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Datasheet for the decision
of 14 November 2023

Case Number: T 1559/19 - 3.5.06

Application Number: 10760867.1

Publication Number: 2556427

IPC: G06F9/44, G06F3/048

Language of the proceedings: EN

Title of invention:
GESTURE BASED GRAPHICAL USER INTERFACE FOR MANAGING
CONCURRENTLY OPEN SOFTWARE APPLICATIONS

Applicant:
Apple Inc.

Headword:
Concurrently open applications/APPLE

Relevant legal provisions:
EPC Art. 56

Keyword:
Inventive step - (no)

Decisions cited:
G 0001/19, T 0641/00

Case Number: T 1559/19 - 3.5.06

D E C I S I O N
of Technical Board of Appeal 3.5.06
of 14 November 2023

Appellant: Apple Inc.
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Representative: Barton, Russell Glen
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Decision under appeal: **Decision of the Examining Division of the
                           European Patent Office posted on 2 January 2019
                           refusing European patent application No.
                           10760867.1 pursuant to Article 97(2) EPC.**

Composition of the Board:

Chairman   M. Müller
Members: M. Domingo Vecchioni
                   B. Müller

Summary of Facts and Submissions

I.   The appeal is against the decision of the examining
        division to refuse the European patent application.

II.   The examining division refused the application on the
        basis that all the claims of the main request and the
        first to third auxiliary requests then on file did not
        meet the requirements of Article 56 EPC, in particular
        in view of:

        D1:   HTC, "User Manual - PDA Phone", 2007, pages 1-38,
              XP002524285.

III.   With the statement of grounds of appeal, the appellant
        requested that the decision of the examining division
        be set aside and that a patent be granted on the basis
        of the first auxiliary request underlying the contested
        decision, re-filed as sole (main) request replacing all
        previous requests.

IV.   In the communication pursuant to Article 15(1) RPBA
        accompanying the summons, the board shared its
        preliminary opinion on the appeal. Claim 1 appeared not
        to be inventive starting from D1. Moreover, it appeared
        to be also not inventive over two further pieces of
        prior art (a patent application and a video), which the
        board introduced.

V.   On 13 November 2023, one day before the oral
        proceedings, the appellant filed a new auxiliary
        request.

VI.   At the oral proceedings, the appellant requested that
        the decision under appeal be set aside and a patent be
        granted on the basis of the claims of the request filed
        with the statement of grounds of appeal ("main
        request") or the auxiliary request filed on 13 November
        2023.

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

        "A method, comprising:
        at a multifunction device (100) with a touch-sensitive
        display (112):
            displaying a home screen user interface on the
        touch-sensitive display, the home screen user interface
        including a first application icon corresponding to a
        first application available for execution on the
        multifunction device;
            while displaying the home screen user interface,
        detecting a selection of the first application icon;
            in response to detecting the selection of the first
        application icon, ceasing to display the home screen
        user interface and displaying a first application view
        on the touch-sensitive display (112) that corresponds
        to the first application, wherein the first application
        view is displayed without concurrently displaying an
        application view for any other application in a
        plurality of concurrently open applications;
            detecting a first input (507);
            in response to detecting the first input (507):
                entering an application view selection mode for
        selecting one of the concurrently open applications for
        display in a corresponding application view, including
        sliding at least a portion of the first application
        view off the display while maintaining a first portion
        of the application view on the display;
                displaying an initial group of open application

icons that correspond to at least some of the plurality of concurrently open applications, wherein the initial group of open application icons was not displayed prior to detecting the first input;

displaying in a first predefined area (5006) that is adjacent to the first portion of the first application view that is maintained on the display at least a first application icon of the initial group of open application icons that correspond to at least some of the plurality of concurrently open applications, wherein the first portion of the first application view is concurrently displayed with the initial group of open application icons;

while in the application view selection mode:

detecting a scroll gesture (511-A) in the first predefined area (5006);

in response to detecting the scroll gesture (511-A), scrolling the plurality of concurrently open application icons in the first predefined area in accordance with the scroll gesture;

detecting a gesture (509) on a respective open application icon in the first predefined area; and,

in response to detecting the gesture (509) on the respective open application icon:

displaying a respective application view on the touch-sensitive display for a corresponding application in the plurality of concurrently open applications, wherein the respective application view is displayed without concurrently displaying an application view for any other application in the plurality of concurrently open applications;

ceasing to display open application icons in the first predefined area; and exiting the application view selection mode."

