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**Datasheet for the decision  
of 3 May 2021**

**Case Number:** T 2296/19 - 3.5.05

**Application Number:** 12169786.6

**Publication Number:** 2495647

**IPC:** G06F3/048

**Language of the proceedings:** EN

**Title of invention:**

Portable electronic device, method and graphical user interface for displaying structured electronic documents

**Applicant:**

Apple Inc.

**Headword:**

Navigating through large web pages by enlarging a current item ("box of content") with a gesture

**Relevant legal provisions:**

EPC Art. 56, 84

RPBA 2020 Art. 13(2)

**Keyword:**

Claims - clarity (no)

Inventive step - (no)

Amendment during oral proceedings - exceptional circumstances  
(no)

**Decisions cited:**

T 1450/15, T 1958/13



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Case Number: T 2296/19 - 3.5.05

**D E C I S I O N**  
**of Technical Board of Appeal 3.5.05**  
**of 3 May 2021**

**Appellant:** Apple Inc.  
(Applicant) One Apple Park Way  
Cupertino CA 95014 (US)

**Representative:** Barton, Russell Glen  
Withers & Rogers LLP  
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**Decision under appeal:** **Decision of the Examining Division of the  
European Patent Office posted on 7 March 2019  
refusing European patent application No.  
12169786.6 pursuant to Article 97(2) EPC.**

**Composition of the Board:**

**Chair** A. Ritzka  
**Members:** P. Tabery  
E. Mille

## Summary of Facts and Submissions

- I. The appeal is directed against the decision of the examining division dispatched on 7 March 2019 refusing European patent application No. EP 12169786.6. This appeal is the second regarding this application, the first was decided in decision T 1450/15 dated 16 May 2017. The application at hand is a divisional application of EP 07814690.9 filed on 5 September 2007. The new RPBA entered into force on 1 January 2020 (Article 24(1) RPBA 2020). Article 12 (4) to (6) RPBA 2020 does not apply in the case at issue since the statement setting out the grounds of appeal was filed on 16 July 2019, before 1 January 2020. Instead, Article 12 (4) RPBA 2007 applies (Article 25 (2) RPBA 2020).
- II. The examining division referred to, *inter alia*, the following documents:
- D1** NATASA MILIC-FRAYLING, RALPH SOMMERER:  
"SmartView: Enhanced Document Viewer for Mobile Devices", MICROSOFT TECHNICAL REPORT, 15 November 2002, XP002462835,  
URL:ftp://ftp.research.microsoft.com/pub/tr/tr-2002-114.pdf  
[retrieved on 2007-12-17]
- III. The examining division decided that the application, according to all requests, did not fulfil the requirements of Articles 76 (1) and 123 (2) EPC. In an obiter dictum, the examining division provided its opinion on inventive step (Article 56 EPC), referring to the second summons to attend oral proceedings before the examining division, dispatched on 29 August 2018.

IV. In its statement setting out the grounds of appeal, the appellant (applicant) requested that a patent be granted on the basis of the claims in accordance with a main request or one of the first to third auxiliary requests, all submitted with the statement setting out the grounds of appeal. The claims of the main request were identical to those of the main request underlying the impugned decision, whereas the auxiliary requests contained further amendments not considered in the impugned decision.

V. The board issued a summons to oral proceedings and set out its provisional opinion on the case in an annex (Article 15(1) RPBA 2020).

The board concurred with the findings of the examining division that the **main request submitted with the statement setting out the grounds of appeal** did not meet the requirements of Articles 76 (1) and 123 (2) EPC. In addition, the board raised objections based on Article 84 EPC.

With respect to the **first auxiliary request submitted with the statement setting out the grounds of appeal**, the board considered that the amendment introduced another unclear formulation, thus aggravating the objection pursuant to Article 84 EPC raised with respect to the main request. This would be considered when discussing the admissibility of this amended request (Article 12 (4) RPBA 2007).

