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**Datasheet for the decision  
of 16 May 2018**

**Case Number:** T 1868/15 - 3.5.06

**Application Number:** 07813605.8

**Publication Number:** 2054802

**IPC:** G06F9/44

**Language of the proceedings:** EN

**Title of invention:**

USER INTERFACE FOR BACKUP MANAGEMENT

**Applicant:**

APPLE INC.

**Headword:**

Backup Management/APPLE

**Relevant legal provisions:**

EPC 1973 Art. 56, 84

EPC Art. 123(2)

RPBA Art. 13(1), 13(3)

**Keyword:**

Amendments - added subject-matter (no)

Inventive step over the document relied upon in the decision -  
after amendment (yes)

Remittal to the department of first instance (yes)

**Decisions cited:**

T 0643/00, T 1143/06, T 0336/14

**Catchword:**



**Beschwerdekammern**  
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Case Number: T 1868/15 - 3.5.06

**D E C I S I O N**  
**of Technical Board of Appeal 3.5.06**  
**of 16 May 2018**

**Appellant:** APPLE INC.  
(Applicant) 1 Infinite Loop  
Cupertino, CA 95014 (US)

**Representative:** Barnfather, Karl Jon  
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**Decision under appeal:** Decision of the Examining Division of the  
European Patent Office posted on 11 March 2015  
refusing European patent application No.  
07813605.8 pursuant to Article 97(2) EPC.

**Composition of the Board:**

**Chairman** W. Sekretaruk  
**Members:** M. Müller  
A. Teale

## Summary of Facts and Submissions

I. The appeal is against the decision of the examining division, with reasons dated 11 March 2015, to refuse European patent application No. 07 813 605.8 because the claimed invention lacked inventive step over the document

D5: US 2006/0101384 A1.

II. Notice of appeal was filed on 19 May 2015, the appeal fee being paid on the same day. A statement of grounds of appeal was received on 20 July 2015. The appellant requested that the decision be set aside and that a patent be granted on the basis of claims according to one of a main request or auxiliary requests 1-4 as filed with the grounds of appeal, in combination with the following application documents:

description, pages

2-28, 30-39 filed on entry into the regional phase,

29, 29a-29i filed with the letter of 3 November 2009,

1, 1a filed with letter of 16 October 2014, and

drawings, sheets

1-29 filed on entry into the regional phase.

III. In an annex to a summons to oral proceedings, the board set out its preliminary opinion that the claims according to all pending requests lacked inventive step, Article 56 EPC 1973. Several potential clarity problems were also mentioned.

IV. In response to the summons, by letter dated 16 April 2018, the appellant filed two new sets of claims as the

new main and first auxiliary requests and moved the then pending requests to second to sixth position.

V. Oral proceedings were held on 16 May 2018, during which the appellant replaced all pending requests with a single new one comprising claims 1-13.

VI. Claim 1 reads as follows:

"A computer program product tangibly embodied in an information carrier, the computer program product including instructions that, when executed, generate on a display device a backup graphical user interface (300) comprising:

    a view display area that presents a current view of a window,

    an input control that, when selected, causes restoration of the window in accordance with a user-selected portion of an earlier version of the window,

    the view display area further presents a plurality of snapshots (304a-d; 702; 704; 802; 804; 900) that animatedly move in the view display area in response to user selection of one or more navigation tools (307a-b; 308a-b; 902a-b), wherein each snapshot as presented in the view display area (304a-d; 702; 704; 802; 804; 900) includes a visual representation of the elements of a corresponding earlier version of the window, the earlier version of the window including one or more elements that are selectable by a user for restoration; and

    wherein a first snapshot of the plurality of snapshots includes a first element that a user can select: [sic]

    wherein selection of the first element triggers corresponding selection of that element in the displayed snapshots; and

wherein selection of the input control, after selection of the an [sic] element in a snapshot, causes restoration of the window with only that element in that first snapshot being restored."

The request also contains an independent system claim 12 and an independent method claim 13, both of which closely correspond to the wording of claim 1.

