

**Internal distribution code:**

- (A) [ - ] Publication in OJ
- (B) [ - ] To Chairmen and Members
- (C) [ - ] To Chairmen
- (D) [ X ] No distribution

**Datasheet for the decision  
of 4 June 2021**

**Case Number:** T 2393/16 - 3.5.06

**Application Number:** 10155522.5

**Publication Number:** 2363776

**IPC:** G06F1/16, H04M1/725

**Language of the proceedings:** EN

**Title of invention:**

System and method for activating components on an electronic device using orientation data

**Applicant:**

BlackBerry Limited

**Headword:**

Phone orientation/BLACKBERRY

**Relevant legal provisions:**

EPC Art. 56, 111(1)  
RPBA 2020 Art. 13(2)

**Keyword:**

Inventive step - (no)  
Amendment after summons - exceptional circumstances (yes)  
Appeal decision - remittal to the department of first instance  
(no)

**Decisions cited:**

**Catchword:**



**Beschwerdekammern**  
**Boards of Appeal**  
**Chambres de recours**

Boards of Appeal of the  
European Patent Office  
Richard-Reitzner-Allee 8  
85540 Haar  
GERMANY  
Tel. +49 (0)89 2399-0  
Fax +49 (0)89 2399-4465

Case Number: T 2393/16 - 3.5.06

**D E C I S I O N**  
**of Technical Board of Appeal 3.5.06**  
**of 4 June 2021**

**Appellant:** BlackBerry Limited  
(Applicant) 2200 University Avenue East  
Waterloo, ON N2K 0A7 (CA)

**Representative:** Hanna Moore + Curley  
Garryard House  
25-26 Earlsfort Terrace  
Dublin 2, D02 PX51 (IE)

**Decision under appeal:** **Decision of the Examining Division of the  
European Patent Office posted on 20 May 2016  
refusing European patent application No.  
10155522.5 pursuant to Article 97(2) EPC.**

**Composition of the Board:**

**Chairman** M. Müller  
**Members:** T. Alecu  
A. Jimenez

## **Summary of Facts and Submissions**

- I. The appeal is against the decision of the Examining Division to refuse the application. The appellant requested that the decision be set aside and that a patent be granted on the basis of a set of claims 1-12 filed with the grounds of appeal as the, at that point, only auxiliary request. A claim set according to a main request had also been filed with the grounds of appeal, but was later withdrawn (see below). The appellant also requested remittal to the first instance.
- II. The Examining Division had refused the application for lack of compliance with Article 56 EPC and with Article 123(2) EPC. The decision referred to the following prior art documents:
- D1: US 2010/0008523, 14 January 2010  
D2: US 2009099812, 16 April 2009  
D3: US 2009/215488, 27 August 2009
- III. With the communication accompanying a summons to oral proceedings, the Board, in respect of the aforesaid auxiliary request:
- questioned its admittance under Article 12(4) RPBA 2007
  - raised objections under Article 123(2) EPC and
  - introduced document
- D4: US 2008/0146289, 19 June 2008.
- The Board also raised novelty objections in view of D4 and inventive step objections starting from D1 or D2 in view of D4 in respect of the main request.
- IV. The appellant argued in favour of admittance of the request under Article 13(2) RPBA 2020. The main request

filed with the grounds of appeal was withdrawn conditional to the admittance of the auxiliary request. The Board admitted the auxiliary request which became the sole request on file.

V. The decision was announced in the oral proceedings.

VI. Claim 1 of the sole request recites (reference signs removed, feature lettering by the Board):

*A method for activating components of a handheld electronic device having a longitudinal axis defining a bottom end and a top end of the device, comprising:*

*a) monitoring data from a first sensor for said device; determining an orientation of said device by analyzing at least said data from said first sensor; and*

*b) determining a location of a user relative to the device based on signals from two microphones located at a spaced relationship on the device, the location of the user being an indication of the user being positioned at the bottom end or the top end of the device; and*

*c) when the determination of the orientation indicates that the longitudinal axis of the device is horizontal and the device is face down or face up, subsequent to the determination of the orientation of the device and location of the user relative to the device, in view of said orientation of said device and said location of a user relative to the device:*

