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**Datasheet for the decision
of 29 August 2023**

Case Number: T 1307/21 - 3.5.05

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Language of the proceedings: EN

Title of invention:

DEVICES, METHODS, AND GRAPHICAL USER INTERFACES FOR PROVIDING
HAPTIC FEEDBACK

Applicant:

Apple Inc.

Headword:

GRAPHICAL USER INTERFACES FOR PROVIDING HAPTIC FEEDBACK /
Apple

Relevant legal provisions:

EPC Art. 56
RPBA 2020 Art. 12(4)

Keyword:

Inventive step - (no) - obvious solution

Amendment to case - suitability of amendment to address issues

(no) - need for procedural economy



Beschwerdekammern

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Case Number: T 1307/21 - 3.5.05

D E C I S I O N
of Technical Board of Appeal 3.5.05
of 29 August 2023

Appellant:

(Applicant)

Apple Inc.
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Cupertino CA 95014 (US)

Representative:

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Decision under appeal:

**Decision of the Examining Division of the
European Patent Office posted on 15 February
2021 refusing European patent application No.
17733235.0 pursuant to Article 97(2) EPC.**

Composition of the Board:

Chair

E. Konak

Members:

N. H. Uhlmann

F. Blumer

Summary of Facts and Submissions

- I. The applicant appealed against the examining division's decision to refuse the European patent application in suit.
- II. The examining division decided that the main request and auxiliary requests 1 to 3 did not meet the requirements of Article 56 EPC. Auxiliary requests 4 and 5 were not admitted under Rule 137(3) EPC.
- III. The examining division made reference, *inter alia*, to the following documents:
- | | |
|----|----------------|
| D3 | US 2016/063825 |
| D4 | US 2016/063850 |
| D5 | US 2017/102916 |
| D6 | US 8 131 848 |
| D7 | US 2012/027216 |
- IV. With the statement setting out the grounds of appeal, the appellant submitted a main request and auxiliary requests 1 to 5.
- V. The board summoned the appellant to oral proceedings.
- In a communication under Article 15(1) RPBA, the board set out its provisional opinion on the case.
- VI. By letter dated 8 August 2023, the appellant submitted further arguments.

VII. At the oral proceedings, the admittance and the allowability of the requests on file was discussed with the appellant.

VIII. The final requests of the appellant were that the decision under appeal be set aside and that a patent be granted on the basis of the main request or any one of auxiliary requests 1 to 5, all requests as filed with the statement setting out the grounds of appeal.

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

"A method, comprising:

at an electronic device with a display, a touch sensitive surface, one or more sensors, and an audio system, and/or one or more tactile output generators:

detecting an alert event; and

in response to receiving the alert event:

delaying provision of audio and/or tactile feedback indicative of the alert event without delaying provision of visual feedback until determining whether the electronic device is in a first use context or in a second use context that is distinct from the first use context;

and in response to determining whether the electronic device is in the first use context or the second use context:

in accordance with a determination that the electronic device is in the first use context, providing first feedback indicative of the alert event, wherein the first feedback includes a first audio output and/or a first tactile output; and

in accordance with a determination that the electronic device is in the second use context that is distinct from the first use context, providing second feedback indicative of the alert event, wherein the second feedback includes a second audio output that is distinct from the first audio output and/or a second tactile output that is distinct from the first tactile output."

- X. Claim 1 of auxiliary request 1 is based on claim 1 of the main request and includes the following additional wording:

"providing visual feedback indicative of the alert event without delaying the provision of the visual feedback until determining whether the electronic device is in a first use context or in a second use context that is distinct from the first use context".

Additionally, the wording "without delaying provision of visual feedback" has been deleted.

- XI. Claim 1 of auxiliary request 2 is based on claim 1 of the main request. The wording "delaying provision of audio and/or tactile feedback indicative of the alert event without delaying provision of visual feedback until determining whether the electronic device is in a first use context or in a second use context that is

distinct from the first use context;" has been replaced by the following wording:

"determining whether the electronic device is in a first use context or in a second use context that is distinct from the first use context;

while determining whether the electronic device is in the first use context or in the second use context:

providing visual feedback indicative of the alert event, including displaying, on the display, a user interface corresponding to the alert event; and

delaying provision of audio and/or tactile feedback indicative of the alert event until the determination is made;".

XII. Claim 1 of auxiliary request 3 is based on claim 1 of auxiliary request 2 and includes the following additional wording:

"while providing the second feedback indicative of the alert event, monitoring whether the electronic device has transitioned from the second use context to the first use context; and

in response to determining that the electronic device has transitioned from the second use context to the first use context, transitioning from providing the second feedback indicative of the alert event to providing the first feedback indicative of the alert event".

Furthermore, the wording "including displaying, on the display, a user interface corresponding to the alert event" has been deleted.

