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Datasheet for the decision of 21 June 2018

Case Number: T 1459/15 - 3.5.05

Application Number: 08713567.9

Publication Number: 2126678

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Language of the proceedings: EN

Title of invention:
List scrolling and document translation, scaling, and rotation on a touch-screen display

Patent Proprietor:
APPLE INC.

Opponents:
Samsung Electronics GmbH (until 8 August 2014)
Motorola Mobility Germany GmbH
HTC Europe Co., Ltd (until 15 November 2012)

Headword:
Crossing document edges/APPLE

Relevant legal provisions:
EPC Art. 54, 56, 84, 123(2), 123(3)
RPBA Art. 12(4), 13(1)

Keyword:

Novelty - main request, auxiliary requests 1 and 8 (no)
Inventive step - auxiliary requests 3, 9 and 11 (no)
Admission of auxiliary requests 2 and 4 to 6 - (no)
Extension of scope of protection - auxiliary request 7 (yes)
Clarity - auxiliary requests 9 and 10 (no)
Added subject-matter - auxiliary request 10 (yes)

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Case Number: T 1459/15 - 3.5.05

D E C I S I O N
of Technical Board of Appeal 3.5.05
of 21 June 2018

Appellant: (Patent Proprietor)	Apple Inc. One Apple Park Way Cupertino CA 95014 UNITED STATES OF AMERICA
Representative:	COPA Copenhagen Patents Rosenørns Allé 1, 2nd floor 1970 Frederiksberg C (DK)
Respondent: (Opponent 2)	Motorola Mobility Germany GmbH Telco Kreisel 1 65510 Idstein (DE)
Representative:	Grosch, Marcus Quinn Emanuel Urquhart & Sullivan, LLP Mollstrasse 42 68165 Mannheim (DE)
Decision under appeal:	**Decision of the Opposition Division of the European Patent Office posted on 23 June 2015 revoking European patent No. 2126678 pursuant to Article 101(3)(b) EPC**

Composition of the Board:

Chair	A. Ritzka
Members:	K. Bengi-Akyuerek
	G. Weiss

Summary of Facts and Submissions

I. The appeal of the patent proprietor was lodged against the decision of the opposition division to revoke the present European patent as granted (main request) and as amended according to the claims of ten auxiliary requests for lack of novelty under Article 54 EPC (main request and first, second, fifth and eighth auxiliary requests), lack of inventive step under Article 56 EPC (third, sixth, seventh and ninth auxiliary requests) and extension of scope of protection under Article 123(3) EPC (fourth auxiliary request). Furthermore, the opposition division did not admit the tenth auxiliary request into the proceedings on the ground that it was late-filed and not *prima facie* allowable under Article 123(2) EPC.

II. The following prior-art documents were *inter alia* cited in the decision under appeal:

D12: WO-A-03/081458;

D15: A.K. Karlson et al.: "AppLens and LaunchTile: Two Designs for One-Handed Thumb Use on Small Devices", Proceedings on Conference CHI 2005, pp. 201-210, April 2005.

III. With its statement setting out the grounds of appeal, the appellant filed claim sets according to a main request and eight auxiliary requests. It requested that the decision under appeal be set aside and that the patent be maintained on the basis of the claims as granted (main request) or the amended claims of one of first to eighth auxiliary requests.

IV. In its letter of reply, the respondent requested that the appeal be dismissed and that the patent as granted

or amended be revoked in its entirety on the grounds of lack of novelty and/or lack of inventive step (Articles 54 and 56 EPC) and extension of scope of protection (Article 123(3) EPC) and set out its reasons therefor.

V. With a letter of reply, the appellant submitted amended claims according to new fourth to sixth auxiliary requests, maintained the claims of the previous fourth to eighth auxiliary requests renumbered as seventh to eleventh auxiliary requests, respectively, and provided counter-arguments in support of the allowability of the patent as granted or as amended.

VI. In response to the appellant's letter of reply, the respondent submitted that the new fourth to sixth auxiliary requests should not be admitted into the appeal proceedings under Article 12(4) RPBA and that they lacked clarity, novelty and inventive step.

VII. In a communication annexed to the summons to oral proceedings pursuant to Article 15(1) RPBA, the board expressed its preliminary opinion on the appeal. In particular, it set out a claim construction and made observations with regard to the admissibility of the second and fourth to sixth auxiliary requests, the grounds of added subject-matter (Article 123(2) EPC) and clarity (Article 84 EPC) and the question of novelty and inventive step (Articles 54 and 56 EPC), having regard to D12 and D15.

VIII. In a letter of reply, the respondent advanced observations on the board's communication under Article 15(1) RPBA, in particular as regards the interpretation of the teaching of D12 and the matter of

added subject-matter.

IX. With its letter dated 19 May 2018 in reply to the summons, the appellant filed amended claims according to new fourth to sixth, ninth and eleventh auxiliary requests replacing the corresponding auxiliary requests on file, and provided its observations on the board's communication under Article 15(1) RPBA.

X. In response to the appellant's letter of reply, the respondent objected to the admissibility of the new auxiliary requests.

XI. Oral proceedings were held on 21 June 2018, during which the admissibility and/or allowability of all claim requests on file were discussed.

- The appellant's final request was that the decision under appeal be set aside and that the patent be maintained as granted (main request) or that the patent be maintained in amended form on the basis of the claims according to present auxiliary requests 1 to 3, 7, 8 and 10, filed with the statement setting out the grounds of appeal, or according to auxiliary requests 4 to 6, 9 and 11 filed with letter dated 19 May 2018.