*c1) activating a first microphone of the two microphones and deactivating a first speaker, the first microphone and the first speaker positioned on said device at the same bottom or top end of the device as the user,*

*c2) deactivating the second microphone of the two microphones and activating a second speaker, the second microphone and the second speaker positioned on said device at the other bottom or top end of the device with respect to the user, and  
c3) generating an output on a display of said device oriented to match said orientation of said device.*

## **Reasons for the Decision**

### *Admittance (Article 13(2) RPBA 2020)*

1. The Board had questioned the admittance of the auxiliary request under Article 12(4) RPBA 2007, because it should have been filed before the Examining Division. The appellant argued in favour of its admittance and added that, even if the Board were not to admit the request under Article 12(4) RPBA 2007, the request should be admitted under Article 13(2) RPBA 2020 in view of the fact that the Board introduced a new document and raised new objections to the main request based on it. This request was an appropriate response to those objections.
  
2. The Board agrees that the introduction of D4 could not have been foreseen by the appellant and considers that they have a right to react to it and that this request is an appropriate response. The Board accepts this to constitute exceptional circumstances in the sense of Article 13(2) RPBA 2020 and consequently admits the request. There is therefore no need to discuss Article 12(4) RPBA 2007.

*The invention*

3. The application (see paragraphs 1, 68 and 69) relates to a method of determining the orientation of a (mobile) device and accordingly activating or deactivating different components, such as microphones and speakers, and orienting the display (landscape/portrait). The orientation can be absolute or can be user-centric and is determined by way of sensors such as accelerometers, gyroscopes, mercury switches or microphone input levels (paragraphs 48, 52, 68); the user position is determined by using the microphones (paragraphs 70 and 71).

*Inventive step*

4. Document D4, introduced by the Board (according to Article 114(1) EPC), contains as a general teaching, similarly to the current application, a method of determining the orientation of a (mobile) device and accordingly activating or deactivating different components, such as microphones and speakers, as well as configuring the display (see abstract, figures 1-3, paragraph 35). It further teaches, for the same purpose, to localize the user of a mobile device using two microphones (paragraphs 25 and 26).
5. D4 addresses some scenarios/orientations in more detail (see chart 128 in figure 3 - A to E).
- 5.1 In orientations A and B (paragraphs 29 to 30), a clam-shell phone having one microphone and one speaker at each ends of the device (when open) is held vertically. It detects whether it is held normally or upside-down, and activates the microphone *proximate* to the *mouth* of the user and the speaker on the other (ear) side. The

display is also correspondingly adjusted (paragraph 35).

- 5.2 In orientation C (paragraph 31), the clam-shell phone is horizontal (placed on the side, not face up or down) and used for media playback. Both speakers are activated and the microphones are off. The display is oriented according to the user position (paragraph 35).
- 5.3 In orientations D and E (paragraphs 32 and 33), a PDA-like phone with a speaker and a microphone each on the front and rear is used in a vertical position for speaking. The device uses the microphone to detect on which side the user finds itself (see paragraph 40), and activates the microphone and speaker on that side. The displays are also configured according to the user position (paragraph 35).
  
6. It is disclosed that the teaching of D4 is not specific to those scenarios, nor is it exhaustive in that it does not cover all possible scenarios. The skilled person would apply it to other types of phones and use scenarios which may arise in practice, as explicitly taught in D4 (see paragraph 34).
  
7. The Board considers the following scenario: a clam-shell phone such as in scenarios A and B of D4, or a smartphone such as in D1 (figure 2), used for telephony in a horizontal position. This may reflect the user desire to continue a conversation while putting the phone on the table (see D2 paragraph 31, see also paragraph 3 of the background section of the description), or simply to hold it horizontally (see D2 paragraph 32).
  
8. The objective technical problem to be solved by the skilled person may be formulated as how to facilitate the use of the device in this given scenario. It is



first necessary to determine the orientation of the device, to see whether it is horizontal(see D4 paragraph 47). Claim features a) and c) are thereby realised.

