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**Datasheet for the decision  
of 5 June 2019**

**Case Number:** T 1695/15 - 3.5.05

**Application Number:** 09834408.8

**Publication Number:** 2369449

**IPC:** G06F3/041

**Language of the proceedings:** EN

**Title of invention:**

INPUT DEVICE

**Applicant:**

Kyocera Corporation

**Headword:**

Click haptic feedback/KYOCERA

**Relevant legal provisions:**

RPBA Art. 13(1)

**Keyword:**

Late-filed requests - admitted (no)

**Decisions cited:**



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Case Number: T 1695/15 - 3.5.05

**D E C I S I O N**  
**of Technical Board of Appeal 3.5.05**  
**of 5 June 2019**

**Appellant:** Kyocera Corporation  
(Applicant) 6, Takedatobadono-cho  
Fushimi-ku  
Kyoto-shi  
Kyoto 612-8501 (JP)

**Representative:** SSM Sandmair  
Patentanwälte Rechtsanwalt  
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**Decision under appeal:** **Decision of the Examining Division of the  
European Patent Office posted on 11 February  
2015 refusing European patent application No.  
09834408.8 pursuant to Article 97(2) EPC.**

**Composition of the Board:**

**Chair** A. Ritzka  
**Members:** P. Cretaine  
F. Blumer

## Summary of Facts and Submissions

I. This appeal is against the decision of the examining division, posted on 11 February 2015, refusing European patent application No. 09834408.8. The application was refused for lack of novelty (Article 54 EPC) of a main request over

D2: US 2006/0119586.

A first auxiliary request was refused for lack of inventive step (Article 56 EPC) over D2 or

D1: I. S. MACKENZIE et al: "The tactile touchpad", CHI'97 EXTENDED ABSTRACTS ON HUMAN FACTORS IN COMPUTING SYSTEMS LOOKING TO THE FUTURE, USA, 1 January 1997, pages 309 and 310.

A second auxiliary request was refused for lack of inventive step (Article 56 EPC) over D2.

II. Notice of appeal was received on 10 April 2015, and the appeal fee was paid on the same day. The statement setting out the grounds of appeal was received on 9 June 2015. The appellant requested that the decision under appeal be set aside and that a patent be granted on the basis of a main request or, in the alternative, an auxiliary request submitted with the statement setting out the grounds of appeal. The appellant also requested oral proceedings in the event that neither of the two requests was allowed.

III. A summons to oral proceedings was issued on 19 March 2019. In a communication annexed to the summons, the board gave its preliminary opinion on the case, namely that the main request did not meet the

requirements of Article 56 EPC in view of D1 or D2, and that the first auxiliary request did not meet the requirements of Article 54 EPC in view of D2.

- IV. With a letter of response dated 30 April 2019, the appellant filed a new main request and a new auxiliary request replacing the requests on file.
- V. Oral proceedings were held on 5 June 2019. During the proceedings, the appellant submitted the former main request (as filed with the statement setting out the grounds of appeal of 9 June 2015) as an auxiliary request 2 and renamed the previous auxiliary request as auxiliary request 1. The appellant requested that the decision under appeal be set aside and that a patent be granted on the basis of any of the following requests:
- main request, filed with letter dated 30 April 2019,
  - auxiliary request 1, filed as "Auxiliary Request" with letter dated 30 April 2019, or
  - auxiliary request 2, filed as "Main Request" with the statement setting out the grounds of appeal dated 9 June 2015.
- VI. At the end of the oral proceedings, the decision of the board was announced.
- VII. Claim 1 of the main request reads as follows:
- "An input apparatus comprising:  
an input unit (12) for receiving a pressure input;  
a load detection unit (13) for detecting a pressure load on the input unit (12);  
a vibration unit (14) for vibrating the input unit (12); and  
a control unit (15) for controlling drive of the vibration unit (14) such that a first tactile sensation

is provided to an object pressing the input unit (12), when the pressure load detected by the load detection unit (13) satisfies a first threshold for receiving an input to the input unit (12), wherein the control unit (15) controls drive of the vibration unit (14) such that a second tactile sensation is provided to the object, when the pressure load detected by the load detection unit (13) satisfies a second threshold lower than the first threshold for receiving the input to the input unit (12) after the input to the input unit (12) is received, wherein the second tactile sensation is the same as or different from the first tactile sensation, wherein at least one of the first threshold and the second threshold can be set by a user, wherein the second threshold is set at a value in the range of 50 - 80 percent of the first threshold."