- The respondent's final request was that the appeal be dismissed.

At the end of the oral proceedings, the board's decision was announced.

XII. Claim 1 of the patent as granted (**main request**) reads as follows:

"A computer-implemented method, comprising:
at a device (100;1700) with a touch screen display (112;1740):
detecting (702) a movement of an object on or near the touch screen display;
in response to detecting the movement, translating (704) an electronic document displayed on the touch screen display in a first direction;
characterized by
in response to translating, in the first direction, the electronic document beyond an edge of the electronic document while the object is still detected on or near the touch screen display (710 - Yes), displaying (714) an area beyond the edge of the document; and
in response to detecting that the object is no longer on or near the touch screen display, translating (72) the electronic document in a second direction until the area beyond the edge of the electronic document is no longer displayed."

Claim 19 of the main request reads as follows:

"A device (100; 1700), comprising:
a touch screen display (112; 1740);
one or more processors (120; 1710); and
a computer readable storage medium according to claim 18."

Claim 1 of the **first auxiliary request** reads as follows (amendments to claim 1 of the main request indicated by the board):

"A computer-implemented method, comprising:
at a device (100;1700) with a touch screen display (112;1740):

displaying an electronic document on the touch screen display, said electronic document comprising a first portion displayed on the touch screen display and at least another portion that extends beyond the portion displayed on the touch screen display;

detecting (702) a movement of an object on or near the touch screen display;

in response to detecting the movement, translating (704) the electronic document displayed on the touch screen display in a first direction to display at least part of the another portion of the electronic document;

characterized by

in response to translating, in the first direction, the electronic document beyond an edge of the electronic document while the object is still detected on or near the touch screen display (710 - Yes), displaying (714) an area beyond the edge of the document; and

in response to detecting that the object is no longer on or near the touch screen display, translating (72) the electronic document in a second direction until the area beyond the edge of the electronic document is no longer displayed."

Claim 1 of the **second auxiliary request** comprises all the features of claim 1 of the first auxiliary request, and adds the following clause to its preamble portion:

", wherein the electronic document is one of a web page (3912), digital image, word processing, spreadsheet, email, presentation document".

Claim 1 of the **third auxiliary request** comprises all the features of claim 1 of the second auxiliary

request, and adds the following clause to its characterising portion:

", wherein the second direction is opposite the first direction".

Claim 1 of the **fourth auxiliary request** reads as follows (amendments to claim 1 of the third auxiliary request indicated by the board):

"A computer-implemented method, comprising:
at a device (100;1700) with a touch screen display (112;1740):
displaying an electronic document in an allotted screen area on the touch screen display, said electronic document comprising a first portion displayed in the allotted screen area on the touch screen display and at least another portion that extends beyond the portion displayed in the allotted screen area on the touch screen display;
detecting (702) a movement of an object on or near the touch screen display;
in response to detecting the movement, translating (704) the electronic document displayed in the allotted screen area on the touch screen display in a first direction to display at least part of the another portion of the electronic document in the allotted screen area, wherein the electronic document is one of a web page (3912), digital image, word processing, spreadsheet, email, presentation document;
characterized by
in response to translating, in the first direction, the electronic document beyond an edge of the electronic document while the object is still detected on or near the touch screen display (710 - Yes), displaying (714) an area beyond the edge of the

document in the allotted screen area on the touch screen display; and

in response to detecting that the object is no longer on or near the touch screen display, translating (72) the electronic document in a second direction until the area beyond the edge of the electronic document is no longer displayed in the allotted screen area on the touch screen display, wherein the second direction is opposite the first direction."

Claim 1 of the **fifth auxiliary request** reads as follows (amendments to claim 1 of the fourth auxiliary request indicated by the board):

"A computer-implemented method, comprising:

at a device (100;1700) with a touch screen display (112;1740):

displaying an electronic document in an allotted screen area on the touch screen display, said electronic document comprising a first portion displayed in the allotted screen area on the touch screen display and at least another portion that extends beyond the portion displayed in the allotted screen area on the touch screen display;

detecting (702) a movement of an object on or near the touch screen display;

in response to detecting the movement, translating (704) the electronic document displayed in the allotted screen area on the touch screen display in a first direction to display at least part of the another portion of the electronic document in the allotted screen area, wherein the electronic document is one of a web page (3912), digital image, word processing, spreadsheet, email, presentation document;

characterized by

in response to translating, in the first direction, the electronic document beyond an edge of the electronic document while the object is still detected on or near the touch screen display (710 - Yes), displaying (714) an area beyond the edge of the document and a part of the edge of the electronic document in the allotted screen area on the touch screen display; and

in response to detecting that the object is no longer on or near the touch screen display, translating (72) the electronic document in a second direction until the area beyond the edge of the electronic document and said part of the edge of the electronic document are no longer displayed in the allotted screen area on the touch screen display, wherein the second direction is opposite the first direction."

Claim 1 of the **sixth auxiliary request** comprises all the features of claim 1 of the fifth auxiliary request with the only difference being that its last paragraph has been replaced by the following clause (amendments indicated by the board):

> "in response to detecting that the object is no longer on or near the touch screen display, translating (72) the electronic document in a second direction until the area beyond the edge of the electronic document and said part of the edge of the electronic document are no longer displayed in the allotted screen area on the touch screen display, wherein the second direction is opposite the first direction, such that said part of the edge of the electronic document is aligned with an edge of the allotted screen area."

