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**Datasheet for the decision
of 23 May 2022**

Case Number: T 1200/20 - 3.5.05

Application Number: 15175530.3

Publication Number: 2990919

IPC: G06F3/048, G06F17/22, G06F17/30

Language of the proceedings: EN

Title of invention:
TOUCH EVENT PROCESSING FOR WEB PAGES

Applicant:
Apple Inc.

Headword:
Substantial procedural violation/APPLE

Relevant legal provisions:
EPC Art. 113(1)
EPC R. 103(1) (a)
RPBA 2020 Art. 11

Keyword:

Right to be heard - substantial procedural violation (yes)

Reimbursement of appeal fee - (yes) - equitable by reason of a
substantial procedural violation

Remittal - fundamental deficiency in first-instance
proceedings (yes)

Decisions cited:

T 0951/97



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Case Number: T 1200/20 - 3.5.05

D E C I S I O N
of Technical Board of Appeal 3.5.05
of 23 May 2022

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

Representative: Gillard, Matthew Paul
Withers & Rogers LLP
2 London Bridge
London SE1 9RA (GB)

Decision under appeal: **Decision of the Examining Division of the
European Patent Office posted on 2 January 2020
refusing European patent application No.
15175530.3 pursuant to Article 97(2) EPC.**

Composition of the Board:

Chair A. Ritzka
Members: E. Konak
K. Kerber-Zubrzycka

Summary of Facts and Submissions

I. The appeal is against the examining division's decision to refuse the application. The examining division decided that the main request was not new over D1 (Article 54(1) and (2) EPC) and that auxiliary request 1 did not involve an inventive step over a combination of D1 and D5 (Article 56 EPC). These documents are as follows:

D1: A. Nathan, "Silverlight 1.0 Unleashed"

D5: US 2006/197753 A1

II. With the statement setting out the grounds of appeal, the appellant re-filed the main request and auxiliary request 1 on which the contested decision is based and also filed new auxiliary requests 2 and 3. It requested that the decision under appeal be set aside and that a patent be granted on the basis of one of the requests. It further requested oral proceedings as an auxiliary measure.

The appellant further argued that a substantial procedural violation had occurred in the examination proceedings and requested the reimbursement of the appeal fee in accordance with Rule 103(1)(a) EPC.

III. In a communication pursuant to Article 15(1) RPBA, the board identified fundamental deficiencies amounting to substantial procedural violations in the examination proceedings. It informed the appellant of its intention to remit the case to the examining division and to order the reimbursement of the appeal fee in full.

IV. The appellant then withdrew its request for oral proceedings. The scheduled oral proceedings were therefore cancelled.

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

"A method, comprising:

displaying a web page (100) in a web browser (404);

while displaying the web page in a web browser:

detecting a touch input (110, 112, 114); and,

in response to detecting the touch input:

receiving the touch input at the web browser and determining, at the web browser, whether the touch input is associated with a region of the web page that includes a touch handler associated with the web page;

in accordance with a determination, at the web browser, that the touch input is detected at a first region (102, 104) of the web page that includes a touch handler associated with the web page, providing one or more touch events that correspond to the touch input to the web page for processing;

in accordance with a determination, at the web browser, that the touch input is detected at a second region of the web page that is distinct from the first region and that does not include a touch handler associated with the web page, processing the touch input with a touch handler associated with the web browser without providing the one or more touch events that correspond to the touch input to the web page for processing."

The wording of the claims of the auxiliary requests is not relevant to this decision.