VII. At the end of the oral proceedings, the chairman announced the decision of the board.

## **Reasons for the Decision**

### *Admission of the late request*

1. The present set of claims was only filed during the oral proceedings and thus constitutes an amendment to the appellant's case which, according to Article 13(1) RPBA may be admitted and considered at the board's discretion, unless Article 13(3) RPBA prevents the board from admitting it ("shall not be admitted") because it raises issues which the Board cannot reasonably be expected to deal with without adjournment of the oral proceedings.
- 1.1 The appellant had, in its grounds of appeal (see page 3, point 10) stressed its opinion that the claimed user interface enabled a user "to identify, from [several] snapshots [...], the backup which is likely to contain the past version of a file that is sought", "because different versions of the same file are shown in multiple snapshots" (emphasis by the board). Implicitly, this argument only applied to some of the

disclosed embodiments and not, for example, to those providing stacked snapshots (figures 7 to 9).

- 1.2 Elaborating on that point during oral proceedings, the appellant focused on the embodiment depicted in figures 3 and 4, in which the elements of interest are visible in all snapshots, and in which the simultaneous visibility enables the user to compare different snapshots with each other with respect to the versions of a particular element of interest.
- 1.3 In the summons and during the oral proceedings, the board contradicted the appellant's assumption that the simultaneous display of multiple snapshots alone would provide a better overview unless the elements were also visible, referring to the stack embodiments as counter-examples.
- 1.4 The board therefore considers that the late amendments clarify the appellant's original case in a fair response to the board's opinion that the stack embodiments were, in fact, not excluded by the claim language. The board also takes the view that this amendment did not go beyond what it could be expected to deal with without adjournment of the oral proceedings. Therefore, neither was it barred by Article 13(3) RPBA from admitting the new request, nor did the criteria listed in the Article 13(1) RPBA speak against its admission.
- 1.5 In view of the above, the board exercised its discretion under Article 13(1) RPBA to admit the new request.

*The invention*

2. The application relates to a graphical user interface for a backup system which supports users in finding and reverting to earlier versions of individual files "or other items" or "elements", such as parameter settings (see, for example, paragraphs 4, 35, 43 and 45; figures 1 and 2; all references being to the application as originally filed).
- 2.1 Like conventional backup systems, the disclosed system repeatedly stores copies (termed "snapshots" in the claims) of the data of interest (see figure 2).
- 2.2 The user interface according to the invention displays a "current view" of a "window" with its elements, along with a "history view including a number of visual representations of earlier views" of that window. Each window represents the (current or previous) state of the system at a "location" of interest, for instance a particular folder within a local or external storage device. These views are referred to as "snapshots" (see paragraphs 5, 60 and 61).
- 2.3 The invention proposes to arrange the snapshots of a "history view" along a "timeline". Several examples of such a history view are disclosed. For instance, individual views may be displayed in a calendar, on a stack, as a "book" or along an actual line (see figures 6 to 14, paragraphs 83, 85, and 92 *et seq.*).
- 2.4 The invention further enables users to navigate through the history view using suitable interface control elements (see for instance item no. 902b in figures 9



to 13), or the history view may be "animated" (see paragraphs 96 to 97 and figure 10).

- 2.5 The proposed user interface is aimed at supporting users in finding the earlier version of a file (or other item) of interest to which they want to revert. At that point, users may select (e.g. click on) the located item which will cause a "backup restoration engine" (see figure 2, item no. 222) to restore the earlier version (see paragraph 56).

*Original disclosure, Article 123(2) EPC*

3. The present claims are based on those according to the main request filed on 16 April 2018, which, in turn, are only slightly modified over those of the main request as refused, the original disclosure for which not being disputed. The decision under appeal did not raise an objection under Article 123(2) EPC nor did the board in its preliminary opinion, and the replacement of "initiates"/"initiation" by "when selected, causes"/"selection [...] causes" is disclosed in paragraph 112 of the application as originally filed (see the grounds of appeal, page 2, section "Basis"). Compared to the claims of 16 April 2018, the present ones add the feature that "selection of the first element triggers corresponding selection of that element in the displayed snapshots" and that the visual representation of the snapshots, simultaneously displayed, includes "the elements". The "corresponding selection" of elements is disclosed in paragraph 70 of the application as originally filed, and the display of the elements in each snapshot (as opposed to embodiments that display only the elements of a first or top-most snapshot (see e.g. figures 7 to 9) is disclosed in

figures 3 and 4. The board thus concludes that the present set of claims complies with Article 123(2) EPC.