The board noted that the further amendments contained in the **second auxiliary request submitted with the statement setting out the grounds of appeal** gave rise to yet another objection pursuant to Article 84 EPC. This would be considered when discussing the admissibility of this amended request (Article 12 (4) RPBA 2007).

Regarding the **third auxiliary request submitted with the statement setting out the grounds of appeal**, the board identified the same deficiencies pursuant to Article 84 EPC as in the preceding requests. The board expressed why it considered that the subject-matter of independent claim 6 of this request lacked an inventive step over what was known from document **D1**.

- VI. In its letter of reply dated 31 March 2021, the appellant withdrew the first auxiliary request, re-filed the remaining requests in an amended order and filed a new second auxiliary request. In addition, further arguments regarding the pending requests were provided.
- VII. Oral proceedings were held on 3 May 2021. The appellant requested that the decision under appeal be set aside and that a patent be granted on the basis of the main request or the first or second auxiliary request, all requests submitted with the appellant's letter dated 31 March 2021, or on the basis of the new third auxiliary request submitted by the appellant during the oral proceedings before the board.
- VIII. **Claim 6** of the **main request** comprises the following features (as labelled by the board):

A method, comprising:

- (i) at a portable electronic device with a touch screen display;
- (ii) displaying at least a portion of a structured electronic document on the touch screen display, wherein the structured electronic document comprises a plurality of boxes of content;
- (iii) detecting a first gesture at a location on the displayed portion of the structured electronic document;

(iv) determining a first box in the plurality of boxes at the location of the first gesture, the first box having a first size;

(v) enlarging the boxes to be displayed on the touch screen display, and centering the first box on the touch screen display whilst maintaining the defined positions of the boxes on the display, the first box is at a second size greater than the first size, wherein at least a portion of a plurality of the boxes are concurrently displayed on the display while the boxes are enlarged, and wherein the determined box is centered vertically;

(vi) while the first box is enlarged, detecting a second gesture;

(vii) in response to determining that the second gesture is a zoom-out gesture performed on the enlarged first box, reducing in size the displayed boxes whilst maintaining the defined positions of the boxes on the display; and

(viii) in response to determining that the second gesture is a swipe gesture performed on the touch screen display, scrolling the displayed portion of the structured electronic document without reducing in size the displayed portion of the structured electronic document, wherein scrolling the displayed portion of the structured document without reducing in size the displayed portion of the structured electronic document translates the determined box and boxes on the display.

Independent **claims 1 and 11** are directed to a corresponding portable electronic device and corresponding computer-readable storage medium, respectively.

IX. The independent claims of the **first auxiliary request** comprise the further limitation that the swipe gesture is "*substantially vertical*".

X. **Claim 5** of the **second auxiliary request** comprises the following features (as labelled by the board; amendments versus claim 6 of the new first auxiliary request as marked by underlining and strike-through by the appellant):

A method, comprising:

- (i) at a portable electronic device with a touch screen display;
- (ii) displaying at least a portion of a structured electronic document on the touch screen display, wherein the structured electronic document comprises a plurality of boxes of content with defined positions relative to each other;
- (iii) detecting a first gesture at a location on the displayed portion of the structured electronic document;
- (iv) determining a first box in the plurality of boxes at the location of the first gesture, the first box having a first size;
- (v) enlarging the boxes, of the plurality of boxes of content, to be displayed on the touch screen display, and centering the first box on the touch screen display whilst maintaining the defined positions, relative to each other, of the displayed boxes ~~on the display~~, so that the first box is at a second size greater than the first size, wherein at least a portion of a plurality of the boxes of content are concurrently displayed on the display ~~while~~ when the displayed boxes are enlarged, and wherein the determined box is centered vertically;



(vi) while the first box is enlarged, detecting a second gesture;

(vii) in response to determining that the second gesture is zoom-out gesture performed on the enlarged first box, reducing in size the displayed boxes whilst maintaining the defined positions of the boxes on the display; and

(viii) in response to determining that the second gesture is a substantially vertical swipe gesture performed on the touch screen display, scrolling the displayed portion of the structured electronic document without reducing in size the displayed portion of the structured electronic document, wherein scrolling the displayed portion of the structured document without reducing in size the displayed portion of the structured electronic document translates the determined box and the displayed boxes ~~on the display~~.

