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Datasheet for the decision of 8 March 2019

Case Number: T 2023/15 - 3.5.05

Application Number: 10760739.2

Publication Number: 2470978

IPC: G06F3/033

Language of the proceedings: EN

Title of invention:
POINT AND CLICK DEVICE FOR A COMPUTER WORKSTATION

Applicant:
Posturite Limited

Headword:
Point and click device for a computer / Posturite

Relevant legal provisions:
EPC Art. 56, 123(2)
RPBA Art. 13(1), 13(3)

Keyword:

Inventive step - (no) - effect not made credible within the whole scope of claim
Amendments - extension beyond the content of the application as filed (no)
Late-filed auxiliary requests - admitted (yes) - adjournment of oral proceedings would have been required (no) - converging versions of claims

Decisions cited:

Catchword:

Europäisches Patentamt
European Patent Office
Office européen des brevets

Beschwerdekammern

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Case Number: T 2023/15 - 3.5.05

D E C I S I O N
of Technical Board of Appeal 3.5.05
of 8 March 2019

Appellant: (Applicant)	Posturite Limited The Mill Berwick, East Sussex BN26 6SZ (GB)
Representative:	Boden, Keith McMurray Fry Heath & Spence LLP Unit A, Faraday Court Faraday Road Crawley, West Sussex RH10 9PU (GB)
Decision under appeal:	**Decision of the Examining Division of the European Patent Office posted on 31 March 2015 refusing European patent application No. 10760739.2 pursuant to Article 97(2) EPC.**

Composition of the Board:

Chair	A. Ritzka
Members:	N. H. Uhlmann
	D. Prietzel-Funk

Summary of Facts and Submissions

I. The appeal is against the examining division's decision to refuse European patent application 10760739.2.

II. During the proceedings, the examining division introduced the following documents:

D1 US5894303;
D2 WO 02/29537;
D3 WO 05/022374;
D4 WO 00/45366;
D5 Anonymous: "Mouse Blisters: Adhesive motorcycle grips for your mouse (not blisters)", , 5 August 2009, www.yaamo.com/page/69/;
D6 Charles W. Moore: "Ergonomic Keyboard And Mouse Solutions For The Mac", 5 July 2002, pages 1-10, www.applelinks.com/mooresviews/ergo.shtml;
D7 Anonymous: "The AirO2bic (formerly the Quill) Vertical Mouse by Designer Appliances - Detailed Specification Sheet", 7 January 2009, URL:https://web.archive.org/web/20090107012638/http://www.ergocanada.com/products/mice/quill.html;
D8 JASON DUMBAUGH: "Evoluent VerticalMouse 3 Revision 2", 21 August 2007, pages 1-4, www.techwarelabs.com/reviews/peripherals/evoluent_mouse/printpage.html.

III. The examining division decided that independent claim 1 of the sole request did not meet the requirements of Article 56 EPC (inventive step).

IV. In its statement setting out the grounds of appeal, the appellant requested that the decision under appeal be set aside and a patent be granted based on the claims underlying the contested decision.

V. With its letter dated 13 July 2017, the appellant submitted amended description pages 2, 3 and claim page

7 to replace the corresponding pages previously on file.

VI. The board arranged to hold oral proceedings.

VII. In the summons, the board set out its provisional view on the case. The board considered that the requirements of Article 56 EPC were not met.

VIII. In response, the appellant filed an auxiliary request and submitted arguments regarding this request.

IX. Oral proceedings were held on 8 March 2019 and were attended by the appellant.

X. The appellant requested that the decision under appeal be set aside and that a patent be granted based on a main request with claims 1 to 4 submitted with the letter dated 13 July 2017 and claims 5 to 6 submitted with the entry into the regional phase on 28 March 2012, or based on an auxiliary request with claims 1 to 4 submitted with the letter dated 4 March 2019 and claims 5 to 6 submitted with the entry into the regional phase on 28 March 2012.

