

**Internal distribution code:**

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

**Datasheet for the decision  
of 27 October 2020**

**Case Number:** T 0517/17 - 3.5.03

**Application Number:** 12150583.8

**Publication Number:** 2477381

**IPC:** H04M1/725, H04M19/04, G06Q10/06

**Language of the proceedings:** EN

**Title of invention:**

Event notification method and portable apparatus with event notification function

**Applicant:**

HTC Corporation

**Headword:**

Event notification system/HTC

**Relevant legal provisions:**

EPC Art. 123(2)  
EPC R. 103(1)(a), 103(4)(c)  
RPBA 2020 Art. 12(8)  
Preparatory document CA/80/19  
Vienna Convention on the Law of Treaties (1969) Art. 32

**Keyword:**

Added subject-matter - (yes)

Decision in written proceedings - (yes): cancellation of arranged oral proceedings following announcement of non-attendance

Reimbursement of appeal fee at 100% - (no): appeal not allowable

Partial reimbursement of appeal fee at 25% - (yes): timely withdrawal of request for oral proceedings; T 0073/17 not followed

**Decisions cited:**

T 0003/90, T 0502/16, T 0073/17, T 0166/17, T 0256/17,  
T 0526/17

**Catchword:**

As to the interpretation of Rule 103(4)(c) EPC, see point 6 of the Reasons.



**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 0517/17 - 3.5.03

**D E C I S I O N**  
**of Technical Board of Appeal 3.5.03**  
**of 27 October 2020**

**Appellant:**  
(Applicant)

HTC Corporation  
No. 23, Xinghua Road  
Taoyuan District  
Taoyuan City 330 (TW)

**Representative:**

2K Patentanwälte Blasberg Kewitz & Reichel  
Partnerschaft mbB  
Schumannstrasse 27  
60325 Frankfurt am Main (DE)

**Decision under appeal:**

**Decision of the Examining Division of the  
European Patent Office posted on 9 August 2016  
refusing European patent application  
No. 12150583.8 pursuant to Article 97(2) EPC.**

**Composition of the Board:**

**Chair** K. Bengi-Akyürek  
**Members:** K. Schenkel  
R. Romandini

## Summary of Facts and Submissions

I. The present appeal concerns the decision of the examining division refusing the present European patent application. The grounds for refusal were non-compliance of the claims of a main request and two auxiliary requests with the requirements of Articles 84 and 123(2) EPC and lack of inventive step (Article 56 EPC) having regard to prior-art document

**D2:** EP 1 885 109 A2.

II. In reply to the board's preliminary opinion under Article 15(1) RPBA 2020, the appellant requested that the decision under appeal be set aside and that a patent be granted on the basis of the claims of a **main request**, or, alternatively, the claims of **first to fifth auxiliary requests** attached to that reply, and that the appeal fee be reimbursed.

In addition, the appellant indicated that it would not be attending the oral proceedings as scheduled and requested "benevolent consideration of the attached requests in his absence" in view of its comments on the substance of the board's preliminary opinion.

III. Oral proceedings were then cancelled.

IV. Claim 1 of the **main request** reads as follows (feature labelling (a) to (c) added by the board):

"An event notification method for use in an electronic device, the method comprising:

- (a) detecting (S201) the occurrence of a notification event at a first time instant;
- (b) in response, that right after the first time instant the notification event is not read after no operation from a user is applied to the electronic device for a first time interval (T1), determining (S220) whether the electronic device changes to a second moving state from a first moving state and maintains the second moving state for a second time interval (T2) right after a second time instant after the first time interval (T1), wherein the electronic device changes to the second moving state from the first moving state which occurs at the second time instant; and
- (c) in response to a determination that the electronic device changes to the second moving state from the first moving state and maintains the second moving state for the second time interval (T2) right after the second time instant, outputting (S260) a notification signal to indicate the occurrence of the notification event."

V. Claim 1 of the **first and second auxiliary requests** also includes features (a) to (c) of claim 1 of the main request and adds further features.

VI. Claim 1 of the **third to fifth auxiliary requests** differs from claim 1 of the main request in that it adds further features and in that feature (b) now reads (amendments indicated by the board):

"in response, that ~~right~~ after the first time instant the notification event is not read after no operation

from a user is applied to the electronic device via a user interface for a first time interval (T1) right, determining (S220) whether the electronic device changes to a second moving state from a first moving state via sensors [in the fourth auxiliary request placed between "second moving" and "state"] and maintains the second moving state for a second time interval (T2) right after a second time instant after the first time interval (T1), wherein the electronic device changes to the second moving state from the first moving state which occurs at the second time instant; and".

## **Reasons for the Decision**

### 1. Decision taken without oral proceedings

In accordance with the jurisprudence of the Boards of Appeal, a party's announcement of non-attendance at oral proceedings is equivalent to a withdrawal of the request for oral proceedings (see e.g. T 3/90, OJ 1992, 737, Reasons, point 1; T 502/16, Reasons, point 1; T 256/17, Reasons, point 1; T 526/17, Reasons, point 1). As a consequence, the decision can be handed down in writing without holding oral proceedings (cf. Article 12(8) RPBA 2020).

### 2. Main request - claim 1

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

2.1.1 As to amended feature (b) of present claim 1, a temporal specification relating to the determining step, i.e. that the determining step is performed "right after a second time instant after the first time

interval", is not disclosed in the present application as filed. Nor did the appellant provide any valid basis for this feature.