Claim 1 of the **seventh auxiliary request** (submitted as fourth auxiliary request with the statement setting out the grounds of appeal) reads as follows:

"A computing device (100;1700) with a touch screen display (112;1740), the device comprising:
means for detecting (702) a movement of an object on or near the touch screen display;
means for translating (704) an electronic document displayed on the touch screen display in a first direction in response to detecting the movement,
means for displaying (714) an area beyond the edge of the document in response to translating, in the first direction, the electronic document beyond an edge of the electronic document while the object is still detected on or near the touch screen display (710 - Yes); and
means for translating (72) the electronic document in a second direction until the area beyond the edge of the electronic document is no longer displayed in response to detecting that the object is no longer on or near the touch screen display."

Claim 1 of the **eighth auxiliary request** (submitted as fifth auxiliary request with the statement setting out the grounds of appeal) reads as follows:

"A computer readable storage medium having stored therein instructions, which when executed by a processor of a device (100;1700) with a touch screen display (112;1740), cause the device to:
detect (702) a movement of an object on or near the touch screen display;
translate (704) the electronic document displayed on the touch screen display in a first direction in response to detecting the movement;

characterized in that

the instructions when executed on the device further cause the device to:

display (714) an area beyond an edge of the electronic document, if (710 - Yes), the electronic document is translated, in the first direction, beyond the edge of the electronic document while the object is still detected on or near the touch screen display; and

translate (720) the electronic document in a second direction until the area beyond the edge of the electronic document is no longer displayed in response to detecting that the object is no longer on or near the touch screen display."

Claim 1 of the **ninth auxiliary request** reads as follows (amendments to claim 1 of the main request indicated by the board):

"A computer-implemented method to provide a visual indictor [sic] to a user that an edge of an electronic document is being displayed, comprising:

at a device (100;1700) with a touch screen display, wherein the electronic document fills more than an allotted screen area (112;1740):

detecting (702) a movement of an object on or near the touch screen display;

in response to detecting the movement, translating (704) the electronic document displayed on the touch screen display in a first direction, including movement in a vertical direction; and including translation prior to the edge of an electronic document reaching the display; wherein the edge is a terminus of the electronic document in the vertical direction

in response to translating, in the first direction, the electronic document beyond the edge of the

electronic document while the object is still detected on or near the touch screen display (710 - Yes), displaying (714) an area beyond the edge of the document; and

in response to detecting that the object is no longer on or near the touch screen display, translating (72) the electronic document in a second direction until the area beyond the edge of the electronic document is no longer displayed."

Claim 1 of the **tenth auxiliary request** (submitted as seventh auxiliary request with the statement setting out the grounds of appeal) reads as follows (amendments to claim 1 of the main request indicated by the board):

"A computer-implemented method to provide a visual indicator to a user that an edge is being displayed, comprising:

at a device (100;1700) with a touch screen display (112;1740), the steps of:

detecting (702) a movement of an object on or near the touch screen display;

in response to detecting the movement, translating (704) an electronic document displayed on the touch screen display in a first direction including translation prior to the edge of the electronic document reaching the display;

in response to determining that the edge of the electronic document does reach the display while translating the electronic document in the first direction while the object is still detected on or near the touch screen display (710 - Yes 712) performing the steps of translating, in the first direction, the electronic document beyond an edge of the electronic document and (710 - Yes), displaying (714) an area beyond the edge of the document, and in response to

detecting that the object is no longer on or near the touch screen display, translating (72) the electronic document in a second direction until the area beyond the edge of the electronic document is no longer displayed;

and in response to determining that the edge of the electronic document does not reach the display while translating the electronic document in the first direction while the object is still detected on or near the touch screen display (710 - No 712), not performing any further steps until another movement of an object on or near the touch screen display."

Claim 1 of the **eleventh auxiliary request** reads as follows (amendments to claim 1 of the main request indicated by the board):

"A computer-implemented method for providing a visual indicator that one or more edges of a translatable electronic document are being displayed, wherein the electronic document is a webpage which is larger than an allotted screen area, the method comprising:

at a device (100;1700) with a touch screen display (112;1740):

displaying the first portion of the electronic document on the touch screen display;

detecting (702) a movement of an object on or near the touch screen display;

in response to detecting the movement, translating (704) the electronic document displayed on the touch screen display in a first direction;

characterized by

in response to translating, in the first direction, the electronic document beyond the edge of the electronic document while the object is still detected

on or near the touch screen display (710 - Yes), displaying (714) an area beyond the edge of the document; and

in response to detecting that the object is no longer on or near the touch screen display, translating (72) the electronic document in a second direction until the area beyond the edge of the electronic document is no longer displayed."