VIII.   Claim 1 according to the auxiliary request differs from
        claim 1 according to the main request by the following
        additions (underlining by the board):

        - "... while maintaining a first portion of the <u>first</u>
        application view on the display ...";

        - "<u>while in the application view selection mode:</u>
            <u>detecting a gesture on the at least a portion of</u>
        <u>the first application view; and</u>
        <u>in response to detecting the gesture on the portion of</u>
        <u>the first application view:</u>
            <u>displaying the first application view on the touch-</u>
        <u>sensitive display without concurrently displaying an</u>
        <u>application view for any other application in the</u>
        <u>plurality of concurrently open applications; and</u>
            <u>exiting the application view selection mode</u>".

IX.   At the end of the oral proceedings, the chairman
        announced the decision of the board.

Reasons for the Decision

The application

1.   The application relates to various methods for managing
        concurrently open applications on a "multifunction
        device" (e.g. a smartphone) with a touch-sensitive
        display and a gesture-based graphical user interface.

2.   Claim 1 is directed in particular to the embodiment of
        figures 5A-5F and 6A, described in paragraphs [154] to
        [165], [190]-[194] and [204]-[207] of the published
        application.

The main purpose of that method is to enable the user to switch between concurrently open applications.

3.   According to the description, the term "open application" refers to "a software application with retained state information". It may be an active application (i.e. currently displayed) or a background, suspended or hibernated application (see paragraphs [156] and [157]).

4.   The method starts with the display of a "home screen user interface" (see figure 5A: home screen 5001). A selection of a "first application icon" corresponding to a "first application" is detected (e.g. a tap gesture on the "Maps" app icon 5002-27 in figure 5A).

In response thereto, a "first application view" corresponding to the first application is displayed instead of the home screen and "without concurrently displaying an application view for any other application in a plurality of concurrently open applications" (see figure 5B, reproduced below).

A predetermined input ("first input") to enter a mode to switch between open applications ("application view selection mode") is detected.

What happens upon detection of the "first input" (e.g. a double-tap on home button 204, see para [193]) may be best explained by reference to figures 5B and 5C:
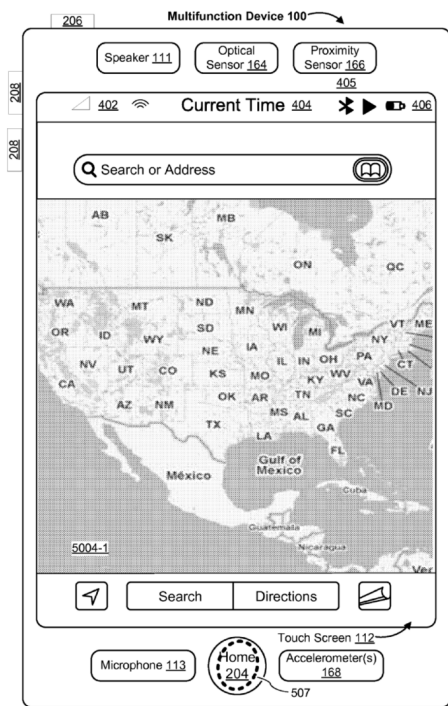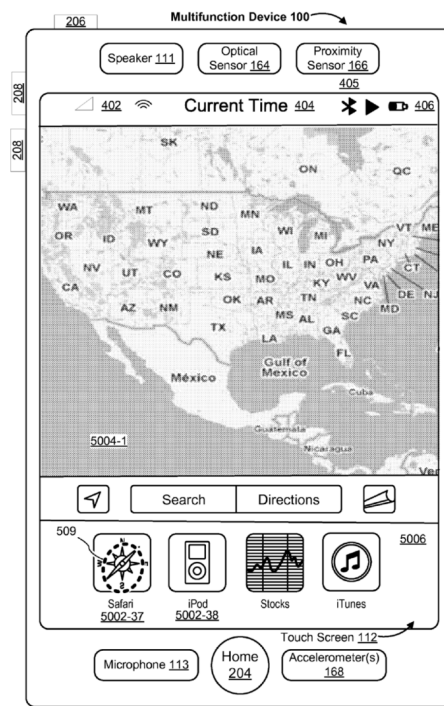
Figure 5B

