

**Internal distribution code:**

- (A) [ - ] Publication in OJ
- (B) [ - ] To Chairmen and Members
- (C) [ - ] To Chairmen
- (D) [ X ] No distribution

**Datasheet for the decision  
of 29 January 2024**

**Case Number:** T 0896/22 - 3.5.05

**Application Number:** 14876853.4

**Publication Number:** 3093748

**IPC:** G06F3/0488, H04M1/02,  
G06F3/0482

**Language of the proceedings:** EN

**Title of invention:**

Application program display method and terminal

**Applicant:**

Huawei Device Co., Ltd.

**Headword:**

Gesture-based list display/HUAWEI

**Relevant legal provisions:**

EPC Art. 56  
RPBA 2020 Art. 12(4), 12(6)

**Keyword:**

Inventive step - main request (no): mere GUI design based on user experience  
Admittance of claim requests filed on appeal - 1st to 5th auxiliary requests (no): should have been filed earlier + not suitable to address the relevant issues

**Decisions cited:**

T 1958/13, T 1681/18, T 1762/18



**Beschwerdekammern**  
**Boards of Appeal**  
**Chambres de recours**

Boards of Appeal of the  
European Patent Office  
Richard-Reitzner-Allee 8  
85540 Haar  
GERMANY  
Tel. +49 (0)89 2399-0  
Fax +49 (0)89 2399-4465

Case Number: T 0896/22 - 3.5.05

**D E C I S I O N**  
**of Technical Board of Appeal 3.5.05**  
**of 29 January 2024**

**Appellant:** Huawei Device Co., Ltd.  
(Applicant) B2-5 of Nanfang Factory  
No.2 of Xincheng Road  
Songshan Lake Science and Technology  
Industrial Zone  
Dongguan, Guangdong 523808 (CN)

**Representative:** Gill Jennings & Every LLP  
The Broadgate Tower  
20 Primrose Street  
London EC2A 2ES (GB)

**Decision under appeal:** **Decision of the Examining Division of the  
European Patent Office posted on 16 November  
2021 refusing European patent application  
No. 14876853.4 pursuant to Article 97(2) EPC.**

**Composition of the Board:**

**Chair** K. Bengi-Akyürek  
**Members:** E. Konak  
F. Bostedt

## Summary of Facts and Submissions

I. The appeal is directed against the examining division's decision to refuse the present application. The examining division decided that the subject-matter of the independent claims of the **main request** and **auxiliary requests 1 to 5** then on file involved added subject-matter (Article 123(2) EPC) and did not meet the requirement of Article 56 EPC in view of the following prior-art document:

**D2:** WO 2013/060178 A1.

For language reasons, a late-published family member of document D2, i.e. US 2014/0068518 A1, was used.

II. Oral proceedings were held before the board on 29 January 2024. The appellant's final requests were that the decision under appeal be set aside and that a patent be granted on the basis of a **main request** or **auxiliary requests 1 to 5** filed with the statement setting out the grounds of appeal.

The main request is identical to the main request on which the contested decision is based, while auxiliary requests 1 to 5 were filed for the first time with the statement setting out the grounds of appeal.

III. Claim 1 of the **main request** reads as follows:

"An application display method, comprising:  
acquiring a first sliding gesture, wherein a start position of the first sliding gesture is located in a first preset operating area, the first preset operating

area is a bottom display area on a touchscreen of a terminal; and

when the terminal detects that the first sliding gesture is a first preset sliding gesture, displaying a list including an identifier of an application that is recently used by the user of the terminal;

acquiring a second sliding gesture, wherein a start position of the second sliding gesture is located in the first preset operating area;

when the terminal detects that the second sliding gesture is the second preset sliding gesture, hiding the list including an identifier of an application that is recently used by the user of the terminal."