Reasons for the Decision

1. *Subject-matter claimed*

1.1 The present invention is best illustrated by Figures 8C and 8D of the patent in suit:

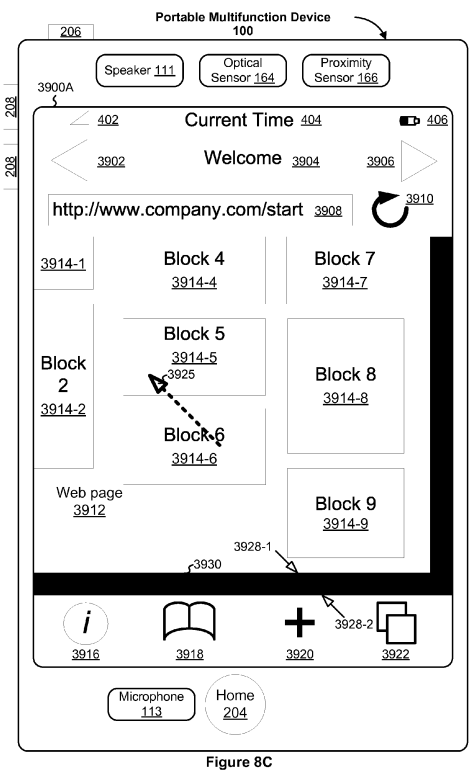

Figure 8C

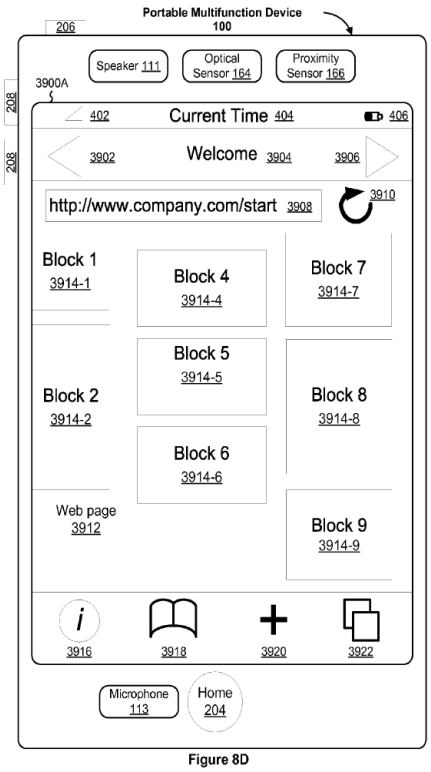

Figure 8D

1.2 Claim 1 of the patent as granted (**main request**) comprises the following features, as labelled by the

board (with references to Figures 8C and 8D in parentheses):

A computer-implemented method, comprising at a device with a touch-screen display the steps of:

A) detecting a movement ("swipe gesture 3925") of an object on or near the touch-screen display (see Fig. 8C);
B) in response to detecting the movement, translating an electronic document ("web page 3912") displayed on the touch-screen display in a first direction ("upward-left direction"; see Fig. 8C);
C) in response to translating, in the first direction, the electronic document beyond an edge ("edge 3928-1") of the electronic document while the object is still detected on or near the touch-screen display, displaying an area ("black area 3930") beyond the edge of the document (see Fig. 8C);
D) in response to detecting that the object is no longer on or near the touch-screen display, translating the electronic document in a second direction (i.e. "downward-right direction") until the area beyond the edge of the electronic document is no longer displayed (see Fig. 8D).

1.3 Claim 1 of the patent as amended according to the first to eleventh auxiliary requests further specifies that (emphasis added by the board)

E) said electronic document comprises a first portion (i.e. portion shown in Fig. 8C) displayed on the touch-screen display and at least another portion (i.e. portion shown in Fig. 8D) that extends beyond the portion displayed on the touch-screen

display, and is translated in the first direction to display at least part of the another portion of the electronic document (**first to fifth auxiliary requests**);

F) the electronic document is one of a web page, digital image, word-processing spreadsheet, email, presentation document (**second to fifth auxiliary requests**);

G) the second direction is opposite the first direction (**third to fifth auxiliary requests**);

H) the electronic document is displayed in an allotted screen area ("user interface 3900A") on the touch-screen display and the first portion and the area beyond the edge of the document are displayed in said allotted screen area (**fourth and fifth auxiliary requests**);

I) a part of the edge of the electronic document is displayed in the allotted screen area in response to translating in the first direction and said part of the edge of the electronic document is no longer displayed in response to translating in the second direction (**fifth and sixth auxiliary requests**);

J) translating the electronic document in the second direction is such that said part of the edge of the electronic document is aligned with an edge ("edge 3928-2") of the allotted screen area (**sixth auxiliary request**);

K) means for detecting, translating and displaying are used in a computing device to perform the method of claim 1 of the main request (**seventh auxiliary request**);

L) a computer-readable storage medium comprising instructions to perform the method of claim 1 of the main request (**eighth auxiliary request**);

M) the method is used to provide a visual indicator to a user that edge(s) of the electronic document is(are) being displayed (**ninth to eleventh auxiliary requests**);

N) the electronic document fills more than an allotted screen area and translating the electronic document in a first direction includes movement in the vertical direction and a translation prior to the edge of an electronic document reaching the display, wherein the edge is a terminus of the electronic document in the vertical direction (**ninth auxiliary request**);

O) translating the electronic document in a first direction includes translation prior to the edge of an electronic document reaching the display and in response to determining that the edge of the electronic document does reach the display while translating, performing the steps of translating beyond an edge of the electronic document and in response to determining that the edge of the electronic document does not reach the display while translating, not performing any further steps until another movement of the object (**tenth auxiliary request**);

P) the electronic document is a webpage which is larger than an allotted screen area, and the first portion of the electronic document is displayed on the display (**eleventh auxiliary request**).

For the sake of consistency, the step of translating according to feature C) is called the "first translation", while the step of translating according to feature D) is called the "second translation" in the following.