Independent **claims 1 and 10** are directed to a corresponding portable electronic device and corresponding computer-readable storage medium, respectively.

XI. The sole independent claim 1 of the **third auxiliary request** comprises the following features (amendments versus claim 1 of the current second auxiliary request as marked by underlining and strike-through by the appellant):

A portable electronic device (100), comprising:

a touch screen display (112);

one or more processors (120);

memory (102); and

one or more programs, wherein the one or more programs are stored in the memory (102) and configured to be

executed by the one or more processors (120), the one or more programs including instructions for:

displaying at least a portion of a structured electronic document (3912) on the touch screen display (112), wherein the structured electronic document (3912) comprises a plurality of boxes of content (3914) with defined positions relative to each other;

detecting a first gesture at a location on the displayed portion of the structured electronic document (3912);

determining which box of the plurality of boxes (3914) is at the location of the first gesture, the determined box having a first size;

enlarging the boxes, of the plurality of boxes of content (3914), to be displayed on the touch screen display, and centering the determined box on the touch screen display whilst maintaining the defined positions, relative to each other, of the displayed boxes, so that the determined box has a second size greater than the first size, wherein at least a portion of a second box of the displayed boxes ~~plurality of the boxes~~ of content is ~~are~~ concurrently displayed on the display with the determined box when the displayed boxes are enlarged, and wherein the determined box is centered vertically;

while the displayed boxes are enlarged, detecting a second gesture; in response to determining that the second gesture is a zoom-out gesture performed on the enlarged determined box, reducing in size the displayed boxes whilst maintaining the defined positions, relative to each other, of the displayed boxes ; and in response to determining that the second gesture is a swipe gesture that is not within a predetermined angle of being perfectly vertical ~~a substantially vertical~~

~~swipe gesture~~ performed on the touch screen display, scrolling the displayed portion of the structured electronic document two-dimensionally without reducing in size the displayed portion of the structured electronic document, wherein scrolling the displayed portion of the structured document without reducing in size the displayed portion of the structured electronic document two-dimensionally translates the determined box and the displayed boxes,

while the determined box is at the first size, detecting a third gesture at a location on the displayed portion of the electronic document;

determining that a second box of the plurality of boxes (3914) is at the location of the third gesture, the second box being different to the first box and having a first size;

enlarging the boxes, of the plurality of boxes of content (3914), to be displayed on the touch screen display, and centering the second box on the touch screen display whilst maintaining the defined positions, relative to each other, of the displayed boxes, so that the second box has a second size greater than the first size of the second box, wherein at least a portion of another box of the displayed boxes of content is concurrently displayed on the display with the second box when the displayed boxes are enlarged, and wherein the determined box is centered vertically;

while the displayed boxes are enlarged, detecting a fourth gesture;

in response to determining that the fourth gesture is a swipe gesture that is not within a predetermined angle of being perfectly vertical performed on the touch screen display, scrolling the displayed portion of the structured electronic document two-dimensionally

without reducing in size the displayed portion of the structured electronic document, wherein scrolling the displayed portion of the structured document without reducing in size the displayed portion of the structured electronic document two-dimensionally translates the determined box and the displayed boxes.

## **Reasons for the Decision**

1. The current application concerns an intuitive way for navigating through large menus or web pages. Upon a gesture, a current item ("box") is enlarged or reduced.

2. Main request

The main request was filed with the statement setting out the grounds of appeal as the second auxiliary request.

2.1 Clarity (Article 84 EPC)

In the annex to the summons, the board set out why it considered several of the claimed features to lack clarity.

