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**Datasheet for the decision  
of 17 March 2016**

**Case Number:** T 0823/14 - 3.5.05

**Application Number:** 09154313.2

**Publication Number:** 2098948

**IPC:** G06F3/048

**Language of the proceedings:** EN

**Title of invention:**

Touch event model

**Patent Proprietor:**

APPLE INC.

**Opponents:**

Samsung Electronics GmbH  
HTC Corporation  
Motorola Mobility Germany GmbH

**Headword:**

Touch event model/APPLE

**Relevant legal provisions:**

EPC Art. 54(3), 111(1)

**Keyword:**

Novelty - main request (yes) - prior European application  
Remittal to the department of first instance - (yes)

**Decisions cited:**

**Catchword:**



**Beschwerdekammern**  
**Boards of Appeal**  
**Chambres de recours**

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Case Number: T 0823/14 - 3.5.05

**D E C I S I O N**  
**of Technical Board of Appeal 3.5.05**  
**of 17 March 2016**

**Appellant:** APPLE INC.  
(Patent Proprietor) 1 Infinite Loop  
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**Representative:** Kitchen, Steven Richard  
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**Respondent:** Motorola Mobility Germany GmbH  
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**Representative:** Grosch, Marcus  
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**Decision under appeal:**      **Decision of the Opposition Division of the  
European Patent Office posted on 2 April 2014  
revoking European patent No. 2098948 pursuant to  
Article 101(2) EPC.**

**Composition of the Board:**

**Chair**                    A. Ritzka  
**Members:**              M. Höhn  
                              G. Weiss  
                              P. Cretaine  
                              D. Prietzel-Funk

## **Summary of Facts and Submissions**

- I. This appeal is against the decision of the opposition division of the European Patent Office posted on 2 April 2014 revoking European patent No. 2098948 pursuant to Article 101(2) EPC on the ground of Article 100(a) EPC (lack of novelty).

The decision under appeal was based on the following publication:

D1: WO 2008/148021 A2.

- II. The notice of appeal filed by the patent proprietor was received on 5 February 2014. The appeal fee was paid on the same day. The statement setting out the grounds of appeal was received on 4 August 2014.

The appellant requested that the decision under appeal be set aside and that the patent be maintained as granted according to a main request or in amended form according to a first, second or fourth auxiliary request, all submitted with letter dated 4 August 2014, or according to a third auxiliary request submitted with letter dated 26 August 2015. Oral proceedings were requested on an auxiliary basis.

- III. The opponent, Samsung Electronics GmbH, filed an appeal against non-admission of prior art documents during the first instance proceedings, but withdrew its opposition with letter dated 8 August 2014. It was therefore no longer party to the appeal proceedings.

- IV. The remaining intervener/opponent(respondent), Motorola Mobility Germany GmbH, requested that the appeal be

dismissed. Oral proceedings were requested on an auxiliary basis.

- V. With a communication dated 14 December 2015 the board summoned the parties to oral proceedings on 17 and 18 March 2016. In an annex to the summons the rapporteur expressed the preliminary opinion to concur with the finding of the decision under appeal that claim 1 according to the main request was not novel.
- VI. By letter dated 12 February 2016 the appellant submitted ten sets of claims according to a main request and first to ninth auxiliary requests - the latter replacing the auxiliary requests on file - and presented arguments with respect to novelty.
- VII. Oral proceedings were held on 17 March 2016.
- VIII. The appellant (patent proprietor) requested that the decision under appeal be set aside and a patent be maintained in amended form on the basis of the main request or one of the auxiliary requests 1 to 9, all filed with letter dated 12 February 2016.
- IX. The respondent requested that the appeal be dismissed.
- X. Independent claim 1 according to the main request reads as follows:

"1. A method for handling touch events at a multi-touch device (200, 210), comprising:  
displaying one or more views (301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312);  
executing one or more software elements, each software element being associated with a particular view (301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312);

associating a multi-touch flag or an exclusive touch flag with each view (301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312), said multi-touch flag indicating whether a particular view is allowed to receive multiple simultaneous touches and said exclusive touch flag indicating whether a particular view allows other views to receive touch events while the particular view is receiving a touch event; receiving one or more touches at the one or more views (301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312); and selectively sending one or more touch events, each touch event describing a received touch, to one or more of the software elements associated with the one or more views (301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312) at which a touch was received based on the values of the multi-touch and exclusive touch flags."