2. *Claim construction*

The board understands that the term "electronic document" recited in claim 1 refers to an information unit (such as a web page, digital image or email) that can be displayed on an electronic device and that has logical, machine-detectable boundaries (such as "edges") and distinct, viewable portions.

3. MAIN REQUEST

Claim 1 of the main request is identical to claim 1 as granted.

3.1 *Novelty (Article 54 EPC)*

3.1.1 The respondent's assessment of novelty and inventive step as regards the opposed patent relies essentially on the embodiment relating to Figure 14B of prior-art document **D12**.

The relevant embodiment of D12 discloses a portable device on which a web page ("page 1210") is reformatted into three columns ("left column 1215"; "centre column 1220"; "right column 1225") and displayed on its touch screen. The text of a sub-page displayed by a "display window 1205" is, upon moving an object ("stylus 1200"), translated ("vertical touch-and-drag scrolling") in a first direction (see e.g. page 14, lines 18-20: *"... the user can use a stylus 1200 to scroll a display window 1205 vertically down a page 1210 in order to read a column 1215, 1220 or 1225 of text of the page 1205 ..."*; page 14, line 31: *"... the user scrolls the page up or down ..."*).

Figure 14B of D12 looks as follows:

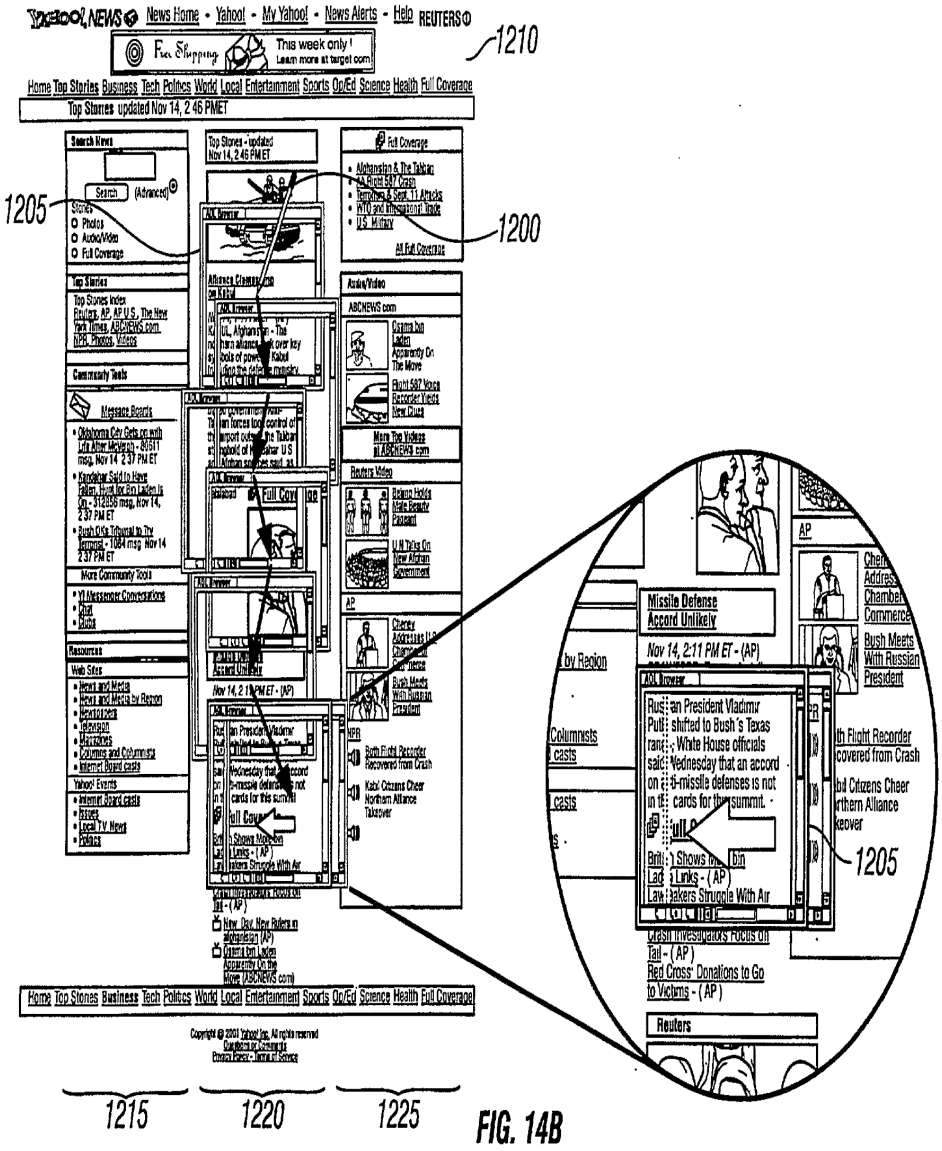

FIG. 14B

3.1.2 If the sub-page is translated beyond the right boundary of centre column 1220 of the web page, an area (i.e. right part of window 1205 displayed before the horizontal snap operation; see zoomed-in circle of Fig. 14B) is displayed beyond that boundary, and the sub-page, upon lifting the object, is then automatically translated ("snap-on-column") in a second direction different from the first direction such that

the previously displayed area disappears (see e.g. page 15, lines 18-21: *"... when the user lifts the pen 1200 from the display 1205. This causes the logical column 1220 to snap into alignment with the display window 1205 as the user stops scrolling ..."*).

