processing power to render the image of the icon on the display during scrolling. The novel feature did not relate purely to presentation of information and was technical. The claimed method provided a more efficient man-machine interface since it allowed users to more efficiently obtain a display comprising a desired icon selectable from a scrollable list, and solved the technical problem of reducing processing requirements required to display scrolled icons by an electronic device.

The board does not find those arguments persuasive. According to the appellant, the alleged technical effects are achieved by the display of the non-highlighted icons in abridged form, e.g. in greyscale form, during scrolling. However, the application does not convincingly disclose that the abridged display forms contribute to reduced power consumption or how that effect might be achieved. Paragraph [0036] first mentions that highlighted items "are considerably easier to identify as the icons 201 move on the [...] display" and then vaguely states that "the non-highlighted icons can require less information ..." and that "the processing resources needed to render the non-highlighted icon can be less" than those needed for a highlighted icon (underlining added). The description does not explain in technical terms how such a reduction of resources is achieved for the abridged forms mentioned in the application. The board agrees with the Examining Division's assessment (see decision under appeal, page 9, last paragraph) that at least

some of those abridged forms cannot contribute to a reduction of resources.

Furthermore, the display of non-highlighted icons in greyscale form, including during scrolling, is known from the method of D1. If the abridged form according to claim 1, which encompasses greyscale, achieved the effects mentioned by the appellant, then that would also be the case for the method of D1.

Thus, the board does not recognise the objective technical problem as formulated by the appellant.

- 2.5 The distinguishing feature is described in paragraph [0037], and the default or ordinary presentation form on which it is based is further described in paragraphs [0031] to [0034] and [0038] of the application. None of those passages mentions the purpose of the default presentation form. It could reflect visual user preferences, which is a non-technical aim. In any case, the board cannot identify a technical purpose of presenting the icons in default form after the end of scrolling and finds that in the context of the present invention that feature relates to presentation of information as such (see also Case Law of the Boards of Appeal, 8th edition, 2016, I.A.2.6 and I.D.9.1.6).

The distinguishing feature therefore merely reflects the non-technical requirement that icons be presented in default form after the end of scrolling. Such a feature does not contribute to inventive step.

- 2.6 Therefore, the subject-matter of claim 1 of the main request does not involve an inventive step (Articles 52(1) and 56 EPC).

First and second auxiliary requests

3. Claim 1 of the first auxiliary request further specifies that the non-highlighted form comprises at least one of reduced-color, greyscale, reduced-resolution, reduced clarity, reduced size, altered depth, altered relative orientation, and modified transparency.

Claim 1 of the second auxiliary request further specifies that the highlighted form comprises a default presentation form.

4. *Inventive step - claim 1*

- 4.1 In document D1 the non-highlighted form is a greyscale form, and the default form corresponds to the highlighted form.

- 4.2 In view of the word "comprises" the additional feature of the second auxiliary request is not a limiting feature.

- 4.3 Therefore, the reasons given above for the main request apply *mutatis mutandis* and neither of the first and second auxiliary requests fulfils the requirements of Articles 52(1) and 56 EPC either.

Amendment to a party's case - admissibility of requests

5. The third and fourth auxiliary requests are amendments to the appellant's case within the meaning of Article 13(1) and (3) RPBA. Such an amendment may be admitted and considered at the Board's discretion (Article 13(1) RPBA) and should not be admitted if it

raises issues which the Board or the parties cannot reasonably be expected to deal with without adjournment of the oral proceedings (Article 13(3) RPBA).