Claim 1 of auxiliary request 1 reads as follows:

"An input apparatus comprising:  
a display unit (11);  
a touch panel (12) disposed on the display unit (11) for receiving a pressure input;  
a load detection unit (13) for detecting a pressure load on the touch panel (12);  
a vibration unit (14) for vibrating the touch panel (12); and  
a control unit (15) for controlling drive of the vibration unit (14) such that a first tactile sensation is provided to an object pressing the touch panel (12), when the pressure load detected by the load detection unit (13) satisfies a first threshold for receiving an input to the touch panel (12);  
wherein the control unit (15) controls drive of the vibration unit (14) such that a second tactile

sensation is provided to the object, when the pressure load detected by the load detection unit (13) satisfies a second threshold lower than the first threshold for receiving the input to the touch panel (12) after the input to the touch panel (12) is received, wherein the second tactile sensation is the same as or different from the first tactile sensation, wherein the detection of the pressure load causes the control unit (15) to drive the vibration unit (14) to vibrate the touch panel (12), wherein at least one of the first threshold and the second threshold can be set by a user, wherein the second threshold is set at a value in the range of 50 - 80 percent of the first threshold."

Claim 1 of auxiliary request 2 differs from claim 1 of the main request in that the feature "wherein the second threshold is set at a value in the range of 50 - 80 percent of the first threshold" at the end of the claim has been deleted.

Each of the requests comprises a further independent claim directed to a corresponding method.

### **Reasons for the Decision**

1. The appeal is admissible (see point II).
2. Main request - Admissibility

The main request was filed late, in response to the board's opinion expressed in the annex to the summons to oral proceedings.

By comparison with the previous main request submitted with the statement setting out the grounds of appeal,

claim 1 comprises the additional feature that the second threshold is set at a value in the range of 50 - 80 percent of the first threshold.

The appellant argued that this amendment to claim 1 was in response to the inventive step-objection raised by the board, and that the additional feature had been searched and did not introduce any complexity in respect of the subject-matter to be examined.

However, the board notes that the above-mentioned additional feature was not present either in the sets of claims on which the decision was based or in the sets of claims submitted with the statement setting out the grounds of appeal, but has been taken from the description. It in fact appears that, before the first decision of 27 May 2014 to refuse the present application, the appellant had deleted this feature from the claims in response to an inventive-step objection in relation to this particular feature (see points 3.3 to 3.7 of the communication from the examining division dated 5 February 2013, points 2.2 to 2.6 of the communication from the examining division dated 3 September 2013, point 3.5 of the communication from the examining division dated 5 February 2014, and the claim requests underlying and attached to the first decision of 27 May 2014 and the decision under appeal).

Taking these circumstances into account, the board, exercising its discretion under Articles 12(4) and 13(1) RPBA, has decided in oral proceedings not to admit the main request into the proceedings.

3. Auxiliary request 1

The same considerations apply as for the main request since claim 1 also comprises the feature that the second threshold is set at a value in the range of 50 - 80 percent of the first threshold.

Therefore, the board, exercising its discretion under Articles 12(4) and 13(1) RPBA, has decided in oral proceedings not to admit auxiliary request 1 into the proceedings.

4. Auxiliary request 2

This request corresponds to the main request filed with the statement setting out the grounds of appeal. The request had been replaced by an amended main request, i.e. withdrawn by the appellant by letter dated 30 April 2019 and was resubmitted at the end of the oral proceedings before the board.

The appellant argued that the re-submission of this request was in response to the board's unexpected decision during the oral proceedings not to admit the main request or auxiliary request 1 (see points 2 and 3). According to the appellant, re-submission of the request did not involve additional work, since it had already been the subject of the preliminary opinion of the board.

However, the board notes that an inventive step objection (Article 56 EPC) has been raised in relation to this request in the communication of the board pursuant to Article 15(1) RPBA, and that, in response to this communication, the appellant has not provided any argument in respect of inventive step but has preferred to withdraw the request before the oral proceedings. Re-submitting a request that has already



been withdrawn in the appeal proceedings, which is moreover prima facie not compliant with Article 56 EPC, amounts to presenting to the board a request which could have been presented before; here the criteria of Article 12(4) RPBA are applied when applying Article 13(1) RPBA.

For these reasons, the board has decided in oral proceedings not to admit auxiliary request 2.

5. Conclusion

None of the appellant's requests is admitted into the appeal proceedings.

**Order**

**For these reasons it is decided that:**

The appeal is dismissed.

The Registrar:

The Chair:



K. Götz-Wein

A. Ritzka

Decision electronically authenticated