Claim 1 of **auxiliary request 1** differs from claim 1 of the main request by the following text (with the additions underlined and the deletions ~~struck through~~):

"[...] when the terminal detects that the first sliding gesture is a first preset sliding gesture, displaying a list including an identifier of an application that is in a first state, wherein the first state comprises at least one of the following states: a state of running in the foreground, a state of running in the background, and a state of being buffered in the background ~~recently used by the user of the terminal~~; acquiring a second sliding gesture, wherein a start position of the second sliding gesture is located in the first preset operating area;

when the terminal detects that the second sliding gesture is the second preset sliding gesture, hiding the list including an identifier of an application that is in the first state ~~recently used by the user of the terminal~~."

Claim 1 of **auxiliary request 2** differs from claim 1 of auxiliary request 1 by the following text (with the additions underlined):

"An application display method, comprising:

acquiring a first upward sliding gesture, wherein a start position of the first upward sliding gesture is located in a first preset operating area, the first preset operating area is a bottom display area on a touchscreen of a terminal; and

when the terminal detects that the first upward sliding gesture is a first preset sliding gesture, displaying a list including an identifier of an application that is in a first state, wherein the first state comprises at least one of the following states: a state of running in the foreground, a state of running in the background, and a state of being buffered in the background;

acquiring a second upward sliding gesture, wherein a start position of the second upward sliding gesture is located in the first preset operating area;

when the terminal detects that the second upward sliding gesture is the second preset sliding gesture, hiding the list including an identifier of an application that is in the first state."

Claim 1 of **auxiliary request 3** differs from claim 1 of auxiliary request 1 by the following text (with the additions underlined):

"[...] when the terminal detects that the second sliding gesture is the second preset sliding gesture, hiding the list including an identifier of an application that is in the first state, wherein the second preset sliding gesture is the same as the first preset sliding gesture."

Claim 1 of **auxiliary request 4** differs from claim 1 of auxiliary request 2 by the following text (with the additions underlined):

"[...] when the terminal detects that the second upward sliding gesture is the second preset sliding gesture, hiding the list including an identifier of an application that is in the first state, wherein the second preset sliding gesture is the same as the first preset sliding gesture."

Claim 1 of **auxiliary request 5** reads as follows:

"An application display method, comprising:

acquiring a first upward sliding gesture, wherein a start position of the first upward sliding gesture is located in a first preset operating area, the first preset operating area is a bottom display area on a touchscreen of a terminal;

when the terminal detects that the first upward sliding gesture is a first preset sliding gesture, displaying a list including one or more identifiers of applications that are in a first state, wherein the first state comprises at least one of the following states: a state of running in the foreground, a state of running in the background, and a state of being buffered in the background; and

acquiring a second upward sliding gesture, wherein a start position of the second upward sliding gesture is located in the first preset operating area;

when the terminal displays identifiers of a first part of applications that are in the first state to the user, when the terminal detects that the second upward sliding gesture is the second preset sliding gesture, the terminal displays identifiers of a second part of applications that are in the first state; and

when the terminal displays identifiers of all applications that are in the first state to the user, when the terminal detects that the second upward sliding gesture is the second preset sliding gesture, the terminal hides the list including the one or more identifiers of applications that are in the first state;

wherein the second preset sliding gesture is the same as the first preset sliding gesture."

### **Reasons for the Decision**

1. Main request - inventive step (Article 56 EPC)
- 1.1 Claim 1 of the **main request** includes the following limiting features (board's labelling):
  - (a) An application display method, comprising:
  - (b) acquiring a first sliding gesture, wherein a start position of the first sliding gesture is located in a first preset operating area,
  - (c) the first preset operating area is a bottom display area on a touchscreen of a terminal; and
  - (d) when the terminal detects that the first sliding gesture is a first preset sliding gesture, displaying a list including an identifier of an application that is recently used by the user of the terminal;
  - (e) acquiring a second sliding gesture,
  - (f) wherein a start position of the second sliding gesture is located in the first preset operating area;
  - (g) when the terminal detects that the second sliding gesture is the second preset sliding gesture, hiding the list including an identifier of an



application that is recently used by the user of the terminal.