Figure 5C

A portion of the first application view (the upper part with the search box in figure 5B) is moved off the display ("sliding [...] off the display"). A "first portion of the application view" (the remaining part of the Maps app view in figure 5B) is "maintained" and concurrently displayed with an "initial group of application icons" (figure 5C: Safari, iPod, Stocks and iTunes icons) that are displayed in a "first predefined area" (figure 5C: application icon area 5006) "adjacent" to the "first portion".

The open application icons displayed in the "first predefined area" may be scrolled by "a scroll gesture [...] in the first predefined area" (figures 5E and 5F).

In response to detection of "a gesture [...] on a respective open application icon in the first predefined area" (e.g. a tap gesture on the Safari app icon 5002-37 in figure 5C), an application view of the

selected open application is displayed without
concurrently displaying an application view of any
other application, open application icons cease to be
displayed in the first determined area and the
application view selection mode is exited (see figure
5D).

5.   According to the description, the invention "provides
        an intuitive way to select one of concurrently open
        applications". It "reduces the cognitive burden on a
        user" when performing this task and "thereby creat[es]
        a more efficient human-machine interface". For battery-
        operated computing devices, power is conserved and the
        time between battery charges is increased by enabling a
        user to perform this task faster and more efficiently
        (paragraph [191]).

        As regards the benefits of the concurrent display, it
        stated that "it provides context by maintaining the
        first application view while an open application icon
        is being selected" and that, in addition, "it is easy
        to get back to the first application (and cease the
        display of the application icon area) by, for example,
        tapping on the first application view" (paragraph
        [194]).

Main request – Claim interpretation

6.   Claim 1 refers in the step of "displaying a home screen
        user interface..." to a "first application icon"
        corresponding to a "first application".

        In the subsequent step of "displaying in a first
        determined area ...", reference is made to the display
        of "at least a first application icon of the initial
        group of application icons".

The board understands this latter icon to be one of the icons of the "initial group of application icons" but that claim 1 neither requires it to be identical to the "first application icon" nor to correspond to the "first application".

This understanding is consistent with figure 5C, which does not show any Maps icon amongst the initially displayed open application icons.

7.   The board considers it to be not entirely clear from claim 1 whether only the step of "displaying a respective application view ..." is required to be "in response to detecting the gesture on the respective open application icon" or whether this applies also to the subsequent steps of "ceasing to display open application icons ..." and "exiting the application view selection mode".

In the description, it is clear that all three steps occur in response to detecting the gesture: see paragraph [204] ("the device performs the following actions: ...").

In the following, the board adopts the narrower interpretation of the description, to the benefit of the appellant.

Main request – Inventive step

8.   The examining division found that claim 1 lacked an inventive step starting from D1 (decision under appeal, point 15, with references to point 13).

The only distinguishing features identified were (a) the sliding of the portion of the first application off

the display, and (b) the scrolling of the open
application icons upon detection of a scroll gesture in
the first predefined area.

Feature (a) did not solve a technical problem. Feature
(b) was an obvious solution to the technical problem of
simultaneously displaying an application view and a
large number of open application icons, whilst making
efficient use of the available display space.

9.   The appellant argued that there are more
        differentiating features between claim 1 and D1.

        D1 did not disclose accessing an application view
        selection mode from a first application view, as
        required by claim 1. In D1 the icon for opening the
        "Quick Menu" was only accessible from the Today Screen,
        which may be mapped to the "home screen" but not with
        the "first application view" of claim 1. Furthermore,
        the feature "while displaying the home screen user
        interface, detecting a selection of the first
        application icon" was not disclosed in D1 as it was not
        apparent that the "Start Menu" should be considered
        part of the home screen user interface.