- 2.1.2 The application as filed only discloses that, if "the notification event is read after no operation is applied" to the electronic device for a "first time interval", it is determined whether the electronic device changes to the "second moving state" and maintains that state for a "second time interval" (see e.g. the claims as filed and paragraphs [0007], [0009], [0018], [0020] and [0024]).
- 2.1.3 The board therefore concludes that the application as filed does not provide a direct and unambiguous basis for the aforementioned step in feature (b).
- 2.1.4 Consequently, claim 1 of the main request does not comply with Article 123(2) EPC.
3. First to fifth auxiliary requests - claim 1 - Article 123(2) EPC
  - 3.1 Given that claim 1 of each of these auxiliary requests include the disputed step of feature (b), the objection raised under Article 123(2) EPC in point 2.1 above applies *mutatis mutandis* to the present auxiliary requests.
  - 3.2 Hence, claim 1 of the first to fifth auxiliary requests does not comply with Article 123(2) EPC either.
4. There being no allowable claim request, the appeal has to be dismissed.

5. Request for reimbursement of the appeal fee - alleged substantial procedural violation (Rule 103(1)(a) EPC)

5.1 In the statement of grounds of appeal, the appellant requested reimbursement of the appeal fee on the grounds that the appealed decision "does neither fulfil the technical nor the legal standards of the EPO", without providing any expectations or definitions as to those "standards".

5.2 According to Rule 103(1)(a) EPC, one of the conditions for a full reimbursement of the appeal fee is that the board deems the appeal to be allowable. Since this condition is not met (cf. points 2 and 3 above), the request is to be rejected for that reason alone.

6. Partial reimbursement of the appeal fee (Rule 103(4)(c) EPC)

6.1 **Rule 103(4) EPC** in its applicable version as from 1 April 2020 reads:

*"The appeal fee shall be reimbursed at 25% ...*

*...*

*(c) if any request for oral proceedings is withdrawn within one month of notification of the communication issued by the Board of Appeal in preparation for the oral proceedings, and no oral proceedings take place."*

Thus, the appeal fee is to be reimbursed at 25% if

- (i) the request for oral proceedings is **withdrawn;**



- (ii) the request is withdrawn within **one month** of the notification of the board's communication under Article 15(1) RPBA;
- (iii) **no** oral proceedings take place.

Moreover, no request is necessary for such reimbursement.

6.2 The board considers that the above requirements (i) to (iii) are met in the present case, for the reasons set out below.

- First, the appellant indicated that it would not be attending the scheduled oral proceedings (see point II above). It did not expressly withdraw the request for oral proceedings. However, a relevant number of decisions of the Boards of Appeal interpret the announcement of non-attendance - without any qualification - as a **withdrawal of the request for oral proceedings** (see point 1 above and also *Case Law of the Boards of Appeal, 9th edition, 2019, III.C.4.3.2*). The board follows this case law.
- Second, the indication of non-attendance in the appellant's submission of 26 August 2020 was submitted before the expiry of the above one-month period pursuant to Rules 126(2), 131(2) and (4) EPC (the board's communication under Article 15(1) RPBA 2020 was issued on 24 July 2020).
- Finally, following the appellant's announcement of non-attendance, the board cancelled the oral proceedings (in line with e.g. T 166/17, Reasons, point 1). In this way, the very purpose of new

Rule 103 EPC was achieved, i.e. additional effort and resources on the part of the board was saved.

6.3 As to requirement (i), the board is aware that, in drawing the above conclusion, it departs from an extensive *obiter dictum* set out in decision **T 73/17** (Reasons, point 9.3). In that decision, the competent board, relying on document CA/80/19, maintained that new Rule 103(4)(c) EPC required an *express* withdrawal. Although the board referred to the case law according to which the announcement of non-attendance is considered to be an implicit withdrawal, it considered that this case law, even if it was correct, could not apply to Rule 103(4)(c) EPC.

However, this board holds that, if it is true that the express announcement of not attending arranged oral proceedings before the board is equivalent to a withdrawal of the request for them, this must be true and valid for *all* effects that the EPC and the case law attach to a withdrawal. It does not appear to be justified to qualify the express announcement as *equivalent* to a withdrawal for the purposes of the question of whether appointed oral proceedings shall take place, but as *not equivalent* for the purposes of the question of whether fees shall be refunded. Such a conclusion is neither supported by the wording of Rule 103(4)(c) EPC nor by the preparatory document **CA/80/19**, which does not comment on the wording of the withdrawal, but only on its *timing*. Rather, it proposes that "the appeal fee is reimbursed at a rate of 25% if ... the decision is eventually issued without the oral proceedings taking place" (see CA/80/19 of 4 October 2019, point 85).

Against this background, it is not necessary to assess

whether CA/80/19 can constitute evidence for the intentions of the legislator. Nor has the board to decide whether it is possible or necessary to resort to the preparatory work associated with new Rule 103 EPC for the specific issue discussed here, considering the requirements laid down in Article 32 of the Vienna Convention on the Law of Treaties.

## Order

### For these reasons it is decided that:

1. The appeal is dismissed.
2. The request for reimbursement of the appeal fee at 100% is refused.
3. Reimbursement of the appeal fee at 25% is ordered.

The Registrar:

The Chair:



A. Voyé

K. Bengi-Akyürek

Decision electronically authenticated