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**Datasheet for the decision  
of 29 June 2017**

**Case Number:** T 1738/15 - 3.5.05

**Application Number:** 11184223.3

**Publication Number:** 2405344

**IPC:** G06F3/048, G06F17/30

**Language of the proceedings:** EN

**Title of invention:**

Touch event model programming interface

**Applicant:**

Apple Inc.

**Headword:**

Providing 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)

**Decisions cited:**

T 1737/15



**Beschwerdekammern**  
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**Chambres de recours**

European Patent Office  
D-80298 MUNICH  
GERMANY  
Tel. +49 (0) 89 2399-0  
Fax +49 (0) 89 2399-4465

Case Number: T 1738/15 - 3.5.05

**D E C I S I O N**  
**of Technical Board of Appeal 3.5.05**  
**of 29 June 2017**

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

**Representative:** Gillard, Matthew Paul  
Withers & Rogers LLP  
4 More London Riverside  
London SE1 2AU (GB)

**Decision under appeal:** **Decision of the Examining Division of the European Patent Office posted on 11 February 2015 refusing European patent application No. 11184223.3 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 and second auxiliary requests lacked clarity (Article 84 EPC).
- II. With the statement setting out the grounds of appeal, the appellant re-filed the claims of the main request and submitted further 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 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, together with counter-arguments to the objections raised in the board's communication under Article 15(1) RPBA.

V. With another letter dated 28 June 2017, i.e. one day before the oral proceedings, the appellant filed further amended sets of claims according to auxiliary requests 7A and 8A "in reaction to the developments last week in the Appeal Oral Proceedings on the closely related divisional application, T 1737/15".

VI. Oral proceedings were held on 29 June 2017, during which the appellant filed amended claims according to "auxiliary request 7B" in response to objections raised by the board under Article 76(1) EPC.

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 claims of "auxiliary request 7A" submitted with the letter dated 28 June 2017 or of the claims of "auxiliary request 7B" submitted during the oral proceedings before the board. All other requests were withdrawn.

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

VII. Claim 1 of **auxiliary request 7A** 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 a touch event, the touch event including a touch list including touch data identifying all touches on a web page, wherein the touch data includes a touch identifier and at least one set of touch location coordinates for a respective touch of the said all touches on the web page;  
receiving one or more values from one or more

instructions embedded in the web page, the one or more values corresponding to one or more touches in the touch list; and  
generating a display of the web page."

Claim 1 of **auxiliary request 7B** 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 a touch list including touch data identifying all touches on a web page, wherein the touch data includes a touch identifier and at least one set of touch location coordinates for a respective touch of the said all touches on the web page; and  
generating a display of the web page."

Further independent claims 4 and 7 of auxiliary request 7B are directed to a corresponding apparatus and computer program respectively.

## **Reasons for the Decision**

### 1. Claims of AUXILIARY REQUEST 7A

The claims of auxiliary request 7A were filed in reaction to the board's communication under Article 15(1) RPBA and the outcome of the closely related appeal case T 1737/15, and were admitted into the appeal proceedings.

**Claim 1** of this request comprises the following features (as labelled by the board):

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:

- (a) providing a touch event,
- (b) the touch event including a touch list,
- (c) the touch list including touch data identifying all touches on a web page, wherein
- (d) the touch data includes a touch identifier and
- (e) at least one set of touch location coordinates for a respective touch of the said all touches on the web page;
- (f) receiving one or more values from one or more instructions embedded in the web page, the one or more values corresponding to one or more touches in the touch list;
- (g) generating a display of the web page.