*Claim construction and clarity, Article 84 EPC 1973*

4. As mentioned in the summons, the board is of the opinion that the claims - and the application as a whole - use the terms "windows" and "snapshot" ambiguously.
- 4.1 Normally, the term "window" is understood in the art to mean an interface element which may, for instance, display the representation of a system state (e.g. the files in a folder). Also the snapshots are said to be views representing such system states (see paragraph 5). What is backed-up and possibly restored, is not primarily the window but the files (or other items) displayed in the windows - even though, of course, the window will, after restoration, display a representation of the new state. From this perspective, the claim language according to which each snapshot includes "a visual representation of [an] earlier version of the window" and a "window" and an "element" selected on the display are "restored" confuses the display elements with what they represent.
- 4.2 However, the board takes the view that the skilled person would have been aware of this imprecision and able to disambiguate on each occurrence of the terms "window", "snapshot" and "element" whether it referred to the display element or to the system state it represented.
- 4.3 Furthermore, in the board's view, the skilled person would not make a distinction between "windows" and

"snapshots" as user interface elements. A snapshot is also a "window", and the "current view of the window" could equivalently be referred to as the current snapshot of the elements in question.

- 4.4 The board further considers that the skilled person would interpret the claimed phrase that "snapshots [...] animatedly move in response to user selection of one or more navigation tools" as specifying that the user triggers a motion which is "animated" in the sense of being at least partly beyond the user's control.
- 4.5 In summary, the board finds that the mentioned imprecisions in the claim language do not render the claims unclear for the person skilled in the art.

*The prior art*

5. D5 relates to data management systems with a focus on backup and recovery functionality (see paragraphs 8, 11, 14, 16, 45 and 46). Specifically, D5 is concerned with user interface support for browsing through earlier system states. The system allows users to switch between the normal system view, referred to as "Real-time mode", and a "History mode" (see figure 6 and paragraph 54). In history mode, the system depicts a timeline of "past times" and provides "time control" elements, with which the user can select a time of interest (see figure 5, no. 514; figures 10 to 16; paragraphs 16 and 75 to 110). Once a time has been selected, a corresponding window opens (see paragraph 17 and figure 7B) showing a list of objects with additional meta-information, in particular its last modified date (see paragraph 77) - which the board understands as referring to the last version of each

object before the selected time - and the number of versions up to the selected time (see paragraph 73). By clicking on that number, the user may further "drill[] down into object versions", i.e. inspect more closely a listing of these earlier versions (paragraphs 72 to 74; figure 7B). When a "Recover" button is pressed, a wizard" is brought up to perform its actions (see paragraph 56).

*Inventive step, Article 56 EPC 1973*

6. Based on the above interpretation of "window", "snapshot" and "elements" (see points 4 and 5), the board considers that D5 discloses a backup graphical user interfaces that comprises a "current view of a window" (the "Realtime mode"; see figures 6 and 7A and paragraphs 50, 55, 57) and "a view display [that] presents [an individual] snapshot[]", which, in turn, "includes a visual representation of a corresponding earlier version of the window" (the "History mode"; see figures 6 and 7B, and paragraphs 75 and 76). D5 also discloses that the view display changes "in response to user selection of one or more navigation tools" (the "Timeline" and its "Components"; see paragraphs 79 to 91 and the corresponding figures). In D5, however, users can only select and work on a single "past" point in time. Also, D5 does not allow users to "cause restoration" of an element in a snapshot by clicking on it, but requires the use of an undefined "wizard".
  
7. D5 thus does not disclose that
  - (a) several "snapshots", each representing earlier versions of a "window", are displayed at the same time;

- (b) selection of an element triggers corresponding selection of that element in the displayed snapshots;
- (c) the "snapshots" move or "animatedly move" in response to the user manipulating the timeline;
- (d) selection of the input control, after selection of an element in a snapshot, "causes restoration of the window with only that element in that window being restored".

