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**Datasheet for the decision  
of 11 May 2021**

**Case Number:** T 2680/18 - 3.5.05

**Application Number:** 13821082.8

**Publication Number:** 2936280

**IPC:** G06F3/01, G06F3/0481,  
G06F3/0488

**Language of the proceedings:** EN

**Title of invention:**

USER INTERFACES AND ASSOCIATED METHODS

**Applicant:**

Nokia Technologies Oy

**Headword:**

User interface with differential haptic feedback / Nokia

**Relevant legal provisions:**

EPC R. 137(3)  
EPC Art. 111(1)  
RPBA 2020 Art. 11, 12(2)

**Keyword:**

Examination procedure - correct exercise of discretion (no)

**Decisions cited:**

G 0007/93



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Case Number: T 2680/18 - 3.5.05

**D E C I S I O N**  
**of Technical Board of Appeal 3.5.05**  
**of 11 May 2021**

**Appellant:** Nokia Technologies Oy  
(Applicant) Karakaari 7  
02610 Espoo (FI)

**Representative:** Whiting, Gary  
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**Decision under appeal:** **Decision of the Examining Division of the  
European Patent Office posted on 7 June 2018  
refusing European patent application No.  
13821082.8 pursuant to Article 97(2) EPC.**

**Composition of the Board:**

**Chair** A. Ritzka  
**Members:** N. H. Uhlmann  
E. Mille

## **Summary of Facts and Submissions**

- I. The appellant appealed against the decision of the examining division refusing European patent application No. 13821082.8, which was filed on 16 December 2013.
- II. In the course of the oral proceedings before the examining division, all requests on file were not admitted under Rule 137(3) EPC. In a section "Obiter Dicta (not part of the decision)", the examining division made further observations.
- III. In its statement setting out the grounds of appeal, the appellant submitted a main request and first to fourth auxiliary requests, essentially corresponding to the main request and the first to fourth auxiliary requests underlying the decision under appeal, and further amended fifth to ninth auxiliary requests.
- IV. The board summoned the appellant to oral proceedings.
- V. In a communication pursuant to Article 15(1) RPBA 2020, the board set out its provisional view. The board considered that the case should be remitted to the department of first instance for further prosecution.
- VI. The appellant withdrew its request for oral proceedings on the condition that the board remit the case for further prosecution in a written procedure.
- VII. The appellant's requests are that the decision under appeal be set aside and that a patent be granted based on the claims of the main request or, alternatively, the first to ninth auxiliary requests, all filed with the statement setting out the grounds of appeal.

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

"An apparatus (401, 501, 601, 701) for enabling the provision of differential haptic feedback (421-422, 621 ), the apparatus comprising:

at least one processor (108, 208); and

at least one memory (107, 207[sic] including computer program code,

the at least one memory and the computer program code configured, with the at least one processor, to cause the apparatus to:

provide signalling to enable the provision of differential haptic feedback (421-422, 621) from means for providing haptic feedback to a user of a device, wherein the signalling is provided when two user interface elements (411-412, 511-514, 611-615) of a graphical user interface (304, 404-405, 504-505, 604) of or associated with the device are in contact with and/or overlapping each other and wherein the differential haptic feedback is based on the degree of contact and/or overlap between the two user interface elements."

IX. In view of the board's decision, the wording of the claims of the auxiliary requests does not play any role.

### **Reasons for the Decision**

1. The application at issue pertains to an apparatus for enabling different tactile feedback depending on two graphical user interface elements being in contact with or overlapping each other.

2. Main request - Admissibility
  - 2.1 The current main request corresponds to the main request on which the decision under appeal was issued, save for a minor correction in dependent claim 7.
  - 2.2 The examining division did not admit this request into the proceedings pursuant to Rule 137(3) EPC. Since all auxiliary request were similarly not admitted, the application was refused.
  - 2.3 Rule 137(3) EPC gives the examining division discretion not to admit amendments to the application documents. If the EPC gives an examining division discretion in certain cases, it is not for the board of appeal to review all the facts and circumstances of the case as if it were in place of the division and decide whether it would have exercised the discretion in the same way unless the division has not exercised its discretion in accordance with the right principles or has done so but in an unreasonable way (see G 7/93, point 2.6 of the Reasons).
  - 2.4 In the case at hand, the examining division took into account the right principles but did so in an unreasonable way for the following reasons.
  - 2.5 According to the decision under appeal, the main request and the first to fourth auxiliary requests were not admitted for two reasons: because the requests did not converge (sections 17 to 20) and because they comprised unnecessary amendments (sections 21 to 25). The board will address these in turn.
  - 2.6 In principle, the convergence of a plurality of requests may be taken into account when deciding on the admissibility of requests based on Rule 137(3) EPC. For example, if claim 1 of a first auxiliary request adds a limitation to claim 1 of a main request and claim 1 of

