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**Datasheet for the decision  
of 29 January 2019**

**Case Number:** T 2328/15 - 3.4.03

**Application Number:** 10192635.0

**Publication Number:** 2360665

**IPC:** G09G3/20, H04M1/02, G06F3/041

**Language of the proceedings:** EN

**Title of invention:**  
Mobile terminal and control method thereof

**Applicant:**  
LG Electronics Inc.

**Headword:**

**Relevant legal provisions:**  
EPC Art. 83, 123(2)  
EPC R. 115(2)  
RPBA Art. 12(4), 15

**Keyword:**  
Sufficiency of disclosure - (no)  
First auxiliary request - not admitted

**Decisions cited:**

T 0197/10, T 2221/10

**Catchword:**



**Beschwerdekammern**  
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Case Number: T 2328/15 - 3.4.03

**D E C I S I O N**  
**of Technical Board of Appeal 3.4.03**  
**of 29 January 2019**

**Appellant:** LG Electronics Inc.  
(Applicant) 20, Yeouido-Dong  
Yeongdeungpo-Gu  
Seoul 150-721 (KR)

**Representative:** Cabinet Plasseraud  
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**Decision under appeal:** Decision of the Examining Division of the  
European Patent Office posted on 25 June 2015  
refusing European patent application No.  
10192635.0 pursuant to Article 97(2) EPC.

**Composition of the Board:**

**Chairman** G. Eliasson  
**Members:** S. Ward  
T. Bokor

## **Summary of Facts and Submissions**

- I. The appeal is against the decision of the Examining Division refusing European patent application No. 10 192 635 on the grounds that the subject-matter of the claims of the main request and the first auxiliary request did not meet the requirements of Article 123(2) EPC. The second and third auxiliary requests were not admitted into the proceedings pursuant to Rules 116(1) and 137(3) EPC.
- II. Oral proceedings before the Board were held in the absence of the appellant, the Board having previously been informed in writing that the appellant would not be represented.
- III. In the statement of grounds of appeal, the appellant requested that the decision under appeal be set aside and that a patent be granted on the basis of either the main request or the first auxiliary request filed with the statement, or failing that, on the basis of either the main request or the first auxiliary request filed with the letter of 2 April 2015, which should now be considered to be the current second and third auxiliary requests. The appellant further stated: "In the event that none of the requests are deemed acceptable, then we hereby request oral proceedings under Rule 116 EPC."
- IV. The following document is referred to:
- D6: ENCYCLOPEDIA OF POLYMER SCIENCE AND ENGINEERING; Volume 10; John Wiley & Sons; 1987; title page, bibliographic page and page 520 ("Light Scattering").
- V. (a) Claim 1 of the main request reads as follows:

*"A mobile terminal (100), comprising:  
a first touch pad (135) configured to receive a touch input at a front surface of the mobile terminal;  
a second touch pad configured to receive a touch input at a rear surface of the mobile terminal;  
a first display unit including a transparent display (151);  
a second display unit including a non-transparent display (155) disposed below the transparent display (151); and  
a controller (180) configured to selectively control the first and second display units to operate in a dual-operation mode by controlling at least a portion of the first display unit to be transparent and controlling the second display unit to display information that can be viewed through said at least the portion of the first display unit that is transparent,  
wherein when the first display unit displays a first object and the second display unit displays a second object overlapping the first object in the dual-operation mode, the controller (180) is further configured to select the first object if a touch input is received to the front surface and to select the second object if a touch input is received to the rear surface, and wherein  
if a touch input is received to the rear surface the controller (180) is further configured to increase the transparency of the first display unit so as to highlight objects displayed on the second display unit thereby allowing a user to view them more clearly."*

(b) Claim 1 of the first auxiliary request reads as follows:

*"A mobile terminal (100), comprising:  
a first display unit including a transparent display (151);  
a second display unit including a non-transparent display (155) disposed below the transparent display (151); and  
a controller (180) configured to selectively control the first and second display units to operate in a dual-operation mode by controlling at least a portion of the first display unit to be transparent and not display information and controlling the second display unit to display information that can be viewed through said at least the portion of the first display unit that is transparent,  
wherein, when the controller (180) controls the first and second display units to operate in the dual-operation mode, the controller is further configured to control the first display unit to display a first object and the second display unit to display a second object overlapping the first object, and to select one of the first or second objects based on whether a front surface of the first display unit is touched or a rear surface of the second display unit is touched."*

(c) Claim 1 of the second auxiliary request and claim 1 of the third auxiliary request are similar to claim 1 of the main request, and both comprise the feature that the controller is further configured to:

*"increase the transparency of the first display unit so as to highlight objects displayed on the second display unit"*.