The appellant argued that the feature *"at least a portion of a plurality of the boxes are concurrently displayed on the display"* was to be understood as relating to displaying a part of each of at least two boxes, as was shown in Fig. 5C of the application. Furthermore, *"enlarging the boxes"* in step (v) related to several boxes, not just to one.

The board asserts that the feature that *"at least a portion of a plurality of the boxes are concurrently displayed on the display"* of claim 6 of the main request is not contained in the claims underlying the decision of the first appeal (T 1450/15). First, it is not evident whether *"a plurality of the boxes"* refers back to the *"plurality of boxes"* defined in step (ii)

or *"the boxes to be displayed"* defined in step (v).  
Second, on the one hand, the term *"a portion"* is singular, thus not necessarily relating to *"parts of at least two boxes"* as argued by the appellant. On the other hand, the verb *"are"* is in its plural form, although it relates to *"a portion"*. This grammatical inaccuracy raises doubts as to whether one or more portions are claimed. In the following, the board will use what it considers to be the broadest possible interpretation of this feature, i.e. that the plurality of the boxes is the same plurality that the first box belongs to and that a single portion is claimed, which may also be a portion of the first box.

This objection applies analogously to claim 1.

In view of the above, the board asserts that the claims of the main request do not fulfil the requirements of Article 84 EPC.

## 2.2 Novelty (Article 54(1) EPC)

In the annex to the summons, the board provided its preliminary view on which of the features of claim 6 it considered to be disclosed in document **D1**, taking into account its interpretation of the unclear features.

The appellant contested both that document **D1** disclosed *"boxes of content"* and that there was a determination to which box a gesture relates.

In addition, the appellant argued that according to document **D1** - contrary to what is claimed - the relative positions of the boxes on the display were altered since *"the corresponding segment is ... displayed ... appropriately re-flowed"*.

Finally, it was argued that the term *"the boxes to be displayed"* related to the subset of boxes that would be present on the display after the enlargement.

The board is not convinced by these arguments. The term *"boxes of content"* allows for broad interpretation. Thus, it also encompasses the *"logical segments"* of the web page mentioned in document **D1** (see the passages cited below). The claimed determination of a box at the location of a gesture is anticipated by a *"region on the thumbnail [of the web page] [being] tapped"* causing the *"corresponding segment ... to be displayed"* (see the paragraph bridging pages 2/3 in **D1**). It is noted that web page segments have *"superimposed regions"* (see preceding paragraph in **D1**). This is a different way of expressing that each region is at the location of the corresponding segment.

In addition, the claims do not specify the *"positions of the boxes on the display"*, hence it cannot be determined whether they have been *"maintain[ed]"*. Consequently, the board considers that this feature cannot be used by the appellant to distinguish its invention from the prior art.

Finally, the board asserts that the *"determined box"* is the only identifiable box specified in the claim as being displayed after the enlargement. Therefore, the board construes *"the boxes to be displayed"* as relating, in one possible interpretation, to the *"determined box"* only. For the same reasons, *"enlarging the boxes to be displayed"* may also be interpreted as relating to the *"determined box"* only.

In view of the above, the board asserts that document **D1** discloses the following features of **claim 6** (the references in parentheses are to that document; strike-through is used to mark features it does not disclose, while alternative features disclosed in it are underlined):

A method, comprising:

- (i) at a portable electronic device with a touch screen display (see the paragraph bridging pages 2/3; Fig. 1);
- (ii) displaying at least a portion of a structured electronic document on the touch screen display (see Fig. 2, left), wherein the structured electronic document comprises a plurality of boxes of content (see page 2, right column, paragraph below Fig. 1);
- (iii) detecting a first gesture at a location on the displayed portion of the structured electronic document (see paragraph bridging pages 2/3 and Fig. 2; according to the current application, a gesture may also be a "tap gesture", see e.g. [0090], and gestures may be "finger gestures" or "stylus gestures", see [0112]);
- (iv) determining a first box in the plurality of boxes at the location of the first gesture, the first box having a first size ("If a region on the thumbnail is tapped with a stylus, the corresponding segment is extracted", see paragraph bridging pages 2/3; Fig. 2);
- (v) enlarging the ~~boxes to be displayed~~ determined box [interpretation of the board] on the touch screen display (see Fig. 2), and centering the first box on the touch screen display (the box is centered horizontally, see Fig. 2) ~~whilst maintaining the defined positions of the boxes on the display~~ [considered void in the interpretation of "boxes to be displayed" as the "determined box"], the first box is at a second size greater than the first size (see Fig. 2), wherein at least a portion of a plurality of the boxes ~~are~~ is [interpretation according to point 2.1 above] concurrently displayed on the display while the ~~boxes are~~ determined box is [interpretation of the board] enlarged (since "a portion" comprises the case of a single box, this is anticipated by the single enlarged box shown, see Fig.

2), and wherein the determined box is centered vertically<sup>[distinguishing feature]</sup>;

(vi) while the first box is enlarged, detecting a second gesture (*implied by: "The user can quickly switch back and forth between the thumbnail overview and the detailed [view]", see page 3, left column, second paragraph*);

(vii) in response to determining that the second gesture is a zoom-out gesture performed on the enlarged first box, reducing in size the ~~displayed boxes~~ determined box <sup>[interpretation of the board]</sup> (*implied by: "The user can quickly switch back and forth between the thumbnail overview and the detailed [view]", see page 3, left column, second paragraph*) ~~whilst maintaining the defined positions of the boxes on the display~~ <sup>[considered void in the interpretation of "displayed boxes" as the "determined box"]</sup>; and

(viii) in response to determining that the second gesture is a swipe gesture performed on the touch screen display (*implied by the scroll bar shown in Fig. 2, right*), scrolling the displayed portion of the structured electronic document without reducing in size the displayed portion of the structured electronic document, wherein scrolling the displayed portion of the structured document without reducing in size the displayed portion of the structured electronic document translates the determined box (*implied since this is the purpose of a scroll bar*) and boxes on the display (*although contested by the appellant, no features of these boxes are specified, hence these particular boxes may also be mapped to elements within the enlarged determined box shown in Fig. 2 right, e.g. the picture, title, etc.*).



Hence, the difference between the subject-matter of **claim 6** and document **D1** resides in that *"the determined box is centered vertically"*.

The subject-matter of **claim 6** is therefore novel over what is known from document **D1**.

### 2.3 Inventive step (Article 56 EPC)

The board asserts that the distinguishing feature relates to a mere matter of data representation and fails to achieve a technical effect. Since a technical effect is indispensable for acknowledging an inventive step, the board considers - notwithstanding the lack of clarity - that the subject-matter of claim 6 is not inventive over what is known from document **D1** (Article 56 EPC).

The appellant argued in favour of an inventive step that the distinguishing feature caused the technical effect of *allowing to easily view boxes of content and to easily navigate to other boxes of content*.

The board notes that the solution according to document **D1** already achieves the first aspect (*"allowing to easily view boxes of content"*) since a box of content may easily be viewed by tapping on it with a stylus. Hence, this effect is not caused by the distinguishing feature. The second aspect (*"easily navigate to other boxes of content"*) is indifferent as to which boxes it relates to. In the context of the problem/solution approach, an objectively credible technical effect is required for the purpose of formulating the objective problem to be solved (in line with decision T 1958/13). However, the board fails to discern how this effect might be related to the distinguishing feature (*"centered vertically"*). Therefore, the board is not convinced by this argument either.

In view of the above, the board decides that **claim 6** does not fulfil the requirements of Article 56 EPC. The same considerations apply analogously to independent **claims 1 and 11**.

2.4 In view of the above, the **main request** is not allowable.

3. First auxiliary request

The first auxiliary was filed with the statement setting out the grounds of appeal as the third auxiliary request.