        The distinguishing features "allow[ed] a user to
        directly switch from one running application to
        another", "reduce the number of user interactions
        needed" to perform that task and so "provide[d] a more
        efficient human-machine interface", as in D1 the user
        would always have to return to the home screen to
        access the Quick Menu. The objective technical problem
        was formulated as "how to provide a more efficient
        method of navigating between running applications on an
   electronic device".

There was no reason for the skilled person to add Quick Menu functions to application screens in view of "D1's express teaching to display application-specific functions in the same region of the display that is used to display the Quick Menu only on D1's Today Screen". D2 did also not provide any hint to the claimed solution. Hence, claim 1 was inventive.

10. The board agrees with the appellant that there are more distinguishing features between claim 1 and D1 than identified by the examining division but nevertheless considers that claim 1 lacks an inventive step over D1, Articles 52(1) and 56 EPC.

11. Document D1 and claim 1

11.1 D1 is a user manual for a smartphone with touch screen (see page 12).

11.2 The "Today Screen" of D1 (page 19, top image) may be mapped to the "home screen user interface" of claim 1.
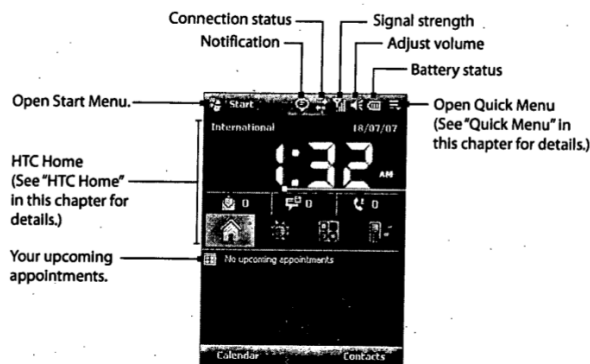

As noted by the examining division (decision under appeal, point 15.1), the "Contacts" button at the bottom of that screen may be mapped to the "first application icon" of claim 1. The skilled person would understand that tapping on that button would open the

"Contacts" application, shown on page 26, bottom-left image.

Alternatively, the e-mail icon displayed just above the Home icon in the centre-left of the Today Screen may also be mapped to the "first application icon" of claim 1, as the skilled person would understand that tapping on the e-mail icon would open the "Outlook" application, shown on page 27, bottom images (see page 21, middle image: "Touch this icon to view your e-mails").

The board furthermore considers the "Start Menu" (shown on page 20, middle image) to be part of the "home screen user interface" and the selection of a program listed as an item in that menu to occur "while displaying the home screen user interface", as recited in claim 1. Any item in that menu corresponding to a program may thus also be mapped to the "first application icon" of claim 1.

11.3   The "application view" of the "Contacts" and the "Outlook" applications, once open, are shown, respectively, on page 26, bottom-left image, and page 27, bottom images.
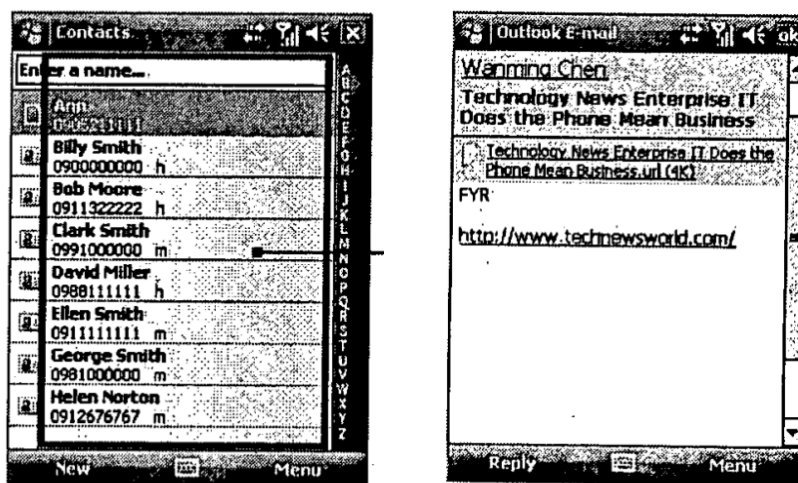
In these cases, as well as in the case of the other applications for which screenshots are included in D1 (Word Mobile, Internet Explorer and Notes on pages 26, 27 and 34), the "application view" is displayed without concurrently displaying an application view for any another application in a plurality of concurrently open applications", as recited in claim 1.