1.1 *Added subject-matter (Article 76(1) EPC)*

Present claim 1 evidently relates to the embodiment described in particular in paragraph [0024] of the parent application as originally filed. This paragraph reads as follows:

*"In some implementations, a touch list can be received that includes touch event data to identify one or more touches on the web page 100. The touch event data can include a touch identifier and at least one set of touch location coordinates. The touch list can also include touch event data to a touch event target associated with each touch. In some implementations, the one set of touch location coordinates can include client coordinates, page coordinates, and screen coordinates. In some*

*implementations, the touch event data can identify one or more changed touches."*

- 1.1.1 As to feature (b), the parent application as originally filed consistently teaches that the touch *list* includes the touch events, and not the other way around (see e.g. first sentence of paragraph [0024]). Although the pseudo-code set out in paragraph [0027] and referred to by the appellant at the oral proceedings before the board recites three distinct touch lists, it merely relates to a software object called "initTouchEvent" which cannot simply be equated with a "touch event" itself (i.e. a touch detected on a touch-sensitive display).
- 1.1.2 As to feature (f), the board cannot discern any basis in the entire parent application for the feature that touch values corresponding to the touch list are indeed received, at whatever unit, from instructions embedded in any web page. The appellant, for the first time during the oral proceedings before the board, provided paragraphs [0028], [0034] and [0035] as basis for feature (f). Those paragraphs however teach solely that the corresponding web page includes an HTML code and application programming interfaces for processing touch events to initiate event actions (see in particular last sentence of paragraph [0035]). The board holds that "initiating event actions" by the embedded HTML code of a web page in no way means that "values" which are supposed to correspond to touches in the provided touch list are to be "received" by another system unit of the underlying touch-screen device.
- 1.2 In view of the above, the board judges that present claim 1 goes beyond the content of the parent application as originally filed and that therefore

auxiliary request 7A does not comply with Article 76(1) EPC.

2. Claims of AUXILIARY REQUEST 7B

The claims of auxiliary request 7B were filed during the oral proceedings before the board as a (successful) attempt to overcome the objections raised under Article 76(1) EPC (see point 2.1 below). Therefore, the board has decided to admit auxiliary request 7B into the proceedings.

2.1 *Added subject-matter (Article 76(1) EPC)*

Independent claims 1, 4 and 7 of this request differ from the independent claims of auxiliary request 7A in that features (a) and (b) have been replaced with the feature "providing a touch list" and in that they no longer include feature (f). As a consequence, the board finds that the objections raised under Article 76(1) EPC in point 1.1 above no longer apply.

2.2 *Clarity (Article 84 EPC)*

2.2.1 As to feature (c), the examining division found that the expression "a touch list for all touches detected on a touch-sensitive surface" included in former claim 1 infringed Article 84 EPC, since it was unclear what time frames and spaces were considered for populating such a touch list (see in particular Reasons 2.1 of the appealed decision).

2.2.2 In view of feature (c) as amended ("the touch list including ... all touches on a web page") the board holds that the considered space to be detected for populating the touch list is now clear. As regards the



time frame relating to touch detections, the board accepts that the skilled person would infer from the present application and his/her common general knowledge that the respective sampling time unit for generating the underlying touch list depends on system design considerations and may thus vary between "a specific moment", "shorter periods of time" and "a longer period of time" (see e.g. appealed decision, Reasons 2.1 and 2.2, last paragraph). Accordingly, the board finds that the definition according to amended feature (c) is broad but not unclear within the meaning of Article 84 EPC.

2.3 In conclusion, the board is satisfied that the independent claims of auxiliary request 7B comply with Articles 76(1) and 84 EPC.

3. *Remittal of the case for further prosecution*

3.1 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 84 EPC (cf. communication under Article 15(1) RPBA, point 2.2) no longer apply, the decision under appeal is to be set aside.

3.2 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. Therefore, 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.

3.3 Rather, the board has decided, in the exercise of its discretion under Article 111(1) EPC, to remit the case to the examining division for further prosecution, on the basis of the claims of auxiliary request 7B.

## Order

### For these reasons it is decided that:

1. The decision under appeal is set aside.
2. The case is remitted to the examining division for further prosecution on the basis of claims 1 to 9 of auxiliary request 7B submitted during the oral proceedings.

The Registrar:

The Chair:



K. Götz-Wein

A. Ritzka

Decision electronically authenticated