VI. With the summons to oral proceedings, the Board sent the appellant a communication under Article 15(1) RPBA setting out its provisional views as follows:

Doubts concerning the meaning of the terms "transparency" and "transparent", as used in the application, gave rise to potential objections under Articles 83, 84 and 123(2) EPC. In relation to Article 83 EPC, claim 1 of the main request defined that the controller was configured to "increase the transparency of the first display unit", but it was doubtful whether it was disclosed in the application how this was to be achieved. Document D6 (an excerpt from a standard reference work) was annexed to confirm the conventional meaning of certain optical terms.

The first auxiliary request did not correspond to any request filed before the department of first instance, and appeared to give rise to new objections. It was therefore likely that the Board would use its discretion under Article 12(4) RPBA not to admit it.

The subject-matter of claim 1 of the second and third auxiliary requests appeared to differ only slightly from that of claim 1 of the main request, and the objection under Article 83 EPC would appear to apply to these requests also.

- VII. The appellant filed a further letter dated 13 December 2018 stating that "the applicant will not be represented at the oral proceedings as scheduled." The letter contained no further arguments or submissions of a substantive nature.

## Reasons for the Decision

1. The appeal is admissible.
2. As announced in advance, the duly summoned appellant did not attend the oral proceedings. According to Rule 115(2) EPC, if a party duly summoned to oral proceedings does not appear as summoned, the proceedings may continue in the absence of that party who may then be treated as relying only on its written case. As the present case was ready for decision at the conclusion of the oral proceedings (Article 15(5) and (6) RPBA), the voluntary absence of a party was not a reason for delaying the decision (Article 15(3) RPBA).

3. *Main Request: Article 83 EPC*

- 3.1 Claim 1 of the main request comprises the feature that if a touch input is received to the rear surface, the controller is configured to "increase the transparency of the first display unit".

- 3.2 In the application as filed, the word "transparency" appears in only two passages of the description, as follows (emphasis by the Board):

*"Also, the **transparency** of a second display may be controlled not to obstruct displaying the non-transparent display (LCD or e-paper). The **transparency** may be controlled from 0%, a completely transparent state, to 100%, a non-transparent state" (paragraph [0236], second and third sentences).*

*"Also, if the user touch [sic] the rear surface, then the controller 180 may increase the **transparency** of the*



*second display to highlight control buttons (=first objects) displayed on the first display, thereby allowing the user to view more clearly"* (paragraph [0264], final sentence).

Neither in these passages, nor elsewhere in the application, is there any explanation how the transparency may be controlled or increased.

- 3.3 According to its well-known conventional meaning, "transparency" refers to the physical property of transmitting light without scattering. In optical science, the "transparency" of a sheet or film has a defined quantitative meaning, referring to the transmitted light intensity that deviates by an angle of less than  $2.5^\circ$  as a percentage of the incident light intensity; the percentage of transmitted light intensity deviating by more than  $2.5^\circ$  being known as the "haze" (see D6, page 520). Accordingly, to a skilled person, claim 1 defines that the controller is configured to increase the transmission (and/or reduce the haze) of the first display unit.

There is nothing in the application to indicate how the amount of light transmitted by the first display unit might be increased, or how the haze of the transmitted light might be reduced.

- 3.4 In assessing whether the invention as claimed meets the requirements of Article 83 EPC, the Board has considered the possibility that, within the context of the present application, the term "transparency" is to be understood in a non-standard sense.

Although the word "transparency" appears only three times in the description (and nowhere in the claims as

originally filed), the terms "transparent" and "non-transparent" appear throughout the description, and, in the Board's view, are used somewhat inconsistently.

3.5 For example, a "transparent display" is referred to, as exemplified by a transparent OLED (or TOLED; see paragraphs [00151], [00155], [00178], [00188], [00233], [00235] and [00236]). A TOLED is well known to be a device in which transparent light emitting diodes (using transparent electrodes and light emitting materials) are formed on, or in, a thin transparent glass or plastic substrate. Such devices are therefore transparent in the normal sense of the term, i.e. having high transmission and low scattering.

3.6 However, "transparent" appears to be used in another sense in, for example, paragraph [0155] of the description, which defines a "transparent operation mode" of the transparent display unit to be one in which "electrical signals for displaying data on the transparent display are not applied, [so that] visual information such as a character, an image, and the like is not displayed, thereby becoming a transparent state." Similarly, according to paragraph [0158], the operation modes are either "transparent or active".