XI. Claim 1 of the main request reads as follows:

"A point and click device for a computer work station, which provides for ambidextrous operation, comprising:

a body (1) having a forwardly-inclined back surface (2) configured for supporting the palm of a user's hand, wherein the back surface (2) is curved from a lower, rear end to an upper, forward end, a front surface accessible by the fingers of a user's hand when gripping the device, and a base which, in use, contacts a fixed horizontal surface and includes a horizontally-extending surface (6) on which the heel of a user's hand may be rested;

right-click and left-click buttons (3, 4) which are arranged one above the other centrally of the front surface;

a scroll dial (5) arranged on the front surface in alignment with the right-click and left-click buttons (3, 4) and rotatable in a horizontal plane; and

a select button associated with the scroll dial (5)."

XII. Claim 1 of the auxiliary request differs from claim 1 of the main request in that the word "outwardly" is added in front of the wording "curved from a lower".

Reasons for the Decision

1. The invention

The application addresses the problem of providing a vertical mouse which can be used by both right- and left-handed users.
Most vertical mice are asymmetrical, with buttons on one of the vertical sides of the mouse. Thus a different device is needed for right- and left-handed users.
The solution to this problem comprises a vertical mouse body with two buttons (one above the other) and scroll dial, all arranged centrally on the front surface of the body.

2. Prior art

Document D2 depicts a vertical computer mouse with symmetric design, two buttons (one above the other) on the front surface of the mouse and a horizontally extending surface (item 6 in figures 24(c) and (d)).

Main request

3. Amendments

Claim 1 has been amended by adding wording based on figure 1. While the description does not provide support for the amendments carried out, this figure alone provides a proper basis for deriving the added features "forwardly-inclined" and "wherein the back surface is curved from a lower, rear end to an upper, forward end".

4. Inventive step

4.1 Document D2 is a suitable starting point for analysing inventive step of the subject-matter of claim 1.

Document D2 discloses a computer mouse that can be used by either the left or right hand as it is symmetrical, as is apparent from figure 24(c), depicting a view on the back surface, and 24(d), which shows the side of the mouse. The same figure depicts a forwardly-inclined back surface configured for supporting the palm of the user's hand (item 10). It is apparent, with the help of a ruler, that the back surface 10 is curved, albeit slightly, from the lower, rear end to the upper, forward end. Figures 2 and 18(c) show that the front surface of the mouse described in this document can be reached by the fingers of a user when gripping the device. Furthermore, the mouse comprises a base (item 6 on figures 24(c) and (d)) which includes a horizontally extending surface. Evidently, the heel of a user's hand may be rested on the surface of the item 6.

Mouse 1 comprises two buttons (items 2) arranged one above another on the front surface. The presence of two buttons on a computer mouse implies a right- and left-click buttons.

Thus, document D2 discloses all the features of the subject-matter of claim 1 except:

- a scroll dial arranged on the front surface in alignment with the two buttons and rotatable in a horizontal plane; and
- a select button associated with the scroll dial.

In the oral proceedings, the appellant agreed that those are the differences between the claimed subject-matter and the teaching of document D2.

It is common ground that the technical effect caused by these different features is the provision of further navigation possibilities for the user of the mouse. Hence, the problem can be formulated as how to provide further navigation possibilities for the user of the mouse of document D2.

4.2 The skilled person faced with this problem would certainly have considered that at the relevant time - the application filing date - most computer mice on the market were equipped not only with two buttons but additionally with a scroll dial that could be used for scrolling and selecting information. The introductory portion of the present application, in particular, the third paragraph on page 1, clearly confirms this understanding.
Moreover, a number of the prior-art documents on file, in particular, documents D7 and D8, disclose vertical mice with two buttons and a scroll dial. Thus, the skilled person would clearly have been motivated to add a scroll button comprising a select function to the mouse design of document D2. The person skilled in the art would have had to decide on two things: First, where to locate the scroll dial and, second, how to orient it. In view of the two buttons of D2's mouse being positioned on the front surface, and to maintain the symmetrical mouse design, the skilled person would

certainly have opted for arranging a scroll button on the front surface. Moreover, they would have located the scroll button close to the two buttons, as disclosed in documents D7 and D8, and made it rotatable in a horizontal plane, so the user could easily reach it. The rotatability in a horizontal plane follows plainly from the position of the index finger and the middle finger, as depicted for instance in figure 18(c) of document D2. Documents D7 and D8 confirmed this observation in teaching that the scroll wheel must be positioned between the two buttons, i.e. in alignment with the two buttons, and rotate in essentially a horizontal plane.