5.1 Article 13(1) RPBA provides a non-exhaustive list of criteria to take into account when deciding whether to admit an amendment to a party's case, namely complexity of the new subject-matter, the current state of the proceedings and the need for procedural economy. That list is further refined by case-law decisions of the Boards of Appeal (see Case Law of the Boards of Appeal, IV.E.4.4). For example, in exercising its discretion, the board may consider whether amended claims are clearly allowable in the sense that they do not introduce new objections and overcome all outstanding objections (T 391/11 of 24 September 2015, reasons 4 to 4.3 and other decisions cited in Case Law of the Boards of Appeal, IV.E.4.2.5 and 4.4.2), amended claims diverge considerably from the claims already filed (Case Law of the Boards of Appeal, IV.E.4.4.4) or the request is substantiated (see T 162/12 of 2 August 2012, reasons 2 to 2.5; T 1836/12 of 5 March 2014, reasons 1.1 to 1.9 and 2.4; T 2501/10 of 23 May 2014, reasons 2.6 to 2.10 and 4.3 and other decisions cited in Case Law of the Boards of Appeal, IV.E.4.2.4 and 4.4.3).

5.2 Decision T 713/11 of 22 November 2016 establishes the requirement that the claim request be sufficiently substantiated within the meaning of Article 12(2) RPBA as a criterion to be taken into account when deciding to admit a claim request under Article 13(1) RPBA (see reasons 1.3 to 2.3).

Even though that decision relates to an appeal in opposition, that criterion in the present board's

judgment also applies, at least in combination with other requirements, in the context of *ex-parte* appeal proceedings. Firstly, because the general principles established by Article 12(1), (2) and (4) RPBA, which motivated that conclusion in T 713/11, apply to any answer to Board's communications mentioned in Article 12(1)(c) RPBA. Secondly, because the assessment of a request with regard to other criteria, e.g. *prima facie* allowability or procedural economy, may depend on whether the request is sufficiently substantiated.

The requirements of Article 12(2) RPBA are that the party's submissions be complete, set out clearly and concisely the reasons in support of the case and specify expressly all the facts, arguments and evidence relied on.

- 5.3 In decision T 1836/12, requests filed after oral proceedings had been arranged were not admitted under Article 13(1) RPBA because they were neither substantiated nor clearly allowable in the sense that it could not be quickly ascertained that they overcame the outstanding issues. In order to deal with those requests the board would have to try to imagine which arguments the appellant would put forward, which was contrary to procedural efficiency (reasons 1.1 to 1.9).

Third auxiliary request

6. Claim 1 of the third auxiliary request differs from claim 1 of the main request in that it further specifies that the plurality of icons are displayed in "a non-sequential order of presentation relative to the at least one prioritization metric".

7. *Prima-facie interpretation of claim 1*

7.1 In its letter, the appellant argued that according to this feature "'selected icons' that are most likely to be important to the user are rendered on the display before those 'non-selected icons' that are less likely to be important to the user" (see page 4, fourth paragraph).

The appellant's arguments in favour of inventive step were based on this interpretation of the feature. In particular, the appellant argued that the feature resulted in an improved human-machine interaction process because "when scrolling, the 'selected icons' that are most pertinent to the user will be rendered ... before the 'non-selected icons' that are of lower relevance" and therefore "the 'selected icons' will be rendered in time for the user to notice them without accidentally scrolling past" (page 4, fifth paragraph).

7.2 The board doubts that, taking into account the description of the present application, the feature should be interpreted as suggested by the appellant.

7.3 Paragraph [0030] of the application reads:

"Nor does this process require that the presentation of icons 201 be re-sorted in order to display the icons sequentially in accordance with the prioritization metric. Instead, icons 201 can be selected for highlighting and non-highlighting without regard to the relative position of such icons 201 within a displayed sequence of such icons 201. In other words, the icons 201 can be displayed in an original default order of presentation and the highlighting (or non-highlighting) can be

performed non-sequentially in relation to the prioritization metric."

From this passage it seems that the presentation "sequentially in accordance with the prioritization metric" corresponds to re-ordering such that more important (selected/highlighted) icons are displayed before and that hence non-sequential order of presentation relative to the at least one prioritisation metric implies that no re-ordering takes place. This *prima facie* interpretation seems to differ and even contradict the appellant's interpretation.