- 8.1 Then, following the general teaching of D4, the skilled person would go on to determine the configuration of the microphone, speakers and display. Given that the scenario is one of a phone conversation, the skilled person would be guided by examples A/B or D/E in D4, C being one for media playback.
- 8.2 These two examples teach that the active microphone should be the one *proximate* to the user's mouth (the sound source): in A and B, there is a presumption that the user's mouth is down and the ear is up, so the bottom microphone is activated and the other one deactivated. In scenarios D and E, the user's position is determined and the microphone on the user side is activated. Thus one needs to activate the microphone closest to the user and deactivate the other.
- 8.3 In the presented scenario, there is no presumption as to where the user finds itself (as in A and B, the user may place the phone either way). The position of the user needs to be determined, and this can only be done in D4 by using the microphones. Claim feature b) is thereby realised.
- 8.4 There follows the choice of the speaker: examples A and B point to the claimed features c1) and c2), whereas D/E point to using the speaker closer to the user. Both possibilities are therefore obvious.
- 8.5 Finally, the display would also need to be oriented accordingly, following the indications in paragraph 35 of D4. Claim feature c3) is thereby also realised.
9. The appellant did neither contest the scenario proposed nor the corresponding formulation of the objective technical problem.

- 9.1 But D4 did not guide the skilled person to the claimed features. The only example in D4 with the phone in a horizontal position was orientation C, which was about video playback. Even if looking at D2, paragraphs 31 to 33 only refer to a speaker mode, there were no details on the microphone configuration. Orientations A and B did not use the microphones for determining user position at all.
- 9.2 Furthermore, statements in D4 were vague and to be taken with a pinch of salt. In particular, it was said (paragraph 35) that in orientation C images presented upon display 224 can be rotated 90 or 270 degrees based on the user position, which did not make technical sense.
- 9.3 The thrust of D4 was providing instructions for configuration based only on phone orientation; D4 was not "user-centric". For instance, in orientation C, the microphones were used only as an alternative to determine the phone orientation (paragraph 35).
10. The Board disagrees with the statement of the appellant that D4 is not "user-centric". In orientation C, it takes care to select the right landscape orientation, so that the image is not upside down. Even if this affirmation were to be taken "with a pinch of salt", it shows concern for orienting the display so that the user can see it properly. In D and E, D4 is clearly concerned with the side of the device on which the user is. Even A and B implicitly show that concern - the active microphone needs to be placed proximate to the user's mouth. There is no explicit determination of the user's position because one does not realistically expect the user's head to be placed upside-down.
11. The board also notes that it is not the position of the device alone that determines the configuration of the

microphone/speakers/display, the shape of the device and its current use is at least as important. For instance, comparing video playback vs. phone conversation, it is clear that for the former, the microphones are of no evident use, whereas for the latter, at least one microphone has to be enabled. So the fact that the horizontal scenario of D4 does not teach the claimed configuration is not pertinent for the scenario considered above.

12. The Board does agree with the appellant that the scenarios in D4 do not teach, or *explicitly* lead to the claimed configuration. But this is not the question to be answered for the assessment of inventive step. The question is rather what would the skilled person do in order to solve the objective technical problem posed, in light of the teachings of D4. As explained above, the Board is convinced that the skilled person would arrive at all of the claimed features by applying the teachings of D4 in a straightforward manner in the presented scenario.
  
13. Consequently, claim 1 of the sole request lacks inventive step in view of D4 (Article 56 EPC).

*Article 123(2) EPC*

14. In view of the opinion of the Board on inventive step, the added matter objection raised in the summons was not further discussed with the appellant, and no decision was taken.

*Remittal*

15. The appellant requested remittal *should the Board not be persuaded [...]* given the fact that the Applicant

*will only have had one opportunity to provide written argumentation in support of the presented claims (reply to the summons, Conclusion section, 2nd paragraph).*

16. The Board notes that appellant provided argumentation in written and in oral form at the oral proceedings before the Board, which then decided on the matter (Article 111(1) EPC, first sentence). Remitting the case (Article 111(1) EPC, second sentence) would thus serve no purpose.

## **Order**

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

The appeal is dismissed.

The Registrar:

The Chairman:



L. Stridde

M. Müller

Decision electronically authenticated