3.1.3 With regard to the teaching of D12, the appellant argued that a single column itself could not be equated with an "electronic document" as claimed, and that consequently the edge between centre column 1220 and right column 1225 of the web page in D12 did not correspond to the edge of such an electronic document.

The board however agrees with the respondent that the sub-page shown in display window 1205 and dragged within centre column 1220 according to Figure 14B of D12 in fact constitutes an information unit that can be displayed on an electronic device and that has logical boundaries (i.e. left/right boundaries of centre column 1220) and distinct portions within the meaning of the definition given in point 2 above. Consequently, the sub-page shown in window 1205 can indeed be equated with an "electronic document" as claimed. Furthermore, given that an explicit graphical representation of boundaries (i.e. edges) of the electronic document claimed is not required according to the present invention, the logical boundary between centre column 1220 and right column 1225 in Figure 14B may well be regarded as an "edge" within the meaning of claim 1.

3.1.4 As to features C) and D) of present claim 1, the appellant argued that D12 relied on a "hard stop" rather than a "soft stop" as performed according to the present invention. Such a "soft stop" was characterised by two conditional features of claim 1, namely (i) that

an area, which had not been shown before, was displayed beyond the edge of the electronic document "in response to" translating the electronic document in the first direction and (ii) that the electronic document was translated in a second direction "until" that area was no longer displayed.

In that regard, the board first notes that the wording of feature C) is silent as to whether or not the "beyond-the-edge area" was displayed beforehand. Secondly, the board agrees with the respondent that, in accordance with condition (i) of claim 1, document D12 similarly teaches that, in response to the user moving window 1205 beyond the boundary between the centre and right columns, an area beyond that boundary is presented, as illustrated in the zoomed-in circle of Figure 14B. Moreover, in accordance with condition (ii), Figure 14B likewise demonstrates that window 1205 is bounced back beyond the boundary between the centre and right columns 1220 and 1225 until the "beyond-the-edge area" virtually disappears (see also page 15, lines 25-28: *"... If the user's scrolling exceeds the threshold, which indicates an intention to move beyond the boundary of the logical column 1220, the display is snapped to the adjacent or repositioned column ..."*. Given that the corresponding boundary is traversed before window 1205 snaps back, the board further holds that the "snap-on-column" functionality of D12 in fact corresponds to a "soft stop" as taught by the present invention.

3.1.5 In conclusion, prior-art document D12 discloses the following features of claim 1:

A computer-implemented method, comprising at a device ("PDA") with a touch-screen display (see Fig. 14B):

A) detecting a movement ("vertical touch-and-drag scrolling") of an object ("stylus 1200") on the touch-screen display (see page 14, lines 18-21; Fig. 14B);

B) in response to detecting the movement, translating ("scrolling") an electronic document ("sub-page" shown by "display window 1205" on "centre column 1220") displayed on the touch-screen display in a first direction (see page 14, line 31: *"... the user scrolls the page up or down with the stylus 1200 ..."*; Fig. 14B);

C) in response to translating, in the first direction, the electronic document beyond an edge ("boundary" between window 1205 of column 1220 and windows of column 1225) of the electronic document while the object is still detected on the touch-screen display, displaying an area (right part of "window 1205" displayed before the horizontal snap operation) beyond the edge of the electronic document (see e.g. zoomed-in circle of Fig. 14B);

D) in response to detecting that the object is no longer on the touch-screen display ("user lifts the pen 1200"), translating ("snap-on-column") the electronic document in a second direction (i.e. to the left) until the area (right part of "window 1205") beyond the edge of the electronic document is no longer displayed (see page 15, lines 18-21: *"... when the user lifts the pen 1200 from the display 1205. This causes the logical column 1220 to snap into alignment with the display window 1205 as the user stops scrolling ..."*).

3.1.6 The appellant further argued at the oral proceedings before the board that the system in D12 was concerned with avoiding wobbling between the different columns of

a web page rather than providing continuous visual feedback to indicate that the user's intent is understood and that the edge of the electronic document has been reached.

However, the board notes that the information on the aim and purpose associated with a certain feature has no bearing on the assessment of whether or not that specific feature is anticipated by a prior-art document. Rather, regardless of whether the snap-in functionality in D12 is applied to avoid wobbling between columns or for any other reason, what really matters in the context of assessing novelty in this case is that D12 palpably discloses the two types of translation as claimed.

3.2 In view of the above, present claim 1 lacks novelty over D12. Hence, the main request is not allowable under Article 54 EPC.

4. FIRST AUXILIARY REQUEST

Added feature E) of this auxiliary request specifies in essence that the electronic document consists of two different portions which may be displayed.

4.1 *Novelty (Article 54 EPC)*

4.1.1 As to new feature E), it is apparent to the board that according to Figure 14B of D12 the user may move the sub-page shown in window 1205 in a substantially vertical direction such that another, presently not visible portion of it appears (see e.g. drag movements in centre column 1220 of Fig. 14B). Therefore, the board concurs with the respondent that feature E) cannot render novel the subject-matter claimed over

document D12.

4.2 Hence, the first auxiliary request is not allowable under Article 54 EPC either.

5. SECOND AUXILIARY REQUEST

Claim 1 of this auxiliary request differs from claim 1 of the second auxiliary request underlying the appealed decision in that the expression "or includes a list of items" has been deleted in feature F) such that the electronic document can no longer be a list of items. This amendment was filed for the first time with the statement setting out the grounds of appeal.