8. *Admission of the request into the proceedings*

8.1 As explained above, the interpretation of the additional feature of claim 1 by the appellant does not seem to correspond to the board's *prima facie* interpretation in the light of the description. The inventive-step reasoning by the appellant (see point 7.1 above) is invalid assuming that *prima facie* interpretation. In particular, since the board is not convinced that in the claimed method the most pertinent "selected icons" are rendered before the less pertinent, it is not clear how the additional feature helps the user not to accidentally scroll past the pertinent icons. The third auxiliary request is hence *prima facie* not allowable for lack of clarity and lack of inventive step.

8.2 The board further notes that claim 1 no longer defines some features introduced with the first and second auxiliary requests. The subject-matter of claim 1 of the third auxiliary request can thus not be seen as converging to the overall purpose addressed by the

claims of higher ranking requests, or to address the board's preliminary objections.

8.3 In view of its absence at the oral proceedings, the appellant could not discuss with the board the questions of claim interpretation, clarity and inventive step. Since the appellant's reasoning supporting the third request is based on an interpretation which does not seem to find support by the description, the reasoning itself cannot be considered clear and complete, or to follow a logical chain of argument. Under these circumstances, the board does not consider the third auxiliary request to be sufficiently substantiated.

8.4 In sum, the third auxiliary request, which was filed after oral proceedings have been arranged, is not sufficiently substantiated and *prima facie* not allowable. For those reasons, in exercise of its discretion under Article 13(1) RPBA following the principles given under points 5. to 5.3 above, the board does not admit the third auxiliary request into the proceedings.

Fourth auxiliary request

9. Claim 1 of the fourth auxiliary request further specifies that the prioritisation metric represents, at least in part, usage of an application associated with each icon of the plurality of icons.

10. *Admission of the request into the proceedings*

10.1 With regard to inventive step the appellant essentially stated that "by rendering according to application usage, those applications that are accessed [with] more

frequency by the user, and hence are more likely to being sought in a current scroll operation, are rendered in preference to those icons that are used less frequently". In its submissions, the appellant did not clearly explain how it interpreted the additional feature, in particular whether it interpreted the icon as having some function and what function.

That reasoning does not explain why the additional feature should be considered to contribute to the technical character of the claimed method, and whether and how it contributes to establishing an inventive step over the prior-art cited in the proceedings thus far, especially document D1. It can thus not be considered to address the board's objections raised in its communication.

10.2 Furthermore, claim 1 also defines the feature of claim 1 of the third auxiliary request which is *prima facie* interpreted differently by the board.

For the same reasons as given for the third auxiliary request, the appellant's reasoning does not make sense and is thus invalid assuming the board's *prima facie* interpretation of the "non-sequential order of presentation relative to the ... prioritization metric" in the light of the description. The fourth auxiliary request, which was filed after oral proceedings have been arranged, is not sufficiently substantiated. Claim 1 is *prima facie* unclear and not inventive.

10.3 Therefore, in exercise of its discretion under Article 13(1) RPBA following the principles given under points 5. to 5.3 above, the board does not admit the fourth auxiliary request into the proceedings.

Final remarks

11. It follows from Articles 15(3) and (6) RPBA that a board should come to a decision at the conclusion of the oral proceedings, even if a party duly summoned is absent, unless there are special reasons to the contrary. One such special reason would be a violation of the right to be heard (Article 113(1) EPC). However, an appellant which submits amended claims in advance of the oral proceedings and subsequently does not attend them may be treated as relying solely on its written case and must expect a decision based on objections to such claims which might arise in its absence. According to the established case law, in such a case the appellant's right to be heard has not been violated (see the decisions cited in Case Law of the Boards of Appeal, IV.E.4.2.6 d)).

In the present case, the appellant had to expect the board to consider whether the third and fourth auxiliary requests, which were submitted in advance of the oral proceedings, would be admitted into the proceedings under Article 13(1) RPBA. The board was therefore, despite the absence of the duly summoned appellant, in a position to take a final decision at the oral proceedings, without violating the appellant's right to be heard.

12. Since the main request and first and second auxiliary requests are not allowable and the third and fourth auxiliary requests are not admitted into the proceedings, 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