XIII. Claim 1 of auxiliary request 4 is based on claim 1 of auxiliary request 3 and includes the following additional wording:

"wherein the first use context corresponds to a face of a user being detected by the one or more sensors of the electronic device, and the second use context corresponds to a face of a user not being detected by the one or more sensors of the electronic device".

XIV. Claim 1 of auxiliary request 5 is based on claim 1 of auxiliary request 3 and includes the following additional wording:

"wherein the first use context corresponds to a user interacting with the electronic device within a predefined time period, and the second use context corresponds to a user not interacting with the electronic device within the predefined time period".

Reasons for the Decision

1. The present application pertains to a method carried out on a device like a smart phone. An alert event is detected. Provision of audio or tactile feedback is delayed until the use context of the device is determined. Provision of visual feedback is not delayed. In response to determining the use context, a corresponding audio or tactile feedback is provided.

2. Document D3 discloses a method for providing audio or haptic output in dependence on a state of a device.

Main request

3. Inventive step

- 3.1 According to the decision under appeal, D3 disclosed all features of claim 1 except "provision of visual feedback before the determination of the use context".

- 3.2 The appellant argued that the distinguishing feature referred to in the impugned decision was "a large oversimplification of the difference" between claim 1 and D3. It stated that the distinguishing features were focused on the relative timing and context dependency of the feedback that is provided and that claim 1 did not cover a mere computational delay but related to an active delay of the provision of the audio and/or tactile feedback until the use context was determined.

It argued that the active verb "delaying" testified that the claim related to an "active delay" and pointed also to claims 147 and 148 as filed, which refer to "means for delaying". If "delaying" covered a computational time period, these means would be redundant.

- 3.3 The board holds that document D3 discloses the determination of a state of the device and the provision of different haptic output, depending on the determined state, see Figure 7 and the corresponding paragraphs 188 to 201. It is self-evident that the haptic output is not provided (steps 715 and 720) immediately after an alert condition is detected (step 705) but after the determination of the state (step

710) takes place. It is, similarly, self-evident that the determination disclosed in D3 takes some time, even if it is rather short. Hence, D3 discloses "delaying provision of audio and/or tactile feedback indicative of the alert event [...] until determining whether the electronic device is in a first use context or in a second use context".

Furthermore, "delaying" is a functional formulation and leaves open how the delay is actually achieved. Thus, the delay disclosed in document D3 anticipates the claimed "delaying". Additionally, none of the independent claims of the main request recites any "means for delaying".

3.4 The board notes that the claimed "delaying" is defined only by specifying the end condition of the delay, i.e. "until determining". Claim 1 does not require any "active delay" and does not exclude that the delay corresponds to the time interval in which the device determines the context.

3.5 The appellant submitted that the entire "delaying" step, formulated in claim 1 as a single step, was a distinguishing feature, not only the "without delaying..." part.

The board disagrees. Whether features are formulated as a single step or a plurality of steps is not decisive. In the case at hand, the delaying step clearly includes two features:

- provision of visual feedback is not delayed, and
- provision of audio or tactile feedback is delayed.

- 3.6 The appellant pointed to paragraphs 230 to 232 of the description and stated that the determination of the use context took some time and that the user might change the context after having perceived the visual feedback.

The board notes that this is a theoretical scenario which is not suggested anywhere in the application as filed. In particular, the amount of time needed for determining the use context is not specified in claim 1. In general, it could be rather short, which makes it very improbable that the user might change the context.

- 3.7 The appellant's argument that the determination of the use context took place after a "delaying" is not convincing. The wording in claim 1 "delaying provision [...] until determining whether the electronic device is in a first use context or in a second use context" cannot be reasonably interpreted in this way. Paragraph 231 confirms that "audio and/or tactile feedback is not provided until after electronic device [...] determines [...] a use context", i.e. what is delayed is the provision of the feedback, not the determination of the use context. Indeed, paragraphs 230 to 232 do not refer to any "delaying".

The appellant stated that both documents D3 and D4 disclosed that the determination of the context was performed immediately after an alert was received and that this determination was not confirmed later.

However, claim 1 does not require any confirmation.

- 3.8 The appellant argued that the separation of the visual and the audio / tactile feedback was the gist of the claimed invention.

The board observes that the distinguishing feature set out below (point 3.9) reflects this aspect: the provision of visual feedback is not delayed, i.e. it is in fact separated from the delayed audio / tactile feedback.

- 3.9 In the board's view, the distinguishing feature in view of D3 is that the provision of visual feedback is not delayed until the determination of the use context.

- 3.10 The appellant argued that the technical effect was "that some amount of feedback – visual feedback – is quickly provided to the user, whereas additional feedback – audio and/or tactile feedback – is delayed until the use context of the device has been determined" and that unnecessary strain on and power consumption from audio and/or tactile output hardware before the appropriate amount of feedback has been determined was avoided.

