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**Datasheet for the decision
of 2 May 2019**

Case Number: T 2568/16 - 3.5.05

Application Number: 11701893.7

Publication Number: 2524298

IPC: G06F3/16, G06F3/048

Language of the proceedings: EN

Title of invention:

ADAPTIVE AUDIO FEEDBACK SYSTEM AND METHOD

Applicant:

Apple Inc.

Headword:

Audio/video feedback on GUI/APPLE

Relevant legal provisions:

EPC Art. 56

RPBA Art. 12(4), 13(1)

Keyword:

Inventive step - (no)

Late-filed requests - admitted (no)

Decisions cited:

Catchword:



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Case Number: T 2568/16 - 3.5.05

D E C I S I O N
of Technical Board of Appeal 3.5.05
of 2 May 2019

Appellant: Apple Inc.
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Representative: Barnfather, Karl Jon
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Decision under appeal: Decision of the Examining Division of the
European Patent Office posted on 6 July 2016
refusing European patent application No.
11701893.7 pursuant to Article 97(2) EPC.

Composition of the Board:

Chair A. Ritzka
Members: P. Cretaine
D. Prietzel-Funk

Summary of Facts and Submissions

- I. This appeal is against the decision of the examining division, posted on 6 July 2016, refusing European patent application No. 11701893.7. A main request and a first auxiliary request were refused for lack of compliance with the requirements of Article 123(2) EPC.
- II. Notice of appeal was received on 1 September 2016, and the appeal fee was paid on the same day. The statement setting out the grounds of appeal was received on 15 November 2016. The appellant requested that the decision under appeal be set aside and that a patent be granted on the basis of the main request or the first to third auxiliary requests, all requests as submitted with the statement setting out the grounds of appeal. The appellant also requested oral proceedings in the event that the main request should not be allowed.
- III. A summons to oral proceedings was issued on 14 February 2019. In a communication annexed to the summons, the board gave its preliminary opinion on the case. In its view, the main request did not meet the requirements of Article 123(2) EPC, and the main request and the first and second auxiliary requests did not meet the requirements of Article 56 EPC, having regard to the disclosure of:

D1: US 2004/0036715, cited in the European search report.

As to the third auxiliary request, the board expressed doubts about its admissibility under

Article 12(4) RPBA and also the view that the subject-matter of claim 1 was not novel with regard to the disclosure of D1.

IV. Oral proceedings were held on 2 May 2019. During the proceedings, the appellant withdrew the main and the second auxiliary requests, and submitted a new main request. The appellant requested that the decision under appeal be set aside and that the patent be granted based on the new main request submitted during the oral proceedings or the first or third auxiliary requests submitted with the statement setting out the grounds of appeal. The decision of the board was announced at the end of the oral proceedings.

V. Claim 1 according to the new main request reads as follows:

"A method, comprising:
using a processor on an electronic device to:
detect a respective occurrence of a user interface event (88) requesting audio feedback on the electronic device at a first time;
in response to detecting the respective occurrence of the user interface event (88) at the first time, identify a plurality of audio items (148) and a first visual notification (142) associated with the user interface event (88), wherein each of the plurality of audio items (148) has a different level of verbosity, and wherein the plurality of audio items (148) include at least a first audio item (150) having a first verbosity level and using a text-to-speech application to speak the first visual notification (142) using synthesized speech, and a second audio item having a second verbosity level lower than the first verbosity level (152, 154, 156) outputting a non-verbal tone:

determine whether the user interface event (88) previously occurred within a particular time interval prior to the first time and whether the first audio item (150) was provided during said previous occurrence; and
in accordance with at least a determination that the user interface event previously occurred within the particular time interval prior to the first time and that the first audio item was provided during said previous occurrence, concurrently provide the second audio item (152, 154, 156) with the first visual notification (142) on the electronic device using an audio output device, wherein the first audio item (150) was provided with the first visual notification during said previous occurrence."

Claim 1 according to the first auxiliary request reads as follows:

" A method, comprising:
using a processor on an electronic device to:
detect a respective occurrence of a user interface event (88) requesting audio notification on the electronic device at a first time;
in response to detecting the respective occurrence of the user interface event (88) at the first time,
identify a plurality of audio items (148) and a first visual notification (142) associated with the user interface event (88), wherein each of the plurality of audio items (148) has a different level of verbosity, and wherein the plurality of audio items (148) include at least a first audio item (150) having a first verbosity level, and a second audio item having a second verbosity level lower than the first verbosity level (152, 154, 156);

determine whether the user interface event (88) previously occurred within a particular time interval prior to the first time and whether the first audio item (150) was provided during said previous occurrence; and
in accordance with at least a determination that the user interface event previously occurred within the particular time interval prior to the first time and that the first audio item was provided during said previous occurrence, concurrently provide the second audio item (152, 154, 156) with the first visual notification on the electronic device using an audio output device, wherein the first audio item (150) was provided with the first visual notification during said previous occurrence."

Each of the new main request and the first auxiliary request comprises further independent claims directed to a corresponding device (claim 12) and a corresponding computer program (claim 14).

