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**Datasheet for the decision
of 5 July 2017**

Case Number: T 1739/15 - 3.5.05

Application Number: 11184224.1

Publication Number: 2405345

IPC: G06F3/048, G06F17/30

Language of the proceedings: EN

Title of invention:

Touch event model programming interface

Applicant:

Apple Inc.

Headword:

Receiving 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, T 1738/15



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Case Number: T 1739/15 - 3.5.05

D E C I S I O N
of Technical Board of Appeal 3.5.05
of 5 July 2017

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

Representative: Gillard, Matthew Paul
Withers & Rogers LLP
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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. 11184224.1 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) due to the expression "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 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 27 June 2017, i.e. one week 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. By a further letter dated 3 July 2017, i.e. one day before the oral proceedings and "in reaction to the debate and decisions reached in the recent hearings in T 1737/15 and T 1738/15", the appellant filed further amended claims according to a new main request and two auxiliary requests replacing all the claim requests on file.
- VII. The board informed the appellant that the scheduled oral proceedings had been cancelled. It established from the file that the appellant's final requests were that the decision under appeal be set aside and that the case be remitted to the examining division for further prosecution on the basis of the claims of the new main request or of either of the two auxiliary requests, all submitted with its letter dated 3 July 2017.
- VIII. Claim 1 of the **main request** reads as follows:

"A method performed by an electronic device with a touch-sensitive device, a web browser and a web page, the method comprising:
receiving, using code embedded in the web page, a touch list including touch data identifying one or more changed touches on the 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 one or more changed touches."

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

Reasons for the Decision

1. MAIN REQUEST

This claim request was filed one day ahead of the scheduled oral proceedings before the board, in reaction to the board's communication under Article 15(1) RPBA and the outcome of the closely related appeal cases T 1737/15 and T 1738/15. The amendments made to the claims were found to be suitable to overcome the board's objections (see point 1.1 below). Therefore, the board has decided to admit the new main request into the proceedings.

Independent claims 1, 5 and 9 of this request differ from the independent claims underlying the appealed decision basically in that they no longer include touch lists for "one or more touches associated with a target of the touch event" and for "all touches detected on a touch-sensitive surface" (as objected to under Article 84 EPC in the impugned decision; see Reasons 2) but now specify that (emphasis added by the board)

- A) a touch list is received by the web page;
- B) the touch list includes touch data identifying one or more changed touches on the web page;
- C) the touch data includes a touch identifier and at least one set of touch location coordinates for a respective touch of the one or more changed

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 and last sentences, as well as paragraph [0007] of the parent and present applications as originally filed.

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

1.2 Hence, the board is satisfied that the present independent claims 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. 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.

2.3 In view of the above, the board has decided, in the exercise of its discretion under Article 111(1) EPC and in accordance with the appellant's request, to remit the case to the examining division for further prosecution, on the basis of the claims of the present main request. As the board is remitting the case to the department of first instance on the basis of the main request, it is neither necessary nor appropriate to consider the present auxiliary requests further.

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 of the main request submitted with letter dated 3 July 2017.

The Registrar:

The Chair:



K. Götz-Wein

A. Ritzka

Decision electronically authenticated