- 3.11 The board notes that alleged effects based on the delayed provision of audio or tactile feedback (e.g. paragraph 386 of the description) cannot be seen as technical effects caused by the distinguishing feature because document D3 discloses this delayed provision.

Furthermore, arguments based on the determination of user's level of attention are not convincing because the independent claims do not refer to such aspects.

The board observes that the description as filed does not ascribe any particular effect to the provision of visual feedback which is not delayed. In particular, according to paragraph 390, the sole passage of the description on which this feature is based, it amounts to an alternative to the delayed provision of any feedback. The pertinent claims 126 and 145 to 148 as originally filed all refer to "delaying provision of **(any) feedback**".

- 3.12 The board accepts that the distinguishing feature leads to the technical effect that some feedback is immediately provided to the user.
- 3.13 The objective technical problem to be solved may be seen as how to modify the teaching of document D3 to provide immediately some feedback to the user. The board notes that this problem evidently does not include any pointer to the solution, i.e. to the distinguishing feature (cf. point 3.9 above)
- 3.14 The skilled person is aware of the generally known functions of smartphones, e.g. of iPhones by the applicant of the application in suit and of D3. In particular, it is generally known that, as a rule, when a phone call is received (e.g. by the telephone module 138 in D3), this call is right away visually signalled on the screen. In view of the problem set out above, the skilled person would be motivated to adapt the method disclosed in D3 accordingly, i.e. to provide right away visual feedback and thereby separate the visual feedback from the audio and/or tactile feedback, and would thus arrive at the subject-matter claimed.

- 3.15 The appellant argued that D3, paragraph 328, disclosed synchronizing the different types of feedback, i.e. haptic and non-haptic feedback, and would thus teach away from providing visual feedback before the haptic feedback.

The board is not persuaded. Paragraph 328 does not disclose any synchronisation of haptic and visual feedback. It merely refers to aligning **haptic and audio** output. Further paragraphs, e.g. 466 and 478, disclose that "auditory, haptic and/or visual components of the alert **may** be synchronized". However, they do not teach that these components have to be synchronised.

- 3.16 For these reasons, the board confirms the finding in the decision under appeal that the subject-matter of claim 1 does not involve an inventive step in view of document D3 and the general knowledge of the skilled person.

- 3.17 Consequently, the main request is not allowable under Article 56 EPC.

Auxiliary request 1

4. Inventive step

- 4.1 The appellant stated in the statement setting out the grounds of appeal that the wording of auxiliary request 1 was "a rephrasing of the wording of the Main Request" and referred to its arguments for the main request.

- 4.2 At the oral proceedings, the appellant explained that in claim 1 it was set out explicitly that the visual feedback was separated from the audio / tactile feedback. In claim 1 of the main request, this separation was claimed only implicitly.

The board notes that the aspect of separation was taken in consideration regarding the main request.

- 4.3 Therefore, the subject-matter of claim 1 does not involve an inventive step for the reasons given in point 3. above.

Auxiliary request 2

5. Inventive step

- 5.1 The board agrees with the appellant that the wording of claim 1 is a second rephrasing of the wording of claim 1 of the main request.

- 5.2 The appellant submitted additionally that according to claim 1, the determination of the use context took place immediately after an alert was received.

However, D3 includes similar disclosure: an alert condition is detected (step 705), immediately thereafter the determination of the state (step 710) is performed.

- 5.3 Therefore, the subject-matter of claim 1 does not involve an inventive step for the reasons given in point 3. above.

Auxiliary request 3

6. Inventive step

6.1 The examining division held that the added features (see point XII. above) were not disclosed in document D3 and that they did not exhibit any synergistic effect with the non-delayed provision of a visual feedback.

The board agrees and notes that according to claim 1, the visual feedback is provided before the determination of the use context, i.e. the visual feedback is independent from the use context and from any changes of it. Furthermore, from the fact that the features added to claim 1 relate to

- the already recited first use context and second use context,
- the already recited first feedback and second feedback, and furthermore to
- the already recited initial determination of whether the electronic device is in the first use context or the second use context

does not follow that a synergistic effect is present because D3 discloses the first and second use context, the first and second feedback and the determination.

6.2 According to the impugned decision, the features added to claim 1 addressed the problem of maintaining audio and/or haptic feedback which is adequate to the use context. The board agrees.

- 6.3 The appellant argued that "the claimed solution has the additional benefit of continuing to monitor the use context and transitioning the feedback between the first and second feedback" and that it "may lead to energy savings" and pointed to paragraph 386.

The board observes that

- the alleged benefit is rather a summary of the features added to claim 1, and
- the notions of first and second use context and first and second feedback are such broad that the claimed features cannot credibly lead to energy savings.

Furthermore, paragraph 386 of the description of the application in suit does not relate to the features added to claim 1 of auxiliary request 3.