XI. After due consideration of the parties' arguments the chair announced the decision.

## **Reasons for the Decision**

### Admissibility

1. The appeal complies with Articles 106 to 108 EPC. It is therefore admissible.
2. The revocation of the patent in suit in the decision under appeal was based on a lack of novelty objection under Article 100(a) EPC with regard to D1 which is prior art according to Article 54(3) EPC. The decision stated that further prior art on record was not considered in the oral proceedings before the

opposition division (see point 10.4, third paragraph of the decision).

**Main request**

3. With regard to novelty the appellant argued that D1 did not disclose all the features of claim 1 according to the main request, i.e. as maintained in the decision under appeal.

The appellant essentially argued that D1 neither disclosed a multi-touch flag nor an exclusive touch flag according to claim 1. In fact, D1 did not disclose flags at all, with a flag being considered to be a two-state indicator which indicates the presence or absence of a characteristic. Furthermore, D1 failed to disclose the step of "selectively sending" and taught "selectively ignoring" instead.

4. The respondent essentially argued that D1 disclosed all the features of claim 1. In particular, it was argued that the SingleCaptureGate function in D1 implemented both, an exclusive touch flag and a multi-touch flag by disclosing that Capture Gate could be implemented as a value of an attached property (reference was made to paragraph [0028]) which was considered to be a two state indicator in view of the CaptureGate returning a true/false indication. Ignoring the input (reference was made to paragraph [0031] of D1) would in fact be the same as selectively sending, since the result was the same, that touch events are either sent or blocked from being sent. Reference was made to figures 5A and 5B of the application as filed which were showing that the decision making step resulted in either sending or ignoring touch data. The application itself therefore disclosed that ignoring or sending were the same



technical feature and D1 therefore disclosed the feature of selectively sending.

4.1 According to D1 input is captured and events are distributed by multi-capture components 104 which are filtered out by capture gate components 106 (see e.g. [0018] of D1). In order to be novelty destroying the SingleCaptureGate or NCaptureGate referred to in the decision under appeal would have to be regarded as being implemented, using a flag.

4.2 With regard to the technical function of a flag (see the several citations of definitions of well known dictionaries in the statement setting out the grounds of appeal, point 3.7.1) the board considers it as a memory location storing an indication of a state or event that can be accessed or communicated, e.g. a true-false bit information. According to claim 1, each view has its dedicated flag, i.e. memory location. In the absence of a concrete definition of the term "flag" in the patent in suit, this term is interpreted based on its technical function.

According to D1 (see [0028]) the implementation of capture gate functionality "is likely to be framework specific". When inputs in D1 are referred to (see e.g. inputs 122, 124 and 126 in figure 1) those inputs can originate from a single input mechanism, i.e. comprise the possibility of multiple simultaneous inputs to a single touch screen mechanism (see last sentence of [0016] of D1). According to D1 a control can be configured to be multi-touch-aware (see [0021]).

4.3 The appellant argued that the SingleCaptureGate in D1 has the function of a token which is passed between different views for limiting acquisition of touch

events to a single device only (with reference to paragraphs [0030] and [0031] of D1 - see e.g. point 3.7.6 of the statement setting out the grounds of appeal).

According to the embodiments disclosed in [0029] to [0032] of D1 the CaptureGate class provides a capture and release (see Release() function) thereby acquiring a single capture gate with the consequence that no other input device can acquire that single capture gate. Despite the TryAcquire() function being boolean, different views or input devices according to the embodiment of D1 referred to by the appellant therefore share a common SingleCaptureGate, while according to claim 1 several exclusive touch flags can exist at the same time (see e.g. the patent in suit in figure 5A, exclusive touch flag set for the first view, and figure 5B, exclusive touch flag set for a second view).

Publication D1 is prior art under Article 54(3) EPC and therefore can only be used for assessing the requirement of novelty but not of inventive step. While the use of a token instead of a flag might be considered to be equivalent in the technical function, it is nevertheless a different feature. Applying the principle of photographic novelty, a flag is different from a token, because they are different technical concepts. Even if the use of a token instead of a flag were regarded as an obvious alternative (in the sense of another implementation scheme as mentioned in [0033] of D1) and, hence, equivalent, this is a question of assessing inventive step for which D1 is not available. The SingleCaptureGate in D1 when interpreted as a token therefore does not anticipate the use of a multi-touch flag or an exclusive touch flag according to claim 1.

4.4 However, the embodiment with capture gate allegedly interpreted to be a token is not the only disclosure for an implementation of the capture gate functionality in D1. The respondent argued with regard to [0028] of D1 that the CaptureGate function can be implemented as a value of an attached property which would qualify as a flag. In its detailed argumentation, the respondent referred to SingleCaptureGate rather than to NCaptureGate (see section D.II of the letter dated 8 December 2014).

