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**Datasheet for the decision
of 5 March 2020**

Case Number: T 0867/18 - 3.5.05

Application Number: 10811447.1

Publication Number: 2472364

IPC: G06F3/041, G06F3/01

Language of the proceedings: EN

Title of invention:

INPUT DEVICE

Patent Proprietor:

Kyocera Corporation

Opponent:

Preh GmbH

Headword:

Predetermined standard/KYOCERA

Relevant legal provisions:

EPC Art. 100(c), 123(2)

RPBA Art. 13(1)

RPBA 2020 Art. 25

Keyword:

Grounds for opposition - added subject-matter (yes)



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 0867/18 - 3.5.05

D E C I S I O N
of Technical Board of Appeal 3.5.05
of 5 March 2020

Appellant: Kyocera Corporation
(Patent Proprietor) 6 Takedatobadono-cho
Fushimi-ku
Kyoto-shi
Kyoto 612-8501 (JP)

Representative: SSM Sandmair
Patentanwälte Rechtsanwalt
Partnerschaft mbB
Joseph-Wild-Straße 20
81829 München (DE)

Respondent: Preh GmbH
(Opponent) Schweinfurter Strasse 5-9
97616 Bad Neustadt a.d. Saale (DE)

Representative: Lohmanns, Bernard
Benrather Schlossallee 49-53
40597 Düsseldorf (DE)

Decision under appeal: **Decision of the Opposition Division of the
European Patent Office posted on 30 January 2018
revoking European patent No. 2472364 pursuant to
Article 101(3) (b) EPC.**

Composition of the Board:

Chair A. Ritzka
Members: E. Konak
D. Prietzel-Funk

Summary of Facts and Submissions

- I. The patent proprietor (hereinafter "the appellant") appealed the decision of the opposition division to revoke the patent in suit (hereinafter "the patent").
- II. The opposition division had decided that the subject-matter of the sole claim as granted extended beyond the content of the application as originally filed (Articles 100(c) and 123(2) EPC).
- III. The appellant requested that the decision under appeal be set aside and the patent be maintained as granted or in amended form on the basis of one of the auxiliary requests 1 to 5 filed with the statement setting out the grounds of appeal.
- IV. The respondent (opponent) requested that the appeal be dismissed, or that the case be remitted to the opposition division for further prosecution if any of the appellant's requests was found to overcome the objection under Articles 100(c) and 123(2) EPC.
- V. The appellant then requested that the decision under appeal be set aside and the patent be maintained as granted or in amended form on the basis of one of the auxiliary requests 1 to 3 filed by letter dated 16 January 2019 in reply to the respondent's submission.
- VI. The board summoned the parties to oral proceedings. In a communication the board gave its preliminary view that the patent did not comply with the provisions of Article 123(2) EPC for the reasons given by the opposition division.

- VII. The respondent announced that it would not be represented at the oral proceedings.
- VIII. The appellant maintained its requests.
- IX. The oral proceedings were held before the board in the absence of the respondent.
- X. Claim 1 of the main request reads as follows:
- "An input apparatus comprising:
a touch sensor (11) configured to detect a contact, the touch sensor (11) having a touch face (11a);
a tactile sensation providing unit (13, 32) configured to vibrate the touch face (11a); and
a load detection unit (12, 31) configured to detect a pressure load on the touch face (11a) of the touch sensor (11);
characterized by
a control unit (15) configured to control drive of the tactile sensation providing unit (13, 32) when a position of the contact detected by the touch sensor (11) moves into or out of a predetermined region while the pressure load detected by the load detection unit (12, 31) satisfies a predetermined standard for receiving an input operation to the predetermined region, such that a tactile sensation is provided to an object pressing the touch face (11a)."
- XI. Claim 1 of auxiliary request 1 differs from claim 1 of the main request in that its characterising part reads as follows (with the additions underlined and the deletions ~~struck through~~):

"a control unit (15) configured to

control drive of the tactile sensation providing unit (13, 32) when a position of the contact detected by the touch sensor (11) moves ~~into or~~ out of a predetermined region while the pressure load detected by the load detection unit (12, 31) satisfies a predetermined standard of the pressure load for receiving an input operation to the predetermined region, such that a tactile sensation is provided to an object pressing the touch face (11a)."

