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**Datasheet for the decision
of 20 June 2017**

Case Number: T 1737/15 - 3.5.05

Application Number: 11184222.5

Publication Number: 2405343

IPC: G06F3/048, G06F17/30

Language of the proceedings: EN

Title of invention:

Touch event model programming interface

Applicant:

Apple Inc.

Headword:

Conveying touch lists/APPLE

Relevant legal provisions:

EPC Art. 76(1), 84, 111(1)

Keyword:

Added subject-matter - (no, after amendment)

Clarity - (yes, after amendment)

Remittal to the first instance for further prosecution - (yes)



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Case Number: T 1737/15 - 3.5.05

D E C I S I O N
of Technical Board of Appeal 3.5.05
of 20 June 2017

Appellant: Apple Inc.
(Applicant) Cupertino, CA 95014 (US)

Representative: Gillard, Matthew Paul
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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. 11184222.5 pursuant to Article 97(2) EPC.**

Composition of the Board:

Chair A. Ritzka
Members: K. Bengi-Akyuerek
D. Prietzel-Funk

Summary of Facts and Submissions

- I. The appeal is against the decision of the examining division to refuse the present European patent application, divided from its parent application EP 09700007.9, on the sole ground that claim 1 of a main request and first to third auxiliary requests lacked clarity (Article 84 EPC) due to the expression "for all touches detected on a touch-sensitive surface".
- II. With the statement setting out the grounds of appeal, the appellant re-filed the claims of the main request and submitted new claims according to first to fifth auxiliary requests. It requested that the decision of the examining division be set aside and that a patent be granted on the basis of one of those claim sets.
- III. In an annex to the summons to oral proceedings pursuant to Article 15(1) RPBA, the board gave its preliminary opinion on the appeal. In particular, it raised objections under Articles 76(1), 123(2) and 84 EPC. The board also informed the appellant that, in view of the numerous objections raised, it appeared to be impracticable to carry out a detailed assessment of novelty and inventive step with respect to the present claim sets, and noted that the issues of novelty and inventive step had neither been discussed nor decided in the decision under appeal.
- IV. By a letter of reply, the appellant filed further amended sets of claims according to sixth to ninth auxiliary requests alongside counter-arguments to the objections raised in the board's communication under Article 15(1) RPBA.

V. Oral proceedings were held on 20 June 2017, during which the appellant filed amended claims according to a new main (and sole) request, replacing all the other claim requests on file, in response to objections raised by the board. This new main request was admitted into the proceedings and discussed.

The appellant's final request was that the decision under appeal be set aside and that a patent be granted on the basis of the new main request filed during the oral proceedings before the board.

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

VI. **Claim 1** of the main request (sole claim request) reads as follows:

"A method performed by an electronic device with one or more processors and memory storing one or more programs for execution by the one or more processors, the method comprising:
providing an interface for one or more touch events, the interface configured to convey a touch list, wherein the touch list includes touch event data to identify one or more touches on a web page, said one or more touches being associated with a target of a touch event, and the touch event data includes a touch identifier and at least one set of touch location coordinates for a respective touch of the one or more touches; and conveying the touch list to the web page for processing."

Further independent **claims 5 and 9** of the main request are directed to a corresponding apparatus and a computer program respectively.

Reasons for the Decision

1. MAIN REQUEST

This claim request was filed during the oral proceedings before the board with the aim of overcoming the objections raised under Articles 76(1) and 84 EPC. It differs from the independent claims underlying the appealed decision essentially in that present independent claims 1, 5 and 9 do not include touch lists for "changed touches" and for "all touches detected on a touch-sensitive surface" (as objected to under Article 84 EPC in the impugned decision; see reasons 2) any longer but now specify that (emphasis added by the board)

- A) only one touch list is conveyed to the web page for processing;
- B) the touch list includes touch event data to identify one or more touches on a web page;
- C) the one or more touches are associated with a target of a touch event;
- D) the touch event data includes a touch identifier and at least one set of touch location coordinates for a respective touch of the one or more touches.

1.1 *Basis for the amendments*

1.1.1 The amendments relating to features A) and B) are supported e.g. by paragraph [0024], first sentence, of the parent and present applications as originally filed.

1.1.2 The amendment relating to feature C), i.e. detecting and conveying the touches on a certain spatial target

of the web page, finds its basis in paragraph [0024], third sentence, of the original parent and present applications.

1.1.3 Lastly, the amendment relating to feature D) is based e.g. on paragraph [0024], second sentence, of the parent and present applications as originally filed.

1.1.4 Thus, the board is satisfied that the above amendments now comply with Articles 76(1) and 123(2) EPC as well as with Article 84 EPC.

2. *Remittal of the case for further prosecution*

2.1 Given that the sole ground for refusal of the present application, i.e. lack of clarity under Article 84 EPC, and the objections raised by the board under Articles 76(1) and 123(2) EPC (cf. communication under Article 15(1) RPBA, points 2.2 and 3.1) no longer apply, the decision under appeal is to be set aside.

2.2 However, the compliance of the present application with the requirements of Article 52 EPC, in particular novelty and inventive step, was neither analysed nor decided in the decision under appeal.

2.3 In view of the above, the board does not consider itself in a position to assess the correctness of any conclusion of the examining division as regards novelty and inventive step, nor to pass final judgment on that issue for the very first time in these appeal proceedings.

Rather, the board has decided, in the exercise of its discretion under Article 111(1) EPC, to remit the case to the examination division for further prosecution, on

the basis of the claims of the present main request.

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.
2. The case is remitted to the department of first instance for further prosecution on the basis of claims 1 to 12 submitted during the oral proceedings before the board.

The Registrar:

The Chair:



K. Götz-Wein

A. Ritzka

Decision electronically authenticated