- 6.4 Facing the problem set out in point 6.2 above, the skilled person would consider documents which belong to the same technical field as D3 and pertain to interactions between a user and a device, for instance document D4.

As the examining division correctly explained in sections 2.2.1 and 5.1 of the decision under appeal, D4 discloses the features added to claim 1. D4 discloses a situation in which active or passive user interaction is detected (paragraphs 104 and 109) and an alert sequence is modified accordingly, i.e. D4 addresses and solves the objective technical problem given in point 6.2 above. By incorporating this solution into the

method disclosed in D3, the skilled person would arrive at the subject-matter of claim 1.

6.5 The board notes that D4 discloses

- a "current alert mode" which corresponds to the claimed second use context and which is selected according to an environmental condition, before the environmental condition changes, and
- a "subsequent current alert mode" which corresponds to the claimed first use context and which is selected after the environmental condition changes (cf. claims 1 and 14, Figure 7D and paragraph 104).

Claims 1 and 14 disclose these features in combination.

6.6 The appellant argued that in D4 there was no link between Figures 7A and 7D.

The board disagrees. According to the final steps 704 and 706 in Figure 7A, an alert is output. The first step 731 of Figure 7D discloses that an alert sequence is output. Thus, the steps disclosed in Figure 7D follow the steps disclosed in Figure 7A. This understanding is confirmed in claims 1 and 14: first a "current alert mode" is selected, based on environmental conditions (claim 1) and after that a "subsequent current alert mode" is selected, based on a changed environmental condition (claim 14).

6.7 For these reasons, the subject-matter of claim 1 does not involve an inventive step having regard to documents D3 and D4 and the general knowledge of the skilled person.

6.8 Hence, auxiliary request 3 is not allowable under Article 56 EPC.

Auxiliary requests 4 and 5

7. Admission

7.1 Claim 1 of the auxiliary requests 4 and 5 corresponds to claim 1 of auxiliary request 3 combined with the additional features of claim 5 and claim 4, respectively.

7.2 The decision under appeal was not based on these requests. Hence, they do not meet the requirements of Article 12(2) RPBA and are to be regarded as an amendment of the appeal case (Article 12(4) RPBA).

7.3 The appellant stated that "the introduced amendments directly address the concerns raised by the Examining Division in section 2.1.10 of the Decision" and that they were a genuine attempt to overcome these objections.

The board holds that this is not a convincing argument for submitting these auxiliary requests in the appeal proceedings. The objections in section 2.1.10 of the decision under appeal had been similarly raised in the communication dated 25 November 2020, section 2.4. The appellant reacted to this communication by submitting the then auxiliary requests 4 and 5 (which include different claims 1).

7.4 The board recalls that the appeal proceedings do not form a continuation of the examination proceedings. The primary object of the appeal proceedings is to review

the decision under appeal in a judicial manner (Article 12(2) RPBA).

7.5 It is not apparent that the amendments in claim 1 of auxiliary requests 4 and 5 are suitable to address the issues which lead to the decision under appeal. The arguments against the allowability of dependent claims 5 and 6 of the main request were given in the first substantive communication by the examining division (dated 10 May 2019), reiterated in the subsequent communications and set out in the reasons for the impugned decision (cf. sections 2.2.4 and 2.2.5). As explained at the oral proceedings, the appellant did not address specifically these objections in the statement setting out the grounds of appeal, it merely stated that "the amendments provide an additional non-obvious and inventive distinction over the cited portions of D3". Such general statement is not suitable to address the specific reasons given in the decision under appeal and in previous official communications (Article 12(4) third paragraph RPBA).

7.6 The appellant argued that it "does not recognise that there has been any significant shifting of the case nor any kind of forum shopping" and that the amendments "do not complicate the case".

The board is not persuaded by these arguments. If, for the sake of the argument, the case were indeed not "significantly shifted" because the amendments are based on dependent claims, the case becomes more complicated because the appellant did not provide proper inventive-step arguments, either in the statement setting out the grounds of appeal or in its letter dated 8 August 2023. Thus, the compliance with Article 56 EPC would have to be discussed for the first

time during the oral proceedings before the board, which is contrary to the need for procedural economy (Article 12(4) third paragraph RPBA).

- 7.7 The appellant submitted that it was required to file a divisional patent application including having to pay accumulated annuities, even though the subject-matter of the auxiliary requests were converging from the previous auxiliary requests.

This argument is not convincing. It was the applicant who decided to file auxiliary requests 4 and 5 on appeal and who set out the arguments in the statement setting out the grounds of appeal.

- 7.8 For these reasons, the board does not admit auxiliary requests 4 and 5 into the appeal proceedings under Article 12(4) RPBA.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chair:



K. Götz-Wein

E. Konak

Decision electronically authenticated