11.4   The board thus considers that D1 thereby discloses - so far - a method comprising **the first part of claim 1**, up to, but not (at least not yet) including, the step of "detecting a first input".

11.5   D1 discloses furthermore that a "Quick Menu" showing "the currently running programs" can be opened by tapping the Quick Menu button located at the top right corner of the Today Screen (page 20, bottom image):
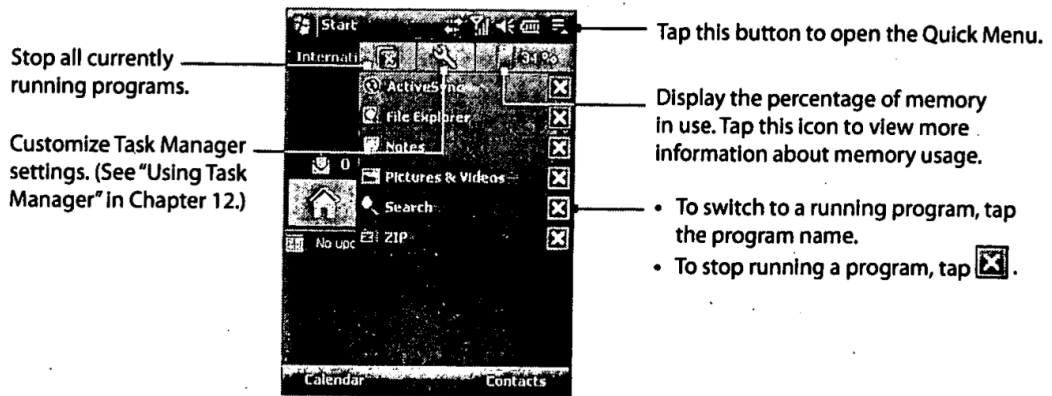
The program names listed, e.g. "File Explorer" and "Notes", are "open application icons" that correspond to "a plurality of concurrently open applications" within the meaning of claim 1, as tapping on any of them enables "switching" to the running program.

The board agrees with the appellant that the "Quick Menu" button appears to be only available in the Today Screen. It is in particular not present in any application screen, such as the Contacts and Outlook screens reproduced above.

The board considers that the skilled person would understand from the explanations and the screenshots provided in D1 that tapping on any of the program names in the Quick Menu would switch to the corresponding program screen (e.g. the above Contacts or Outlook screen) and that the Quick Menu would thereby also cease to be displayed.

11.6   The board considers therefore that the following **further features of claim 1** are disclosed in D1 (the omitted parts indicated by "[...]" being not disclosed):

- detecting a first input (tap on Quick Menu button in the Today Screen)*;*
- in response to detecting the first input:
--- entering an application view selection mode for selecting one of the concurrently open applications for display in a corresponding application view (Quick Menu open) *[...];*
--- displaying an initial group of open applications icons (program names File Explorer, Notes, etc. listed in the Quick Menu) *that correspond to at least some of the plurality of concurrently open applications, wherein the initial group of open application icons was not displayed prior to detecting the input* (when the Quick Menu was not open)*;*
--- displaying in a first predefined area (it is implicit that the area in the right part of the screen in which the list may be displayed is predetermined) *[...] at least a first application icon of the initial group of open application icons that correspond to at least some of the plurality of concurrently open applications* (e.g. the "Notes" program name may be taken as the "first application icon of the initial group ...") *[...];*
while in the application view selection mode:
--- [...]
--- detecting a gesture on a respective open application icon in the first predetermined area (tap on a program name listed in the Quick Menu)*; and,*
in response to detecting the gesture on the respective open application icon:
--- displaying a respective application view on the touch-sensitive display for a corresponding application in the plurality of concurrently open applications, wherein the respective application view is displayed without concurrently displaying an application view for any other application in the plurality of concurrently

open applications (opening of the program whose name in
the Quick Menu was tapped)*;*
--- *ceasing to display open application icons in the
first predefined area* (implicit, as explained above)*;
and*
--- *exiting the application view selection mode*
(implicit, as explained above).