Claim 1 according to the third auxiliary request reads as follows:

"A method, comprising:
using a processor on an electronic device to:
detect the occurrence of a user interface event requesting audio feedback on the electronic device at a first time;
identify a plurality of audio items associated with the user interface event, wherein each of the plurality of audio items has a different level of verbosity;
select a first audio item from the plurality of audio items that corresponds to a first desired verbosity level determined based at least partially upon whether

the user interface event previously occurred within a particular time interval prior to the first time; and provide the audio feedback by playing back the selected first audio item on the electronic device using an audio output device."

The third auxiliary request comprises a further independent claim directed to a corresponding device (claim 13).

Reasons for the Decision

1. The appeal is admissible (see point II above).
2. New main request - Admission
 - 2.1 This request was filed at the end of the oral proceedings and replaced the previous main request. The board had previously expressed the view that claim 1 of the previous main request infringed Article 123(2) EPC and did not meet the requirements of Article 56 EPC.
 - 2.2 During the discussion about the previous main request, the board held that the feature defining "a first audio item (150)...comprising speech synthesized based on the first visual feedback (142)" was not supported by the originally filed application documents (Article 123(2) EPC). Indeed, the only passage in the description which dealt with speech synthesising in relation to the visual feedback notification was paragraph [0070] where it was mentioned that a text-to-speech application was used to "speak" the notification 142 using synthesised speech. This passage therefore described that the whole feedback notification 142 was spoken and not that speech was synthesised based on the feedback notification 142, i.e. that only part of the

feedback notification could be spoken, as defined by claim 1 of the previous main request. The appellant amended claim 1 by replacing the objected feature by the feature "a first audio item (15)...using a text-to-speech application to speak the first visual notification (142) using synthesized speech", thereby *prima facie* overcoming the Article 123(2) EPC objection.

- 2.3 With respect to the objection under Article 56 EPC against the previous main request, it was common ground during the oral proceedings that the subject-matter of claim 1 of the previous main request differed from the disclosure of D1 only in that the verbosity level of the visual feedback, unlike the verbosity level of the audio feedback, was not changed at a second occurrence over a particular time interval of the same user interface event. The objective technical problem was formulated, as proposed by the appellant, as how to improve the user experience when both audio and video feedback were presented. The board held that the skilled person would have been well aware that, as acknowledged by the appellant in its letter of 18 November 2014 (see the first paragraph of the section "Novelty and Inventive step"), verbose visual feedback had a less disturbing effect than verbose audio feedback and could be beneficial when clarification was needed. Thus, the skilled person would have been prompted to retain in D1 the verbosity level of the visual feedback when the verbosity level of the audio feedback was decreased, thereby arriving at the subject-matter of claim 1. The board therefore concluded that claim 1 did not involve an inventive step, having regard to the disclosure of D1 and the common general knowledge of the skilled person.

To overcome this objection, the appellant added the wording "outputting a non-verbal tone" to specify more precisely the second audio item and argued that D1 did not disclose or suggest reducing a text to a non-verbal tone. However, as this feature was already disclosed in D1 (see the paragraph [0069]: "it could simply be a one or more sounds"), it appeared to the board that the amendments to the claims were not *prima facie* able to overcome the inventive-step objection. The board thus exercised its discretion under Article 13(1) RPBA and decided not to admit the new main request into the proceedings.

3. Auxiliary request 1 - Inventive step

Claim 1 differs from claim 1 of the previous main request only in that the word "feedback" has been replaced by the word "notification" and the wording "and comprising speech synthesized based on the first visual feedback (142)", objected under Article 123(2) EPC, has been deleted.

The board holds that the use of "notification" instead of "feedback" does not provide any substantial amendment to the subject-matter of claim 1. Therefore, claim 1 does not meet the requirements of Article 56 EPC, having regard to the disclosure of D1.

4. Auxiliary request 3 - Admission

This request was filed with the statement setting out the grounds of appeal. The claims of this request are identical to the originally filed claims and to the claims filed on European phase entry. These claims were regarded as not novel in the international preliminary report on patentability issued on 17 July 2012, and

were withdrawn by letter dated 28 February 2013. However, according to the case law of the boards of appeal, requests withdrawn before the department of first instance, thus precluding a reasoned decision on the issue, that are re-filed in the appeal proceedings are not admitted. An admission would be contrary to the main purpose of ex parte appeal proceedings, which are primarily concerned with examining a contested decision (see G 10/93, OJ 1995, 172; Case Law of the Boards of Appeal, 8th edition 2016, IV.E.4.3.3c). The board thus exercised its discretion under Article 12(4) RPBA and decided not to admit auxiliary request 3 into the proceedings.

5. Conclusion

The new main request is not admitted into the proceedings (Article 13(1) RPBA), auxiliary request 1 does not meet the requirements of Article 56 EPC, and auxiliary request 3 is not admitted into the proceedings (Article 12(4) RPBA).

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chair:



K. Götz-Wein

A. Ritzka

Decision electronically authenticated