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Datasheet for the decision of 19 December 2019

Case Number: T 0166/17 - 3.5.05

Application Number: 09802061.3

Publication Number: 2370874

IPC: G06F3/01

Language of the proceedings: EN

Title of invention:
METHOD AND APPARATUS FOR PROVIDING A HAPTIC MONITORING SYSTEM USING MULTIPLE SENSORS

Applicant:
Immersion Corporation

Headword:
HAPTIC MONITORING SYSTEM USING MULTIPLE SENSORS / Immersion

Relevant legal provisions:
EPC Art. 123(2), 116
EPC R. 115(2)

Keyword:
Amendments - extension beyond the content of the application as filed (yes)
Summons to oral proceedings - non-attendance of party announced - oral proceedings cancelled

Decisions cited:
T 0663/10, T 0671/12, T 0910/02

Catchword:

Europäisches Patentamt
European Patent Office
Office européen des brevets

Beschwerdekammern

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Case Number: T 0166/17 - 3.5.05

D E C I S I O N
of Technical Board of Appeal 3.5.05
of 19 December 2019

Appellant: (Applicant)	Immersion Corporation 50 Rio Robles San Jose, CA 95134 (US)
Representative:	Hofstetter, Schurack & Partner Patent- und Rechtsanwaltskanzlei PartG mbB Balanstrasse 57 81541 München (DE)
Decision under appeal:	**Decision of the Examining Division of the European Patent Office posted on 8 July 2016 refusing European patent application No. 09802061.3 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 lies from the decision of the examining division to refuse European patent application No. 09802061.3 because the sole request did not meet the requirements of Article 56 EPC.

II. With its notice of appeal, the appellant submitted an amended main request and an auxiliary request and requested that the decision be set aside and that a patent be granted on the basis of these requests.

III. In its statement setting out the grounds of appeal the appellant submitted arguments.

IV. The board arranged for oral proceedings to be held.

V. In a communication pursuant to Article 15(1) RPBA, the board set out its provisional view of the case. It considered, inter alia, that both requests did not meet the requirements of Article 123(2) EPC.

VI. By letter dated 12 November 2019 the appellant informed the board that "neither the applicant nor the applicant's representative will attend the oral proceedings".

VII. In a subsequent communication the board informed the appellant that the oral proceedings were cancelled.

VIII. The appellant requested that the decision under appeal be set aside and that a patent be granted on the basis of one of the following requests:

- main request as filed with the notice of appeal;
- auxiliary request as filed with the notice of appeal.

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

"A haptic system, comprising:

a first haptic device configured to be worn by a first user and a second haptic device configured to be worn by a second user, each of the first haptic device and the second haptic device comprising
a sensing device (114, 120) capable of being selectively set to sense the respective user's vital physical information via sensors (150, 152, 154, 156, 158, 160) and capable of forwarding the vital physical information for processing;
a positioning device coupled to the sensing device (114, 120) and configured to identify the respective user's physical location;
a digital processing unit (112, 220) coupled to the sensing device (114, 120) and configured to provide a haptic signal in response to the vital physical information and physical location of the user wearing the respective haptic device;
a haptic generator (126, 626) coupled to the digital processing unit (112, 220) and capable of generating haptic feedback in accordance with the haptic signal; and
a filter (122) configured to filter extraneous information which can interfere with the detection of true vital signs of the use,
characterized in that
the haptic generator (126, 626) of the first haptic device is configured to generate haptic feedback based on a combination of the vital physical information and physical location of the first user and the second user, and
the haptic generator (126, 626) of the second haptic device is configured to generate haptic feedback based

on the combination of the vital physical information and physical location of the first user and the second user."

X. Claim 1 of the auxiliary request reads as follows:

"A haptic system, comprising:

a first haptic device configured to be worn by a first user and a second haptic device configured to be worn by a second user, each of the first haptic device and the second haptic device comprising:
a sensing device (114, 120) capable of being selectively set to sense the respective user's vital physical information via sensors (150, 152, 154, 156, 158, 160) and capable of forwarding the vital physical information for processing;
a positioning device coupled to the sensing device (114, 120) and configured to identify the respective user's physical location;
a digital processing unit (112, 220) coupled to the sensing device (114, 120) and configured to provide a haptic signal in response to the vital physical information and physical location of the user wearing the respective haptic device; wherein the digital processing unit (112, 220) generates a haptic cue to the user for enhancing performance of a team sport;
a haptic generator (126, 626) coupled to the digital processing unit (112, 220) and capable of generating haptic feedback in accordance with the haptic signal; and
a filter (122) configured to filter extraneous information which can interfere with the detection of true vital signs of the use,
characterized in that
the haptic generator (126, 626) of the first haptic device is configured to generate haptic feedback based

on the vital physical information and physical location of the first user and the second user, and
the haptic generator (126, 626) of the second haptic device is configured to generate haptic feedback based on the vital physical information and physical location of the first user and the second user, wherein for enhancing the performance of the users in the team sport,
each of the first haptic device and the second haptic device includes as the positioning device a positioning block circuit capable of communicating with a GPS system for identifying the physical location of each user, and
each haptic device is configured to analyse the data relating to physical locations of each user and vital statistics of every user and to then instruct one of the users to take the position of another one of the users for improving the team performance."

Reasons for the Decision

1. Procedural matters

1.1 In response to the summons to oral proceedings and to the board's communication pursuant to Article 15(1) RPBA, the appellant informed the board that "neither the applicant nor the applicant's representative will attend the oral proceedings scheduled for 19 December 2019". They requested that oral proceedings be conducted in the absence of the applicant's party according to Rule 115(2) EPC and a decision be taken on the file as it stands.