- XII. Claim 1 of auxiliary request 2 differs from claim 1 of auxiliary request 1 in that the following text was added before the full stop at the end:

" , wherein the tactile sensation is a release sensation"

- XIII. Claim 1 of auxiliary request 3 differs from claim 1 of auxiliary request 2 in that its characterising part reads as follows (with the additions underlined and the deletions ~~struck through~~):

"a control unit (15) configured to control a display state of a predetermined region on the touch sensor (11) to be restored from a depression display to an original display and to control drive of the tactile sensation providing unit (13, 32) when a position of the contact detected by the touch sensor (11) moves out of a predetermined region while the pressure load detected by the load detection unit (12, 31) satisfies a predetermined standard of the pressure load for receiving a pressing input operation to the predetermined region, such that a tactile sensation is provided to an object pressing the touch face (11a), wherein the tactile sensation is a release sensation."

Reasons for the Decision

1. Main request
 - 1.1 The board finds no prejudicial error in the conclusion of the contested decision that the text "for receiving an input operation to the predetermined region" added to "the predetermined standard" in claim 1 of the main request contains subject-matter which extends beyond the application as filed.
 - 1.2 The appellant did not contest that this wording was not explicitly disclosed in the application as filed, but instead argued that the amendment was implicitly disclosed. In the statement setting out the grounds of appeal, it pointed to page 11, lines 13 to 15 of the description as filed, which states that the "standard", i.e. "the predetermined standard", is a standard for the pressure load applied to the touch sensor. The appellant inferred from the fact that pressure applied to the touch sensor should necessarily be for an input operation that the application as filed implicitly disclosed "a predetermined standard for receiving an input operation". However, even if the appellant's argument were to be accepted for the sake of argument, the disputed amendment further specifies that the input operation is "to the predetermined region". As correctly indicated in the contested decision, the predetermined standard checked in step S12 in figure 3 is independent of "the predetermined region", i.e. not specific to any predetermined region of the touch face.
 - 1.3 The appellant argued that the correct interpretation of the wording of the claim would not require the predetermined standard to be specific to a particular

predetermined region and that nothing in the application as originally filed would lead the skilled person to such an interpretation. The claim merely listed the two conditions that had to be met one after the other in order to provide a tactile sensation (S15 in figure 3), namely the pressure load satisfying a predetermined standard (S12 in figure 3) and the position of the contact being inside the predetermined region (S13 and S14 in figure 3). The temporal link between these conditions was clear from several passages of the description including paragraphs [0037], [0039], [0042], [0043] and [0046]. However, these arguments do not convince the board, since the wording of the amendment clearly allows an interpretation according to which predetermined standards are specific to particular predetermined regions and for which the application as originally filed fails to provide a basis. Therefore, the amendment contains subject-matter which extends beyond the content of the application as filed.

- 1.4 Therefore, claim 1 of the main request does not meet the requirements of Articles 100(c) and 123(2) EPC.
2. Auxiliary requests 1 to 3
 - 2.1 The disputed feature was amended in claim 1 of auxiliary requests 1 and 2 as "a predetermined standard of the pressure load for receiving an input operation to the predetermined region" and in claim 1 of auxiliary request 3 as "a predetermined standard of the pressure load for receiving a pressing input operation to the predetermined region".
 - 2.2 As these amendments still maintain the wording "a predetermined standard [...] for [...] input operation

to the predetermined region", they are not suitable to overcome the objection under Articles 100(c) and 123(2) EPC to claim 1 of the main request. Therefore, auxiliary requests 1 to 3 are clearly not allowable and the board does not admit them into the proceedings (Article 13(1) RPBA 2007 and Article 25 RPBA 2020).

Thus, the appeal is not allowable.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chair:



K. Götz-Wein

A. Ritzka

Decision electronically authenticated