11.7   The board thus considers that the method of claim 1
<u>differs</u> from the method disclosed in D1 only in the
following features:

(i)   **the "application view selection mode" is
entered** in response to the detection of the
first input **while the first application view
is displayed** (in D1 the Quick Menu can only
be accessed to from the Today Screen, i.e.
the home screen);

in the "application view selection":

(iia)   **maintaining a "first portion" of the first
application view on the display and displaying
it concurrently with and adjacent to the
"first predefined area"** (in D1 a portion of
the Today Screen, i.e. the home screen, is
maintained on the display and displayed
concurrently and adjacent to the opened Quick
Menu, i.e. the first predefined area - see
the figure reproduced at point 16.5 above);

(iib)   **sliding at least a portion of the first
application view off the display** (in D1, the
portion of the Today Screen, i.e. the home
screen, that is covered by the opened Quick
Menu is no longer visible to the user; there

is however no animation of sliding that
portion off the display);

(iii) **scrolling the plurality of concurrently
open application icons in the first
predefined area in response to a detected
scroll gesture in that area** (D1 does not
mention the possibility of scrolling the
programs list in the Quick Menu).

11.8   The identified distinguishing features are essentially
the same as those identified by the appellant.

12.   Technical contribution

12.1   Only features which contribute to the technical
character of a claimed invention may support the
presence of an inventive step within the meaning of
Article 56 EPC (T 641/00, Headnote I; G 1/19).

12.2   Re feature (i)

The board considers that feature (i) contributes to the
technical character of the method of claim 1 as this
feature - in combination with the claim features
defining what happens in response to detecting a
gesture on a "respective open application icon" -
defines an interaction mechanism allowing the user to
switch from one open application to another without
having to return to the home screen. Feature (i) may
also be considered to reduce the number of interactions
needed to perform such a switch operation in comparison
to D1, as argued by the appellant (grounds of appeal,
page 5, first paragraph).

The board therefore considers that feature (i)

contributes to solving over D1 the technical problem of *providing a more efficient interaction mechanism for switching from one open application to another open application.*

12.3   Re features (iia) and (iib)

Features (iia) and (iib) may only be present if the "application view selection mode" is invoked from the "first application view". They are thus not independent from feature (i). Nonetheless, the board considers them not to contribute to the technical character of the method of claim 1.

12.3.1 These features specify what is presented on the screen in addition to the "first predetermined area": a "first portion of the first application view", adjacent to that area, and the sliding off the display of "at least a portion of the first application view". They thus relate to a presentation of information within the meaning of Article 52(2)(d) EPC.

12.3.2 This presentation of information has no direct effect on the aforementioned interaction mechanism enabling directly switching between open applications nor on the number of user interactions required for that purpose. This mechanism would be as operational without the presentation of that information.

12.3.3 In the description (paragraphs [191] and [194]), it is suggested that the invention "reduces the cognitive burden on a user when selecting one of concurrently open application[s]" and that the concurrent display of the "first portion of the first application view" with the open application icons in the "first predetermined area" has the benefit of "provid[ing] context by

maintaining the first application view while an open
application icon is being selected". Additionally, it
is stated that "it is easy to get back to the first
application (and cease display of the application icon
area) by, for example, tapping on the first application
view".

As regards the last of the three alleged effects, it
could well be seen as a technical effect but it is not
achieved over the whole scope of claim 1 and cannot
thus be relied on in the assessment of claim 1. Indeed,
claim 1 does not mention the detection of a user input
on the "first portion" nor what would happen if one
were detected (this is only addressed in dependent
claim 3 in the main request; see the discussion of
claim 1 according to the auxiliary request at points 18
and 19 below).

As regards the first two alleged effects, it is not
clear to the board which specific mental process of the
user is being eased by "providing context" by
maintaining part of the first application view on the
display. Features (iia) and (iib) do not contribute to
guiding the user in its interaction with the device,
e.g. to find where on the screen the relevant open
application icon is located. It is also doubted that
they facilitate the *mental decision making* as to which
open application to switch to (this will strongly
depend on circumstances of use), but that would in any
case not be a technical effect.