The board considers that the additional feature of the swipe gesture being "*substantially vertical*" is already implied by the scroll bar shown on the right-hand side of Fig. 2 of document **D1**. Therefore, the board asserts that the subject-matter of the **claim 6** of the first auxiliary request is not inventive (Article 56 EPC) for the reasons provided with respect to claim 6 of the main request.

The same considerations apply analogously to the other independent claims.

Therefore, the **first auxiliary request** is not allowable.

4. Second auxiliary request

4.1 Clarity (Article 84 EPC)

The appellant submitted that the amendments introduced with this request remedied the board's clarity objections raised with respect to features that were not contained in the claims underlying the board's first decision in this case (T 1450/15). The appellant emphasised that the feature "*a portion of a plurality of boxes*" was to be understood as relating to portions of at least two different boxes.

The board maintains that the unaltered formulation "*a portion ... are*" is grammatically incorrect and thus lacks clarity, as detailed above. The board maintains what it considers to be the broadest possible interpretation of this feature, i.e. that the term "*a portion*" relates to one portion of one box.

In view of the above, the board considers that **claims 1 and 5** are not clear within the meaning of Article 84 EPC.

#### 4.2 Inventive step (Article 56 EPC)

Claims 1 and 6 are amended to consistently refer to *defined positions of the boxes relative to each other*. However, the board considers that the now defined relative positions do not effectively limit the claimed subject-matter in the case of displaying "*a first portion of a plurality of boxes*", where this plurality of boxes comprises the first box and the portion may be a portion of the first box. In this case of a single box being displayed, the term "*positions of the boxes relative to each other*" is void of any meaning. Consequently, the board considers that this feature cannot be used by the appellant to distinguish its invention from the prior art. Therefore, the board considers that the amended features of current claim 5 are not novel over what has been cited for the corresponding features of claim 6 according to the preceding requests.

As a consequence, the board asserts that the subject-matter of the **claim 5** of the second auxiliary request is not inventive (Article 56 EPC) for the reasons provided with respect to claim 6 of the main request. The same considerations apply analogously to the other independent claims.

4.3 Therefore, the **second auxiliary request** is not allowable.

5. Third auxiliary request

The appellant submitted that the amendments were supported by paragraph [0090] and Fig. 5C, blocks 4 and 6, disclosing two boxes and thus supporting the newly introduced second box. In addition, paragraph [0096] provided support for the features relating to *"a swipe gesture that is not within a predetermined angle of being perfectly vertical"*.

The appellant argued that this request could not have been filed prior to the oral proceedings before the board. Notably, the inventive step reasoning provided by the board in the annex to its summons differed from that in the impugned decision. Furthermore, the board's interpretation of the term *"boxes"* had changed during the oral proceedings.

The board finds the appellant's arguments not to be convincing. The board still considers the *"boxes"* to be *"boxes of content"*, as defined in the application under scrutiny. Hence, no change of view is apparent in this aspect. The board is well aware that the inventive step reasoning provided in the annex to the summons differs from what has been provided during the examination. However, the differing inventive step reasoning provided in good time prior to the oral proceedings before the board does not constitute an exceptional circumstance which, according to Article 13(2) RPBA 2020, would justify submitting amendments as late as during the oral proceedings before the board.

In addition, the board notes that the third auxiliary request diverges from the higher ranking requests since the features relating to *"a substantially vertical swipe gesture"* contained in the higher ranking requests

are replaced by features relating to *"a swipe gesture that is **not** within a predetermined angle of being perfectly vertical"* [emphasis by the board].

Therefore, the board decides not to admit the **third auxiliary request** into the proceedings (Article 13 (2) RPBA 2020).

## Order

**For these reasons it is decided that:**

The appeal is dismissed.

The Registrar:

The Chair:



K. Götz-Wein

A. Ritzka

Decision electronically authenticated