In appeal proceedings, the admissibility of claim amendments filed with the statement setting out the grounds of appeal, which "shall contain a party's complete case" (Article 12(2) RPBA), is governed by Article 12(4) RPBA, which confers on a board the discretionary power "to hold inadmissible facts, evidence or requests which could have been presented or were not admitted in the first instance proceedings".

5.1 *Admissibility under Article 12(4) RPBA*

5.1.1 As to the second auxiliary request, the appellant submitted that the deletion of "or includes a list of items" in feature F) constituted a minor amendment and an appropriate reaction to the decision under appeal as regards the second auxiliary request then on file.

5.1.2 The board notices from the file that the opposition division's communication accompanying the summons to oral proceedings included the following statement with respect to the second auxiliary request on file (see

page 28, point 44):

> *"Given the fact that document D12 discloses that the column (i.e. the electronic document) comprises various text portions and text images (see e.g. figure 12) it is considered that a list of items is known from the document."*

The board concurs with the respondent that the removal of "or includes a list of items" from claim 1 of that auxiliary request would have been an appropriate reaction to the opposition division's objection at that stage. The appellant however failed to do so. On an objective assessment, the appellant therefore could and should have presented that claim amendment already in the opposition proceedings and not have waited until the appeal proceedings.

5.2 In view of the above, the board decided not to admit the second auxiliary request into the appeal proceedings under Article 12(4) RPBA.

6. THIRD AUXILIARY REQUEST

Added feature F) of this auxiliary request lists possible types of electronic document, while new feature G) requires that the second translation's direction is opposite to the first one.

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

6.1.1 The feature analysis and observations set out in points 3.1.2 to 3.1.6 above as regards features A) to D) apply *mutatis mutandis* to present claim 1.

6.1.2 As to added feature F), the board notes that D12 relies on a web page, thus palpably anticipating that feature (see e.g. "web page 1210" in Fig. 14B).

6.1.3 As to new feature G), the board deduces from the teaching of D12 that the first translation is associated with a right/down movement, whereas the second translation ("snap-in") corresponds to a movement to the left (see Fig. 14B). Accordingly, the board is satisfied that added feature G) renders the subject-matter of present claim 1 novel over D12 (Article 54 EPC).

However, as to inventive step, the concrete directions of document movements in this case relate to the manner *how* cognitive content is conveyed to the user and primarily depend on subjective user preferences or user experience studies, rather than on technical considerations relating to providing device-specific and performance-oriented improvements as regards the implementation of a certain touch-screen device.

If such user preferences or studies mandate the implementation of opposite directions as regards the first and second translations in the framework of an objective problem posed, the person skilled in the field of GUI design would have no difficulties in replacing a right/down-to-left movement into a right/down-to-left/up movement in accordance with the subject-matter claimed. Thus, no contribution to an inventive step can be acknowledged.

6.2 Hence, the third auxiliary request is not allowable under Article 56 EPC.

7. FOURTH, FIFTH AND SIXTH AUXILIARY REQUESTS

The amended claim sets of the present fourth to sixth auxiliary requests were filed for the first time with the appellant's letter dated 19 May 2018, i.e. *after* filing the statement setting out the grounds of appeal (see point IX above).

In appeal proceedings, the admissibility of claim amendments filed after a party has submitted its statement setting out the grounds of appeal is governed by Article 13 RPBA. By virtue of Article 13(1) RPBA, a board's discretion in admitting any amendment to a party's case "shall be exercised in view of inter alia the complexity of the new subject-matter submitted, the current state of the proceedings and the need for procedural economy".

7.1 *Admissibility under Article 13(1) RPBA*

7.1.1 In this context, the appellant submitted that these auxiliary requests were filed in reaction to the respondent's letter of reply to the statement setting out the grounds of appeal and that they did not introduce added subject-matter within the meaning of Article 123(2) EPC.

7.1.2 As to the substantive aspects of the present auxiliary requests, i.e. their *prima facie* allowability, the board holds that feature H) of the fourth and fifth auxiliary requests, which is actually taken from the patent's description as filed (cf. paragraphs [00157] and [00162]) and which specifies that the electronic document is displayed in an "allotted screen area", is not clearly defined (Article 84 EPC). This is because it is not clear whether said "allotted screen area" in

fact belongs to the touch-screen display or to the electronic document or to something else.

Moreover, as to feature J) of the sixth auxiliary request, which is likewise taken from the patent's description as filed (cf. paragraphs [00157] to [00162]) and which implies that parts of the edges of the electronic document and said allotted screen area are aligned following the second translation, the board finds that there is no clear disclosure in the patent's originally filed description as to aligning a part of the edge of the electronic document with an edge of the allotted screen area during the second translation (cf. paragraphs [00150] and [00162]), contrary to the requirements of Article 123(2) EPC.

7.2 Hence, the board decided not to admit the fourth to sixth auxiliary requests into the appeal proceedings under Article 13(1) RPBA.

8. SEVENTH AUXILIARY REQUEST

In this auxiliary request, all the method claims have been deleted. It only includes a claim (i.e. claim 1) directed to a "computing device" and a claim (i.e. claim 2) directed to a "computer readable storage medium".