1.2 Oral proceedings serve the purpose of giving a party to the proceedings the opportunity to present its case orally and, if the board considers it appropriate, the

purpose of discussing orally any outstanding objections. If a party informs the board that it does not intend to attend the oral proceedings, the board is not obliged to hold oral proceedings in the absence of the party. In such a case, a party has no legitimate interest in pursuing its request for oral proceedings. Rather, under these circumstances and irrespective of whether or not the appellant explicitly maintains or withdraws its request for oral proceedings, it is within the discretion of the board to decide whether the scheduled oral proceedings are to be maintained or to be cancelled, since it cannot be the purpose of Article 116 EPC and Rule 115(2) EPC that a party can oblige a board to hold oral proceedings in its absence (following T 0910/02, Reasons, point 6, T 0663/10, Reasons, point 1.3 and T 0671/12, Reasons, point 2. See also the Case Law of the Boards of Appeal of the EPO, 9th edition 2019, III.C.4.3.2).

1.3 In the communication under Article 15(1) RPBA, objections under, inter alia, Article 123(2) EPC were raised in respect of claim 1 of both requests on file. In deciding not to attend the oral proceedings the appellant chose not to make use of the opportunity to comment at the oral proceedings on any of these objections but, instead, chose to rely on the arguments as set out in the statement of grounds of appeal, which the board duly considered below.

1.4 Under these circumstances holding oral proceedings was considered inappropriate. Hence, the board decided to cancel the oral proceedings and, having considered the merits of the case, was in a position to reach a decision which complied with the requirements of Article 113(1) EPC.

2. The application

The present application pertains to a haptic monitoring system which is capable of generating haptic feedback. The addressed problem is to provide a method for mutually informing two athletes about their physical performance e.g. during a team sport competition. The solution as claimed teaches that a haptic generator of each user generates haptic feedback based on a combination of vital physical information (e.g. heart rate) and location of both user.

Main request

3. Amendments

The board holds that claim 1 as presently amended extends beyond the content of the application as originally filed, violating the provisions of Article 123(2) EPC. The reasons therefor are the following.

3.1 Claim 1, in the characterising portion, specifies that each of the two claimed haptic generators are configured to generate haptic feedback based on a combination of the vital physical information and physical location of the first user and the second user.

3.2 Throughout the examining proceedings, the applicant provided Figures 4 and 9 and paragraphs 38 to 41, 46 to 49 and 59 to 64 as basis for these features.

3.3 From these passages, paragraphs 40, 41 and 59 to 64 and Figure 9 appear to come closest to the amended features enlisted above.

3.4 Paragraph 40 teaches, inter alia, that "upon analyzing the data relating to physical locations of each bike and vital statistics of every cyclist, haptic

coordinating and enhancing device 410 can instruct cyclist 402 to take the position of cyclist 408 for improving the team performance". Hence, the haptic device 410 instructs one of the cyclists in a very specific manner, i.e. to take the position of another cyclist for improving the team performance. This teaching is much more specific than the features objected to above. The features thus constitute an impermissible intermediate generalisation.

3.5 Paragraph 41 is not suitable as a basis for this amendment because the haptic feedback is based on the collected vital information of the cyclist only, not on the location.

3.6 Paragraphs 61 to 63 and original claims 11, 12, 23 and 24 teach that the haptic signals are generated based on vital information, location and a predefined performance parameter, when a computed performance level does not match with a predefined optimal performance. Differently, present claim 1 does not take a predefined performance parameter or a predefined optimal performance into consideration.

3.7 Paragraph 64 refers to a first and a second haptic feedback, however specifically for instructing the respective user to change current course of action. Claims 11, 12, 23 and 24 and Figure 9 comprise a similar disclosure.

3.8 Paragraph 64 explains further that "(t)he process is able to generate a first haptic cue in response to the first haptic signal and a second haptic feedback and a second haptic cue in response to the first haptic signal and the second haptic signal." This teaching relates to each of the two claimed haptic generators generating haptic feedback based on the two vital

informations and two positions. However, it does not disclose that the first and second haptic cues are generated on the first and second device, respectively. Moreover, the two haptic signals, as described, differ from the haptic signals as claimed (see section 3.6 above).

3.9 Original claims 14 and 26 pertain to related features but disclose the different teaching that the first haptic feedback is generated in response to the first haptic signal, whereas the second haptic feedback is generated in response to the first and second haptic signals.

Auxiliary request

4. Amendments

The board holds that claim 1 as amended extends beyond the content of the application as originally filed, contrary to the provisions of Article 123(2) EPC.

4.1 The objections set out in section 3. above apply, mutatis mutandis, to claim 1 of the auxiliary request.

4.2 No basis is apparent for replacing "bike" respectively "cyclist" (paragraph 40) by "user". For example, paragraph 41, which relates to water polo swimmers, does not refer to exchanging positions of swimmers. Hence, the various types of team sports enlisted in the last sentence of paragraph 40, in particular water polo, do not allow for such broadening of the subject-matter claimed.

4.3 Further in this regard, paragraph 64 states "In one embodiment, the process is capable of instructing the first user to take over the second user's position." However, this passage does not relate to team

performance and does not specify which device is carrying out this process.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar: The Chair:

K. Götz-Wein A. Ritzka

Decision electronically authenticated