12.3.4   It is noted that the aspects of features (iia) and
         (iib) relating to the display being "adjacent" and the
         "sliding" animation do not appear to have any bearing
         on the aforementioned mental decision making. They may
         at best have aesthetic effects (see paragraph [162],

suggesting a pleasant "visual appearance"), but these
are not technical effects, as also noted by the
examining division (decision under appeal, point 14.3).

12.3.5   As it is not apparent to the board that features (iia)
         and (iib) contribute to achieving a technical effect in
         the context of claim 1, they do not contribute to the
         technical character of the claimed method and cannot
         therefore support the presence of an inventive step.

         Furthermore, neither feature (i) nor feature (iii)
         depends on features (iia) and (iib).

         Features (iia) and (iib) thus need not be further con-
         sidered in the remaining assessment of inventive step.

12.4   Re Feature (iii)

         The board considers that feature (iii) contributes to
         the technical character of the method of claim 1 as
         this feature defines an interaction mechanism allowing
         the user to switch to an open application when there
         are more open applications icons than may be
         (reasonably) displayed on the screen.

         This feature may thus be considered to contribute to
         solving over D1 the technical problem of *providing an
         interaction mechanism for the case that there are more
         open application icons that can be displayed on the
         screen*.

12.5   Features (i) and (iii) thus address different technical
         problems. It is noted that the interaction mechanisms
         defined respectively by features (i) and (iii) - in so
         far as they differ from those already included in D1 -
         are not inter-dependent as any of them could be added

to D1 without necessitating the addition of the other
one. It is thus also not apparent that the combined
addition of features (i) and (iii) results in any
synergistic technical effect, i.e. a technical effect
going beyond the combination of their individual
technical effects.

In such a situation, it is legitimate to assess
inventive step by considering the obviousness of
features (i) and (iii) over D1 separately.

13.   Obviousness

13.1   Feature (i)

13.1.1 The board notes that D1 does not present the "Quick
       Menu" as a means to merely close running programs but
       as a means to "quickly switch between running programs
       and stop programs" (see page 20, section "Quick Menu").
       The use case of switching from a currently displayed
       open application (running program) to a concurrently
       open application is thus already considered in D1. D1
       provides for that case to go to the home screen and to
       open the Quick Menu from there. The skilled person
       would however look for ways to improve on that process.

       The board considers that it would have been obvious to
       the skilled person to consider enabling a direct
       switching from a currently open application to another
       open application, for in order to make this possible it
       would have sufficed to add the Quick Menu button
       (present in the top bar of the Today Screen) also to
       the top bar of any application screen. This would have
       been readily possible for all the application screens
       shown in D1 (e.g. Contacts, Outlook, Internet Explorer,
       Notes).

13.1.2   The board does not follow the appellant's argument that
         D1 expressly teaches displaying application-specific
         functions in the top bar of the application screens.

         First, no "express teaching" in that respect is
         apparent in D1. Second, while the bottom bars of the
         application screens shown in D1 have application-
         specific buttons, this does not appear to be the case
         with their top bars, which appear to all have the same
         buttons, some of them in common with the top bar of the
         Today Screen (see e.g. the volume icon).

13.1.3   Adding the "Quick Menu" button to the top bar of all
         the application screens in D1, with the same
         functionalities as those associated to that button in
         the Today Screen, would have resulted in the addition
         of feature (i).

13.2   Features (iia) and (iib)

         Notwithstanding the conclusion reached at point 12.3.5
         above that features (iia) and (iib) need not be further
         considered in the assessment of inventive step, the
         following is noted.

         Adding the "Quick Menu" button to the top bar of
         application screens in D1, as in the line of reasoning
         for the obviousness of feature (i), would also have
         immediately resulted in the addition of feature (iia),
         as opening the Quick Menu in any application screen in
         D1 would have left a portion of the application view
         still visible on the screen, adjacent to the part of
         the screen used for the Quick Menu, similarly to the
         situation depicted in the figure at the bottom of page
         20 when the Quick Menu is opened from the Today Screen.