a second auxiliary request adds a different one, there might be divergence between the first and second auxiliary requests. However, in this hypothetical case the main request is not divergent from any of the auxiliary requests.

The case at hand is of a similar nature. As set out in the decision under appeal (section 18), there is an alleged divergence between the first, third and fourth auxiliary requests. No reasons are given why the main request might be divergent, and the board is not aware of any. Instead, section 19 of the impugned decision correctly states that what matters is "the 'convergence' or 'divergence' of the claim versions, i.e. whether they further develop the subject-matter of the independent claim of the Main Request by progressively limiting it in one direction or in the direction of one inventive idea, respectively, or whether they develop it along various directions by incorporating different features".

To sum up, the principle of "divergence" does not justify not admitting the main request.

- 2.7 The examining division held that the replacement of "plurality of user interface elements" with "two user interface elements" in claim 1 was not to be admitted under Rule 137(3) EPC because this amendment did not satisfy the requirements of Article 123(2) EPC, was not made in response to any objection and could have been made earlier.

In the board's view, these are unreasonable objections. Figures 4a to 4d and pages 13 to 15 of the description provide a clear basis for two user interface elements. Furthermore, the communication attached to the summons to oral proceedings dated 10 July 2017 raised, for the first time, an objection under Article 83 EPC

regarding, *inter alia*, the plurality of user interface elements (section 6.3 on page 4). Replacing "plurality of user interface elements" with the more specific "two user interface elements" may be seen as a bona fide attempt to address this objection.

2.8 For the above reasons, the board is of the opinion that the examining division overstepped the limits of its discretion by not admitting the main request.

2.9 As this non admittance was the sole reason for refusing the main request, the board sets aside the decision under appeal.

3. Further remarks in the decision under appeal, pages 10 to 16

3.1 The examining division set out some observations regarding the requirements of Articles 83 and 84 EPC. While these observations do not form part of the reasons for the decision, the board would like to comment as follows with regard to the main request.

3.2 The wording of claim 12 objected to in section 27 of the decision is clear, as convincingly argued by the appellant in section 27 of the statement setting out the grounds of appeal.

3.3 Regarding the objections under Article 83 EPC, the board makes the following observations.

According to the decision under appeal, section 30.4, "The reader is not told how the apparatus/device actually produces the differential haptic feedback or how the apparatus/device 'knows' there is a spatial interaction".

The appellant rebutted this objection in sections 30.4a and 30.4b (pages 14 and 15) of the statement setting out the grounds of appeal.

The board agrees that providing haptic feedback with, for example, different frequency or amplitude and determining if two user interface elements are in contact or overlapping would have been generally known to the skilled person.

4. Remittal

The department of first instance has not yet examined the application regarding novelty and inventive step. Consequently, the decision under appeal does not and indeed cannot refer to these aspects.

Having in mind that the primary object of the appeal proceedings is to review the decision under appeal in a judicial manner (Article 12(2) RPBA 2020), the board considers that in this case special reasons present themselves for remitting the case to the examining division for further prosecution (Article 111(1) EPC, last subclause, and Article 11 RPBA 2020).

5. In view of the above observations, the board does not need to take a position on the auxiliary requests.

6. The appeal fee must be reimbursed at 25% pursuant to Rule 103(4)(c) EPC.



## Order

### For these reasons it is decided that:

The decision under appeal is set aside.

The case is remitted to the department of first instance for further prosecution.

The appeal fee is reimbursed at 25%.

The Registrar:

The Chair:



K. Götz-Wein

A. Ritzka

Decision electronically authenticated