Thus, "transparent" used in this sense does not refer to the physical properties of the materials, but appears to be intended to mean that no image is displayed ("transparent mode"). The alternative "active mode" in which an image is displayed, is therefore presumably considered "non-transparent", in the sense that the light emitted from the display makes it more difficult to clearly discern objects lying behind the display (even though the light from any such objects would still be transmitted through the display).

3.7 Accordingly, it is possible to speculate that the expression "increase the transparency of the first display unit" is actually intended to mean something like "reduce the intensity of the image displayed on the first display unit".

Such an interpretation might also serve to explain the otherwise apparently incomprehensible statement in paragraph [0236] that "The transparency may be controlled from 0%, a completely transparent state, to 100%, a non-transparent state". On the face of it, this passage appears to make no sense, as a transparency of 0% would be a completely opaque state, and not "a completely transparent state" and a transparency of 100% would be a completely transparent state and not "a non-transparent state". Again, one could speculate that what was intended was that the *intensity of the image displayed on the first display unit* may be controlled from 0% (this condition *defining* "a completely transparent state"), to 100% (this condition *defining* "a non-transparent state").

3.8 However, even if this was the intention, the Board does not believe that it would be possible to acknowledge compliance with the requirements of Article 83 EPC based on deriving a non-standard meaning for "transparency" from the description. The reasons are as follows:

3.9 Firstly, in T 2221/10, the Board came to the following conclusion:

*"According to established case law of the Boards of Appeal the description can be used as the patent's 'dictionary' to assess the correct meaning of ambiguous*

*terms used in claims. However, if a term used in a claim has a clear technical meaning, the description cannot be used to interpret such a term in a different way. In case of a discrepancy between the claims and the description, the unambiguous claim wording must be interpreted as it would be understood by the person skilled in the art without the help of the description" (T 2221/10, Reasons, point 33).*

A similar conclusion was reached in T 197/10 (see *Leitsatz* i.e. "Headnote").

Since "transparency" has a clear and unambiguous conventional meaning, the description cannot be used to interpret it in a different way.

3.10 Secondly, a separate necessary condition to be fulfilled before the description could be used as the application's "dictionary" is that the description should clearly and unambiguously define what, within the context of the invention, is intended by the claimed term.

In the present case, the description contains no definition of what precisely is meant by "increase the transparency", and any attempt to identify an intended meaning different to that which would be conventionally understood would be mere speculation (see point 3.7, above).

3.11 The term "transparency" is therefore understood in the conventional sense set out above under point 3.3, and since it is not apparent from the description how the transparency of the first display unit, understood in this sense, could be increased, the invention defined

by claim 1 of the main request does not meet the requirements of Article 83 EPC.

4. *First Auxiliary Request*

4.1 The first auxiliary request does not correspond to any request filed in the proceedings before the department of first instance, and no reason has been given by the appellant why this request could not have been submitted during those proceedings. Article 12(4) RPBA therefore gives the Board the discretion not to admit this request.

In deciding how this discretion should be exercised, one criterion regularly used by the Boards is whether the request would give rise to new objections, including objections under Article 123(2) EPC.

4.2 According to the appellant, claim 1 of the first auxiliary request is based on claim 1 and "option 3 of claim 12 of the application as filed". Original claim 1 included a touch pad, and the appellant accepts that "the presence of a touchpad (135) is no longer explicitly recited in the claim."

4.3 Examining the first auxiliary request would therefore require the Board to consider the question whether an independent claim in which a touch pad is no longer explicitly defined nevertheless satisfies the requirements of Article 123(2) EPC, in the light of the appellant's argument that the feature remains "implicitly present" as a result of other claimed features.

The appellant has, as noted above, given no reason why such a claim could not have been filed previously, nor

has it been explained why it was considered necessary to formulate the first auxiliary request in such a way that this question now arises for the first time in appeal.

Under these circumstances the Board considers it appropriate to exercise its discretion under Article 12(4) RPBA not to admit the first auxiliary request into the proceedings.

5. *Second and Third Auxiliary Requests*

The independent claims of the second and third auxiliary requests define mobile terminals and methods comprising the feature that if a touch input is received to the rear surface, the controller is configured to increase the transparency of the first display unit. The subject-matter of these claims therefore fails to meet the requirements of Article 83 EPC for the reasons explained in connection with the main request *mutatis mutandis*.

6. In summary, the main request and the second and third auxiliary requests are not allowable, and the Board does not admit the first auxiliary request into the proceedings. Consequently, the appeal must fail.

**Order**

**For these reasons it is decided that:**

The appeal is dismissed.

The Registrar:

The Chairman:



S. Sánchez Chiquero

G. Eliasson

Decision electronically authenticated