In the embodiment according to figures 2 and 3 of D1, control elements with a specific functionality as described in [0025] are provided. In particular, items 5 and 6 provide the skilled reader of D1 with the information that an exclusive touch scenario is foreseen (see item 5; limitation to avoid pressing UP and DOWN buttons and dragging the thumb slider, i.e. different views, at the same time) as well as a multi-touch scenario (see item 6; rest of controls can accept multiple inputs, i.e. multiple touches on a screen according to the introductory portion of D1).

Filtering out conflicting events according to D1 with SingleCaptureGate therefore concerns the situation of an exclusive flag for conflicting events between different views. In addition, D1 further discloses (see [0021]) that a control is configured to be multi-touch-aware so that it will capture any contact above it and will route all corresponding subsequent events to the control.

4.5 In view of the disclosure in D1 suggesting the implementation of SingleCaptureGate as a value of an attached property (see [0028]), or more concretely as shown in step 604 of figure 6 of D1 as a CaptureGate

status (see also [0035] on page 11, lines 1 and 2 of D1), the skilled reader would be taught to provide a memory location indicating whether such a status/property exists or not. He would then, on the basis of his expert knowledge, also consider a well known flag to be such a memory location. A flag is therefore implicitly disclosed. It follows that D1 therefore discloses both, multi-touch flags and exclusive flags according to claim 1.

- 4.6 By interpreting the SingleCaptureGate as in the reasoning above, the board does not see problems of an enabling disclosure in D1. In fact, objections by the appellant in this regard were presented only for the NCaptureGate functionality.
- 4.7 The board does not consider the disclosure of D1 referred to in the decision under appeal as a combination of separate embodiments of D1, as argued by the appellant, since the passage referred to in [0019] of D1 is background information relating to other more specific embodiments which follow in the description of D1 including [0031] onwards. As expressed for example in [0022], the specific teaching of D1 is meant to "extend the traditional approach" and, hence, the skilled reader of D1 would understand that the concrete embodiment disclosed in [0029] to [0035] has to be read with the traditional approach (see [0019] onwards) in mind.
5. According to D1, input is captured and events are distributed by multi-capture components 104, which are filtered out by capture gate components 106 (see e.g. [0018] of D1). While the board considers selectively sending and selectively ignoring as providing the same technical effect, i.e. sending or not sending

respective touch events, it nevertheless has to be kept in mind that D1 is prior art under Article 54(3) EPC.

With regard to the question whether selectively ignoring as disclosed in D1 can be regarded as anticipating the feature of selectively sending according to claim 1 and thus as novelty destroying, it has to be established whether the corresponding feature of claim 1 is directly and unambiguously disclosed in D1.

- 5.1 Bearing in mind the aforementioned principle of photographic novelty, it is apparent that ignoring on the one hand and sending on the other hand are not exactly the same, because they require different operations for handling the data. Even if both are regarded as providing the same technical effect, i.e. either touch event data is forwarded to the software elements for processing or not, this rather points toward both ways being technically equivalent. The question of equivalence, however, is part of the assessment of inventive step under Article 56 EPC and cannot be taken into account for novelty.
- 5.2 The board rather concurs with the appellant that D1 by teaching to selectively ignore touch data, while being silent on how touch data that is not ignored would be dealt with, may disclose an equivalent alternative to the claimed solution which might be obvious, but it does not take the skilled person all the way to the claimed solution. The board is not convinced that D1 directly and unambiguously discloses selectively sending touch event data to software elements.
- 5.3 The subject-matter of claim 1 is therefore considered to be novel over the disclosure of D1.

5.4 The same arguments apply, *mutatis mutandis*, to corresponding independent claims 11 and 21, which are therefore also novel. The dependent claims, because of their reference to the independent claims, are novel too.

6. As mentioned above, the revocation of the patent in suit in the decision under appeal was only based on the lack of novelty objection under Articles 54(3) and 100(a) EPC with regard to D1. This objection is not maintained by the board.

The decision stated that further prior art on record was not considered in the oral proceedings before the opposition division. Further prior art on record is therefore not matter to be reviewed in the appeal proceedings. The board therefore exercises its discretion under Article 111(1) EPC and, in accordance with the appellant's expectation (see letter dated 12 February 2016, page 5, third paragraph), remits the case to the opposition division for further prosecution.

## Order

### For these reasons it is decided that:

1. The decision under appeal is set aside.
2. The case is remitted to the opposition division for further prosecution.

The Registrar:

The Chair:



L. Malécot-Grob

A. Ritzka

Decision electronically authenticated