8.1 *Extension of scope of protection (Article 123(3) EPC)*

8.1.1 The board agrees with the opposition division (cf. appealed decision, Reasons 5.1) and the respondent that the scope of present claim 1 is extended beyond that of claim 19 as granted (see point XII above), since it no longer comprises a "computer readable storage medium"

as opposed to claim 19 of the patent as granted.

8.1.2 The appellant did not further comment on that objection at the oral proceedings before the board.

8.2 In conclusion, the seventh auxiliary request is not allowable under Article 123(3) EPC.

9. EIGHTH AUXILIARY REQUEST

This auxiliary request comprises a single claim only directed to a "computer readable storage medium".

9.1 *Novelty (Article 54 EPC)*

9.1.1 The feature analysis and observations set out in points 3.1.2 to 3.1.6 above as regards features A) to D) apply *mutatis mutandis* to the present claim.

9.1.2 The board concurs with the respondent that the formulation using an "if clause" as regards the first translation (i.e. to display an area beyond an edge of the electronic document if the electronic document is translated, in the first direction, beyond the edge of the electronic document while the object is still detected on or near the touch-screen display; see point XII above) does not lead to another interpretation of feature C) according to which an area beyond an edge of the electronic document is to be displayed in response to the first translation.

9.1.3 Accordingly, this re-formulation of feature C) likewise cannot render present claim 1 novel over D12.

9.2 In view of the above, the eighth auxiliary request is not allowable under Article 54 EPC either.

10. NINTH AUXILIARY REQUEST

Added feature M) of this auxiliary request indicates the purpose of the claimed method (i.e. "to provide a visual indicator to a user that edge(s) of the electronic document is(are) being displayed"), while new feature N) essentially requires that the electronic document is longer than the screen allotted to display the document in a vertical direction. The board admitted the ninth auxiliary request into the appeal proceedings since its submission was considered to be an appropriate reaction to the board's objections under Article 123(2) EPC.

10.1 *Clarity (Article 84 EPC)*

As to new feature N), the board notes that it is not clear whether "allotted screen area" belongs to the touch-screen display or to the electronic document or to something else (see also point 7.1.2 above).

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

10.2.1 The feature analysis and observations set out in points 3.1.2 to 3.1.6 above as regards features A) to D) apply *mutatis mutandis* to present claim 1.

10.2.2 As to feature M), the board holds that the "snap-in functionality" applied in D12 also constitutes a visual indication for the user, providing continuous visual feedback to indicate that a boundary has been reached. Thus, feature M) is considered to be anticipated by

document D12.

10.2.3 As to added feature N), the board concedes that there is no vertical boundary disclosed in Figure 14B of D12 and that this feature, consequently, renders present claim 1 novel (Article 54 EPC). However, the question whether the described snap-in functionality is applied only to horizontal movements in the event of multiple page *columns* or to vertical movements in the event of multiple page *rows* or to both depends on GUI design requirements or constraints and can be readily implemented by the skilled GUI designer. Therefore, feature N) cannot contribute to an inventive step either.

10.3 In sum, the ninth auxiliary request is not allowable under Articles 84 and 56 EPC.

11. TENTH AUXILIARY REQUEST

Added feature O) of this auxiliary request essentially indicates that no further steps are undertaken during the first translation until a different movement is executed if it is determined "that the edge of the electronic document does not reach the display".

11.1 *Added subject-matter (Article 123(2) EPC)*

11.1.1 As to feature O), the present application as originally filed teaches that, during the first translation, an edge of the electronic document may be reached and not that the edge of the electronic document itself reaches the display (cf. paragraphs [00148], [00149] and [00151]). Furthermore, the original application indicates merely that the process is complete (rather than that no further steps are performed) if it is

determined that an edge of the electronic document is not reached during the first translation (see in particular paragraph [00153], in conjunction with Fig. 7, steps 710 and 712). Thus, feature O) does not have a basis in the present application as originally filed and therefore constitutes added subject-matter.

11.2 *Clarity (Article 84 EPC)*

In addition, as regards feature O), the board takes the view that the technical meaning of the fact that an edge of an electronic document could reach the display is apparently unclear to the skilled reader, contrary to the requirements of Article 84 EPC.

11.3 Hence, the tenth auxiliary request is not allowable under Articles 123(2) and 84 EPC.

12. ELEVENTH AUXILIARY REQUEST

Added feature P) of this auxiliary request indicates that the electronic document is supposed to be larger than the allotted screen area. The board admitted the eleventh auxiliary request into the appeal proceedings because its submission was considered to be an appropriate reaction to the board's objections under Article 123(2) EPC.

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

12.1.1 The feature analysis and observations set out in points 3.1.2 to 3.1.6 above as regards features A) to D) and in point 10.2.2 above as regards feature M) apply *mutatis mutandis* to present claim 1.

12.1.2 As to feature P), the board agrees with the respondent that the term "allotted screen area" is not clear (see points 7.1.2 and 10.1 above) and that the person skilled in the field of GUI design would be aware from D12 that the sub-page shown in window 1205 could realistically be larger than the screen area allotted to centre column 1220 and that, in such a situation, the portions that are presently invisible could be viewed by scrolling vertically with user's stylus 1200 without encountering technical difficulties and without exercising inventive skills.

12.2 Hence, the eleventh auxiliary request is not allowable under Article 56 EPC.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar: The Chair:

K. Götz-Wein A. Ritzka

Decision electronically authenticated