Reasons for the Decision

1. In the case at hand, the examining division did not sufficiently communicate its novelty objections to claim 1 of the main request either before or during the oral proceedings, and therefore the appellant was unable to counter these objections. Moreover, the examining division failed to engage with the appellant's arguments in favour of the novelty of the claimed subject-matter. In particular:
 - 1.1 In the version filed with the letter of 23 May 2017, the appellant added to claim 1, inter alia, the feature of *"receiving the touch input at the web browser and determining, at the web browser, whether the touch input is associated with a region of the web page that includes a touch handler associated with the web page"*, which the appellant indicated in its letter to be one of the features which was not disclosed in D1 (see the letter of 23 May 2017, page 5, third paragraph). The annex to the summons to oral proceedings which followed as the next official action is unusually short. In particular, it does not include a complete feature analysis for the version of claim 1 then on file. Regarding the aforementioned feature, it merely states (point 3) that: *"However, the ESOP on point 2, identifies the input, the region and the handler. Again no reasons has been argued [sic]."* To begin with, since this feature was not part of claim 1 at the time the ESOP was issued, it cannot have been dealt with in the ESOP. Furthermore, when an applicant adds a new feature to a claim and argues that this feature is novel, the onus lies on the examining division to argue that it is not. At the oral proceedings, when the applicant explicitly requested a more detailed feature mapping,

the examining division rejected this request and referred to the feature mapping that had allegedly already been provided in writing (see point 7.1 of the contested decision and page 1 of the minutes of the oral proceedings).

1.2 In its letter of reply to the summons, dated 25 October 2019, the appellant argued (see points 11 to 12) that the feature "*in accordance with a determination, at the web browser, that the touch input is detected at a first region (102, 104) of the web page that includes a touch handler associated with the web page, providing one or more touch events that correspond to the touch input to the web page for processing*" of claim 1 was also novel over D1. At the oral proceedings, the appellant repeated this argument and requested counter-arguments. The examining division refused any discussion and referred again to its written arguments (see the minutes of the oral proceedings, page 1, "Main Request"). However, since the appellant had not argued in its previous written submissions specifically in favour of the novelty of this feature, the written arguments of the examining division in previous communications could not have addressed the appellant's argument. Therefore, the appellant was left to guess what the outstanding objections were with regard to each of these features.

1.3 Finally, the appellant had contested in its letter of reply to the summons to oral proceedings dated 25 October 2019 (see points 13 to 21) the examining division's assertion that the final feature of claim 1, namely "*in accordance with a determination, at the web browser, that the touch input is detected at a second region of the web page that is distinct from the first region and that does not include a touch handler*

associated with the web page, processing the touch input with a touch handler associated with the web browser without providing the one or more touch events that correspond to the touch input to the web page for processing", was implicitly disclosed in D1. At the oral proceedings, the appellant repeated this argument and requested counter-arguments. The examining division again refused any discussion and referred to its written arguments (see the minutes of the oral proceedings, page 1, "Main Request"), even though none of the written arguments of the examining division in previous communications had explained why the contested feature was considered to be implicit.

- 1.4 Thus, by basing the decision on grounds on which the appellant had not had an opportunity to present its comments, the examining division violated the appellant's right to be heard (Article 113(1) EPC).

2. As for auxiliary request 1, at the oral proceedings the examining division raised an inventive-step objection based on the combination of D1 with D5. The appellant then requested a 30-minute interruption to study D5 and the combination thereof with D1. The examining division refused this reasonable request, alleging that "D5 was already present in the procedure" (see the contested decision, point 9.1, and the minutes of the oral proceedings, page 2). However, this is factually incorrect. D5 had never been cited in the examination proceedings before; it was merely one of the documents listed in the Search Report. Thus, the appellant faced an inventive-step objection based on new evidence, D5, for the first time at the oral proceedings and was forced to prepare its case without even an interruption of the oral proceedings (cf. T 951/97, point 4 of the Reasons). Basing the decision on new evidence on which

the appellant had not had sufficient opportunity to comment was a further violation of the appellant's right to be heard (Article 113(1) EPC).

3. These violations of the appellant's right to be heard amount to fundamental deficiencies constituting special reasons for remitting the case to the department of first instance under Article 11 RPBA 2020.
4. Since the fundamental deficiencies apparent in the examination proceedings amount to substantial procedural violations, reimbursement in full of the appeal fee is equitable (Rule 103(1)(a) EPC).

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.
2. The case is remitted to the examining division for further prosecution.
3. The appeal fee is to be reimbursed in full.

The Registrar:

The Chair:



K. Götz-Wein

A. Ritzka

Decision electronically authenticated