For these reasons, the subject-matter of claim 1 does not involve an inventive step.

4.3 The appellant argued at the oral proceedings that document D2 would rather have motivated the skilled person to provide a further button as additional option for navigating in view of figures 18(a), (b) and (c).

The board is not persuaded. While the skilled person might have indeed added a third button, they would have been motivated by both the general market demands, as witnessed by the introductory portion of the present application, and the teaching of the highly pertinent prior-art documents D7 and D8 to add a scroll dial.

4.4 The appellant submitted that documents D7 and D8 both taught that the two buttons and the scroll dial are positioned on the right or the left side of the mouse to be used with extended fingers rather than on the front side. Hence, these documents taught away from positioning the scroll dial on the front surface and rather towards positioning the buttons and the scroll dial on the left side, for instance.

The board disagrees. Document D2 discloses two buttons, arranged one above the other on the front side, in a symmetrical design. In view of the manifold apparent advantages of this symmetrical design, the skilled person would certainly have been motivated to avoid any deviations from it. Accordingly, they would have kept the position of the buttons as depicted in closest prior art D2 (figures 24(c) and (d)). Because documents D7 and D8 teach to position the scroll dial between the buttons, the skilled person would have effortlessly arrived at the position and orientation as claimed. Whether the fingers of the user are extended, as in documents D7 and D8, or in a gripping position, as in prior-art document D2 and in the application in suit, is of no relevance for these observations.

Auxiliary request

5. Admissibility of the request

Amended claim 1 was submitted merely four days before the oral proceedings. In exercising its discretion pursuant to Article 13, paragraphs (1) and (3) of the Rules of Procedure of the Boards of Appeal, the board decided to admit the request into the proceedings because it comprises a minor amendment only, which does not give rise to new objections and which the board could deal with without difficulties in the oral proceedings.

6. Amendments

Claim 1 has been amended by adding the word "outwardly" in front of the wording "curved from a lower", based on figure 1. While the description does not provide support for this amendment, figure 1 alone provides a proper basis for deriving this added feature.

7. Inventive step

7.1 Prior-art document D2 is a suitable starting point for analysing inventive step of the subject-matter of claim 1.

As explained in detail in section4.1 above, document D2, in particular figures 24(c) and 24(d), discloses all features of the subject-matter of claim 1 except:

- a scroll dial arranged on the front surface in alignment with the two buttons and rotatable in a horizontal plane;
- a select button associated with the scroll dial; and
- the back surface being outwardly curved.

The appellant argued that the last of the differentiating features would lead to a natural position of the hand of the user, thus facilitating the operation of the scroll dial.

7.2 The application documents do not refer to such an effect. This was not disputed by the appellant. Moreover, claim 1 does not specify the aspect of the back surface being outwardly curved in any detail. A mouse which is only slightly outwardly curved falls into the scope of protection sought. Furthermore, claim 1 does not require that the back surface be outwardly curved over its whole length. Figure 1 depicts that a part of the back surface, namely, the part close to the surface 6, is curved inwardly, not outwardly.

Thus, the effect suggested by the appellant is not achieved over essentially the whole scope claimed. Consequently, "supporting more ergonomically the user's hand" is formulated as a less ambitious technical

effect. Hence, the objective technical problem can be formulated as how to support the hand of the user of the mouse of document D2 more ergonomically.

This problem is independent of the problem set out in section 4.1 above. Hence, the contribution towards inventive step of the back surface being outwardly curved must be addressed independently of the other differentiating features.

7.3 Facing this problem, the skilled person would have considered the teaching of document D2 and the form of the human palm when gripping. In this regard, figures 1, 6, and 29 depict the back surface of a mouse of which a substantial part is outwardly curved, and which is evidently meant to support a palm. Consequently, prior-art document D2 suggests a solution to the problem posed which falls under the scope of protection sought.

For these reasons, the subject-matter of claim 1 does not involve inventive step.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar: The Chair:

K. Boelicke A. Ritzka

Decision electronically authenticated