- 1.2 In the contested decision, the examining division found claim 1 of the main request to differ from the "closest prior art" D2 in features (c) and (f). The examining division could not see any synergistic effect associated with the two distinguishing features. However, regarding both distinguishing features, the examining division considered them to be a mere replacement of one gesture with another, without any technical effect.
- 1.3 The appellant disputed the lack of a synergistic effect between the distinguishing features. It underlined that the "start position" of both the "first sliding gesture" and the "second sliding gesture" were located in the same preset operating area, which provided a simple and clear ergonomic advantage to the user. It argued that both the first and the second gestures operated ("show" or "hide") on the same list. Therefore, they could only be performed in combination and not in isolation.
- 1.4 The appellant argued that the combined technical effect of the distinguishing features was an improved ergonomic advantage for all users, going beyond a subjective user preference. As the input method was objectively easier than the one disclosed in D2, the accuracy and reliability of user input was increased and errors were reduced. This credibly assisted the user in performing the technical task of displaying or hiding the list of identifiers of recently-used applications. The objective technical problem could thus be seen as how to enhance the reliability of the user input and reduce the occurrence of errors.

The board does not agree. Designing GUIs and associated user experiences belongs to the sphere of non-technical artistic activity, graphic design and animation.

Providing a particular user experience with a GUI might solve a technical problem if it produces a technical effect that goes beyond the straightforward or unspecified implementation of that user experience on a standard computer system or if it can credibly be demonstrated that the provided user experience indeed assists the user in performing a technical task (see **T 1681/18**, Reasons 2 and **T 1762/18**, Reasons 3).

Displaying or hiding lists of applications in a GUI is not a technical task, but part of the description of the user experience within the GUI. As to the choice of the specific "hand gestures" involved, it is not aimed at improving the implementation of the touch-screen system e.g. in terms of processing load or gesture-recognition speed (see e.g. **T 1958/13**, Reasons 2.2.6). Instead, it relates merely to a certain gesture-to-function mapping selected by the GUI designer based on user experience. Therefore, replacing the gestures used in D2 with other gestures as claimed cannot contribute to the technical character of the invention. Whether these gestures are "easier", "simpler" or "ergonomically advantageous" is of no relevance in that regard.

1.5 In consequence, the subject-matter of claim 1 of the main request does not involve an inventive step (Article 56 EPC).

2. Auxiliary requests 1 to 5 - admittance

2.1 In view of the primary object of the appeal proceedings to review the decision under appeal in a judicial manner, an appellant's appeal case must be directed to

the requests on which the decision under appeal was based (Article 12(2) RPBA 2020). Any part of an appellant's appeal case which does not meet this requirement is to be regarded as an "amendment", unless the appellant demonstrates that this part was raised and maintained in the proceedings leading to the decision under appeal. Any such amendment may be admitted only at the discretion of the board. The appellant should provide reasons for submitting the amendments in appeal proceedings (Article 12(4), first to third sentences, RPBA 2020).

- 2.2 In the present case, the contested decision is not based on auxiliary requests 1 to 5 within the meaning of Article 12(2) RPBA 2020. Therefore, these requests on file are "amendments" within the meaning of Article 12(4) RPBA 2020, and thus can only be admitted at the discretion of the board.
- 2.3 As to the reasons for submitting amended auxiliary requests for the first time in these appeal proceedings, the appellant argued that they were to address the objections under Article 123(2) EPC raised for the first time at the oral proceedings before the examining division.
- 2.4 However, if the appellant was really keen to resolve these issues by claim amendments, it should have done this at the oral proceedings before the examining division at the latest and not postponed this to the appeal proceedings (cf. Article 12(6), second sentence, RPBA 2020). Furthermore, the additional features of claim 1 of the auxiliary requests are not suitable to address the inventive-step objection to claim 1 of the main request, as they are based on the mistaken assumption that the simplicity of a "hand gesture"

would contribute to the technical character of the invention.

2.5 Therefore, the board did not admit auxiliary requests 1 to 5 into the appeal proceedings (Article 12(4) and 12(6), second sentence, RPBA 2020).

## Order

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

The appeal is dismissed.

The Registrar:

The Chair:



B. Brückner

K. Bengi-Akyürek

Decision electronically authenticated