Furthermore, another part of the application view would
be covered by the Quick Menu and thus cease to be
visible. This is part of feature (iib).

Hence, even if feature (iia) and this part of feature
(iib) were considered to make a technical contribution
in combination with feature (i), they would have been
obvious starting from D1.

The remaining part of feature (iib) - that the no
longer visible part of the application view is "slided
off the display" - contributes at best to an aesthetic,
hence non-technical effect, and is thus irrelevant for
inventive step.

13.3   Feature (iii)

D1 does not disclose what would happen if the number of
open applications (running programs) exceeded what
could be displayed in the Quick Menu shown on page 20.
The skilled person would have to provide for a solution
in such a situation.

The board considers that a straightforward solution
would be enabling scrolling the list of running
programs in the Quick Menu by a scrolling gesture.

It is noted that D1 mentions on the same page, in
respect of the similarly designed Start Menu,
"scrolling through the programs list". This may have
been meant via the physical navigation button on the
phone (see page 12). It would however have been obvious
to the skilled person that a scroll gesture would be an
alternative, in particular as D1 also mentions the
possibility of "finger scrolling" to scroll up and down

lists (see page 26), as noted by the examining
division.

The skilled person would thus have added feature (iii)
to the Quick Menu, be it when it is opened from the
Today Screen or - if feature (i) were already added for
the obvious reasons given above - from any other
application screen.

14.   At the oral proceedings, the appellant argued that the
        combined differentiating features contributed to a
        technical effect by keeping a view of the first
        application view when selecting the second application
        view. Also, in D1, the menus were likely to be
        hierarchical, as was usual in a Window environment (the
        interface of D1 being a version of Windows Mobile), so
        that the skilled person would not have arrived at the
        invention.

        The board is not convinced by these arguments.

        It is not apparent how the view of the first
        application view can be helpful for the selection of
        the second application view. Furthermore, it would only
        be helpful at the level of the mental decision-making,
        not e.g. as to how to enter the selection on the
        device.

        As regards D1, while it may be that that Start Menu is
        organised hierarchically (as it is shown with menu
        items likely to have sub-menus), that is not the case
        with the Quick Menu, the entries of that menu being
        individual open programs (see D1, page 20, last
        figure).

15.   Conclusion

The board therefore concludes that claim 1 according to the main request does not involve an inventive step over D1.

Auxiliary request – Admittance

16.   The auxiliary request was filed one day before the oral proceedings. Claim 1 is a direct combination of previous claims 1 and 3. The appellant justified its filing by reference to the new prior art introduced and the associated new objections of lack of inventive step raised in the board's preliminary opinion.

17.   Although it must be stressed that these circumstances do not justify filing the request only one day before oral proceedings, the present amendment is one that was anticipated in the preliminary opinion and could thus be dealt with without this being prejudicial to procedural economy. The board therefore exercised its discretion under Article 13(2) RPBA in admitting the auxiliary request.

Auxiliary request – Inventive step

18.   The added features essentially specify that users may perform a gesture (e.g. a tap) on the part of the first application view that remained visible (the "at least a portion of the first application view") to exit the application view selection mode and return to the first application view.

19.   As argued above, it would have been obvious to the skilled person to make the Quick Menu of D1 directly accessible from each application view, e.g. by adding the corresponding button in the top bar. It is furthermore obvious that once the Quick Menu is open -

from the Today Screen or any application view - there
must be a way to close it (exit the mode) without
having to switch to another open application, i.e. to
simply return to the current view. In a gesture-based
environment, this would typically be achieved by a
particular gesture. Where on the screen the gesture
should be carried out (e.g. on a visible part of the
first application as opposed the Quick Menu button in
the top bar) is technically arbitrary, at least a
priori and without any claimed detail that might make
certain locations preferable over others (e.g. relative
sizes of different portions of the screen, which
however cannot be derived from claim 1). Therefore, any
specific such location, especially the claimed one,
constitutes an obvious alternative. It follows that the
added features do also not render claim 1 inventive.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar: The Chairman:

L. Stridde   Martin Müller

Decision electronically authenticated