7.1 *Feature (d)* solves the problem of providing simpler access to the function of restoring a file or other item or object. The board considers that it is a standard problem for the user interface designer to reduce the number of "clicks" required to perform certain functions. Specifically, it would have been natural for users to spot, in the window 7B, a file to be restored, and also that they wanted the restoration to require as few clicks as possible. Enabling users to select a file of interest and an input control to "cause" its restoration would, in the board's judgment, have been a conventional and obvious solution to address the users' desire.

7.2 *Feature (c)* does not solve a technical problem. D5 discloses that the snapshot changes with the time selected by the user. The board understands this to mean that a snapshot disappears and a new one, corresponding to the selected time, appears. That the snapshots "animatedly move" in the process has, in the board's judgment, a merely aesthetic value, and thus no effect in a field not excluded from patentability (see Articles 52(2) b) and d)). This is consistent with the animations specifically disclosed in the application (see e.g. paragraph 92). In particular, the animation does not contribute to the problem "of efficiently

locating and restoring a past version of a file" (see the grounds of appeal, point 24).

- 7.3 As regards *features (a) and (b)*, the board considers that, in the context of the claimed backup graphical user interface, they do indeed "facilitate the efficient searching and restoration of a past version of a file". A user trying to restore the past version of a file will, in particular, be able to (i) navigate to an earlier point in time at which a version of the file of interest was saved, (ii) select that file and see, since "corresponding" elements in the other displayed snapshots will also be selected and simultaneously displayed, whether "corresponding" files were saved at other points in time, (iii) navigate to such another point in time and then, (iv) cause the restoration of the selected element in the so-selected snapshot.
- 7.4 The board also considers that features (a) and (b) in combination are not suggested by D5 nor obvious in view of common general knowledge in the art.
8. It remains to be decided whether the stated problem is indeed a technical one.
- 8.1 In T 643/00, it was found that "providing a technical tool for efficient search, retrieval and evaluation of images stored in an image processing apparatus" could be such a technical task (see catchword and point 14 of the reasons; see in this regard also point 6.3 of T 1143/06). The board agrees with this finding. Furthermore, although the case underlying T 643/00 related to a resolution-based image arrangement and was thus image-specific, the board considers that the ratio

of T 643/00 also applies to technical tools for the searching of digital objects other than images.

- 8.2 In T 336/14 (see catchword), it was found that "In the assessment of inventive step of a claim which [relates to] a graphical user interface (GUI) [...] it has to be analysed whether the GUI together with its content presented credibly assists the user in performing a technical task [...] by means of a continued and/or guided human-machine interaction process". In an *obiter dictum*, T 336/14 also confirmed the cited conclusion of T 643/00 (see point 1.2.6 of the reasons).
- 8.3 The board endorses the stress laid by T 336/14 on the relevance of whether the user-interface in question assists the user "by means of a continued and/or guided human-machine interaction process".
- 8.4 In the board's judgment, the presently claimed invention provides GUI elements which, in combination, provide a technical tool supporting the user in searching for the earlier version of a file by means of such a guided human-machine interaction process (see point 7.3 above).
- 8.5 Accordingly, the board concludes that features a to d solve a technical problem.

*Remittal for further prosecution*

9. The board notes that its positive finding on the inventive step of the claimed invention vis-à-vis D5 relies partly on a feature that was not originally claimed and which excludes a number of disclosed embodiments.

- 9.1 The board can therefore not be sure whether the search performed on the application as originally filed covered the presently claimed invention. For this reason, the board cannot, at this point, decide whether a patent is to be granted and rather decides to remit the case to the examining division for further prosecution, Article 111(1) EPC.
- 9.2 On this occasion, the board notes that the description has not yet been adapted to the claims, as it contains "embodiments" which no longer fall within the scope of the claims. The board also notes that some of the reference signs relate to such excluded embodiments, especially those referring to figures 7 to 9.

## 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.

The Registrar:

The Chairman:



B. Atienza Vivancos

W. Sekretaruk

Decision electronically authenticated