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**Datasheet for the decision
of 11 September 2018**

Case Number: T 2103/15 - 3.5.05

Application Number: 07009695.3

Publication Number: 1947555

IPC: G06F3/048

Language of the proceedings: EN

Title of invention:

Mobile terminal with touch screen

Applicant:

Microsoft Technology Licensing, LLC

Headword:

Border crossing during data input/MICROSOFT

Relevant legal provisions:

EPC Art. 123(2)

RPBA Art. 15(3)

Keyword:

Oral proceedings held in the absence of the appellant
Added subject-matter - (yes)



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Case Number: T 2103/15 - 3.5.05

D E C I S I O N
of Technical Board of Appeal 3.5.05
of 11 September 2018

Appellant: Microsoft Technology Licensing, LLC
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Redmond, WA 98052 (US)

Representative: Goddar, Heinz J.
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Decision under appeal: **Decision of the Examining Division of the
European Patent Office posted on 15 June 2015
refusing European patent application
No. 07009695.3 pursuant to Article 97(2) EPC**

Composition of the Board:

Chair A. Ritzka
Members: K. Bengi-Akyuerek
F. Blumer

Summary of Facts and Submissions

I. The appeal is against the decision of the examining division to refuse the present European patent application for lack of novelty (Article 54 EPC) with respect to the independent claims of a main request, having regard to the disclosure of

D1: US-A-2005/0219226,

for added subject-matter (Article 123(2) EPC) in respect of the independent claims of a first auxiliary request and for lack of inventive step (Article 56 EPC) with respect to the independent claims of a second auxiliary request, having regard to document D1.

II. With the statement setting out the grounds of appeal, the appellant filed an amended set of claims. It requested that the examining division's decision be set aside and that a patent be granted on the basis of that set of claims. In addition, it requested oral proceedings as an auxiliary measure.

III. In a communication annexed 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 123(2), 84 and 54 EPC in view of prior-art document D1.

IV. With a letter of reply dated 10 August 2018, the appellant submitted an amended set of claims along with arguments in support of its patentability, and requested that a patent be granted on the basis of those claims.

- V. By letter dated 5 September 2018, the appellant informed the board that it would not be attending the scheduled oral proceedings and that it was withdrawing its request for oral proceedings.
- VI. Oral proceedings were held *in absentia* as scheduled on 11 September 2018. The board established from the file that the appellant's final requests were that the decision under appeal be set aside and that a patent be granted on the basis of claims 1 to 17 (sole request) as filed with the letter dated 10 August 2018.

After due deliberation on the basis of those final requests and the written submissions, the board's decision was announced at the end of the oral proceedings.

- VII. Claim 1 of the sole claim set on file reads as follows:

"A method of controlling display in a mobile terminal comprising a touch screen (110) having a display area (114) that operates as a touch input area (116), the method comprising:

activating (S306) an information input mode;

providing the touch input area (116) separated from graphic icons displayed in a control area (118, 1410) of the display area (114);

recognizing a starting touch point of a first touching manner in the touch input area (116); and

recognizing the first touching manner extending over a border of the touch input area into the control area (118, 1410) of the display area (114),

wherein recognizing the first touching manner comprises:

adapting the control area (118, 1410) to be used as an additional input area if the starting touch point of the first touching manner is within the touch input area (116) and the first touching manner extends into the control area (118, 1410); and

adapting the control area (118, 1410) to be used as controlling mobile terminal operations when a second touching manner is not detected for a predetermined period."

Reasons for the Decision

1. *Non-attendance of the appellant at oral proceedings*
- 1.1 The appellant decided not to attend the scheduled oral proceedings before the board, and withdrew its request for them (cf. point V above). Pursuant to Article 15(3) RPBA, the board is not "obliged to delay any step in the proceedings, including its decision, by reason only of the absence at the oral proceedings of any party duly summoned who may then be treated as relying only on its written case."
- 1.2 In the present case, the appellant filed an amended set of claims and provided comments in support of its patentability in response to the objections raised in the board's communication under Article 15(1) RPBA. The board considered the new claims and found that claim 1 still gave rise to objections under Article 123(2) EPC (cf. point 2.1 below). So, in exercise of its

discretion under Article 15(3) RPBA, the board took a decision at the end of the oral proceedings, in the absence of the duly summoned appellant.

2. *Allowability of claim 1*

Present claim 1 was submitted for the first time in response to the objections raised in the board's communication under Article 15(1) RPBA. It comprises the following limiting features, as labelled by the board:

A method of controlling display in a mobile terminal comprising a touch screen having a display area that operates as a touch-input area, the method comprising the steps of:

- a) activating an information input mode;
- b) providing the touch-input area separated from graphic icons displayed in a control area of the display area;
- c) recognising a starting touch point of a first touching manner in the touch-input area;
- d) recognising the first touching manner extending over a border of the touch-input area into the control area, comprising
- e) adapting the control area to be used as an additional input area if the starting touch point of the first touching manner is within the touch-input area and the first touching manner extends into the control area;
- f) adapting the control area to be used as controlling mobile terminal operations when a second touching manner is not detected for a predetermined period.

2.1 *Added subject-matter (Article 123(2) EPC)*

The board holds that claim 1 is not allowable under Article 123(2) EPC, for the following reasons:

2.1.1 As to feature f), the present application as originally filed teaches that the control area is adapted to be used for control functions when, during an activated data input mode, user inputted data information is not detected for a predetermined period (see e.g. paragraphs [00012], [00019] and [000112]). The board therefore concludes that the use of the term "second touching manner" amounts to an unallowable intermediate generalisation of the application's original content, contrary to the requirements of Article 123(2) EPC.

2.1.2 The appellant cited paragraph [00015], in combination with paragraph [000112], of the original application as a basis for feature f). Paragraph [00015] states the following:

"... during a data input mode, the input area is adapted to recognize a second touching manner in the control region of the display area as activation of a control function associated with a touched graphic icon ... the second touching manner comprises one of depressing the control region for a predetermined period and for multiple times."

2.1.3 Hence, the original application teaches merely that the control area of the touch screen is used for control functions when a "second touching manner" (i.e. depression of the control region) in the control area is detected during the data input mode (see also paragraph [00010] and claim 3). However, the application is entirely silent as to what happens when

such a "second touching manner" (whatever its precise meaning) is not detected for a predetermined period.

2.2 In view of the above, claim 1 of the sole set of claims on file is not allowable under Article 123(2) EPC.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chair:



K. Götz-Wein

A. Ritzka

Decision electronically authenticated