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Datasheet for the decision of 3 December 2024

Case Number: T 0517/23 - 3.5.05

Application Number: 10804121.1

Publication Number: 2461234

IPC: G06F3/041, H03K17/96

Language of the proceedings: EN

Title of invention:
Input apparatus and control method of input apparatus

Patent Proprietor:
Kyocera Corporation

Opponents:
Preh GmbH
TDK ELECTRONICS AG

Headword:
Touch screen with tactile sensation/KYOCERA

Relevant legal provisions:
EPC Art. 123(2)
RPBA 2020 Art. 12(8)

Keywords:
Applicability of prohibition of *reformatio in peius* - main and 1st auxiliary request (yes): opponent is sole appellant + subject-matter broadened
Added subject-matter - 2nd to 18th auxiliary requests (yes)

Decisions cited:
G 0009/92, G 0001/99

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Case Number: T 0517/23 - 3.5.05

D E C I S I O N
of Technical Board of Appeal 3.5.05
of 3 December 2024

Appellant: (Opponent)	TDK ELECTRONICS AG Rosenheimer Str. 141 e 81671 München (DE)
Representative:	Epping - Hermann - Fischer Patentanwaltsgesellschaft mbH Schloßschmidstraße 5 80639 München (DE)
Respondent: (Patent Proprietor)	Kyocera Corporation 6, Takedatobadono-cho Fushimi-ku Kyoto-shi Kyoto 612-8501 (JP)
Representative:	SSM Sandmair Patentanwälte Rechtsanwalt Partnerschaft mbB Joseph-Wild-Straße 20 81829 München (DE)

Decision under appeal:	**Interlocutory decision of the Opposition Division of the European Patent Office posted on 11 January 2023 concerning maintenance of the European Patent No. 2461234 in amended form.**

Composition of the Board:

Chair	K. Bengi-Akyürek
Members:	N. H. Uhlmann
	C. Almberg

Summary of Facts and Submissions

I. The opponent (appellant) appealed against the opposition division's interlocutory decision to maintain the present European patent according to the then "5th auxiliary request".

II. The following prior-art document is referred to in this decision:

E4: US 2006/0119586 A1.

III. The board summoned the parties to oral proceedings and set out its (negative) preliminary opinion as to compliance with Articles 123(2) and 56 EPC in a communication under Article 15(1) RPBA.

IV. On 21 November 2024, the patent proprietor (respondent) informed the board that it will not be attending the scheduled oral proceedings.

V. The oral proceedings were thus cancelled.

VI. The parties' final requests are as follows:

- The opponent requests that the decision under appeal be set aside and that the patent be revoked.

- The proprietor requests the following:

  - **main request**: that the appeal be "refused" and the patent maintained "in its granted form";

- **first and second auxiliary requests**: that the patent be maintained according to one of the claim sets labelled "1st Auxiliary Request" and "2nd Auxiliary Request" submitted on 28 February 2024;
- **third to seventeenth auxiliary request**: that the patent be maintained according to one of the claim sets labelled "2nd Auxiliary Request" to "16th Auxiliary Request" submitted with the proprietor's written reply to the statement of grounds of appeal;
- **eighteenth auxiliary request**: that the patent be maintained according to the claims labelled "18th Auxiliary Request" submitted on 28 February 2024.

VII. Claim 1 of the **main request** (patent as granted) reads as follows:

"An input apparatus comprising:
a touch sensor (11) configured to receive an input;
a load detection unit (12) configured to detect a pressure load on a touch face of the touch sensor (11);
a tactile sensation providing unit (13) configured to vibrate the touch face; and
a control unit (15) configured to control drive of the tactile sensation providing unit (13), when the pressure load detected by the load detection unit (12) satisfies a standard to provide a pressing action sensation, such that a click sensation is provided to an object pressing the touch face, wherein
the control unit (15) controls drive of the tactile sensation providing unit (13), when the pressure load detected by the load detection unit (12)

satisfies a standard to provide a release action sensation after the click sensation is provided, such that a release sensation corresponding to the click sensation is provided to the object, **characterized in that** the standard to provide a release action sensation is lower than the standard to provide a pressing action sensation."

VIII. Claim 1 of the **first auxiliary request** reads as follows (board's labelling):

(a) "An input apparatus comprising:
(b) a display unit (14);
(c) a touch sensor (11) configured to receive an input to the display unit (14) at an input position;
(d) a load detection unit (12) configured to detect a pressure load on a touch face of the touch sensor (11);
(e) a tactile sensation providing unit (13) configured to vibrate the touch face; and
(f) a control unit (15) configured to:
(g) control the display unit (14) to change a display state of the input position from an original state when the touch sensor (11) receives an input at the input position;
(h) control drive of the tactile sensation providing unit (13),
(i) when the pressure load detected by the load detection unit (12) satisfies a standard to provide a pressing action sensation, such that a click sensation is provided to an object pressing the touch face, and
(j) control drive of the tactile sensation providing unit (13) and control the display unit (14) to change the display state of the input position to the original state,

(k) when the pressure load detected by the load detection unit (12) satisfies a standard to provide a release action sensation after the click sensation is provided,
(l) such that a release sensation corresponding to the click sensation is provided to the object,

characterized in that

(m) the standard to provide a release action sensation is lower than the standard to provide a pressing action sensation and
(n) the standard to provide the pressing action sensation is set higher than a load at which the touch sensor (11) responds."

IX. In claim 1 of the **second auxiliary request** (patent as maintained), the wording "at an input position" in feature (c) was replaced by the phrase "and an input position".

X. In claim 1 of the **third auxiliary request**, feature (h) of claim 1 of the second auxiliary request was modified as follows (board's labelling and emphasis):

(h3) "then control drive of the tactile sensation providing unit;"

and feature (m) has been modified as follows:

(m3) "the standard to provide the release action sensation is lower than the standard to provide a pressing action sensation".

XI. Claim 1 of the **fourth auxiliary request** is based on claim 1 of the first auxiliary request. Feature (m) of claim 1 of the first auxiliary request was modified in

claim 1 of the fourth auxiliary request in the same way as feature (m3) of the third auxiliary request.

XII. In claim 1 of the **fifth auxiliary request,** feature (h) of claim 1 of the fourth auxiliary request was modified in the same way as feature (h3) of the third auxiliary request.

XIII. Claim 1 of the **sixth auxiliary request** is based on claim 1 of the first auxiliary request. Feature (c) of claim 1 of the first auxiliary request was modified in claim 1 of the sixth auxiliary request as follows (board's labelling and emphasis):

(c6) "a touch sensor disposed on the display unit (14) and configured to receive an input to the display unit at an input position".

XIV. Claim 1 of the **seventh auxiliary request** is based on claim 1 of the first auxiliary request. Feature (n) of claim 1 of the first auxiliary request was modified in claim 1 of the seventh auxiliary request as follows (board's labelling and emphasis):

(n7) "the standard to provide the pressing action sensation is set higher than a load at which the touch sensor responds by setting a timing to provide the click sensation later than a timing of the response of the touch sensor (11)".

XV. Claim 1 of **eighth to seventeenth auxiliary requests** include different combinations of the amendments made to the third to seventh auxiliary requests.

XVI. Claim 1 of the **eighteenth auxiliary request** is based on claim 1 of the first auxiliary request. Feature (n) of claim 1 of the first auxiliary request was modified in claim 1 of the eighteenth auxiliary request as follows (board's labelling and emphasis):

(n18) "the standard to provide the pressing action sensation is set higher than a load at which the touch sensor responds such that a timing to provide the click sensation is later than a timing of the response of the touch sensor (11)".

Reasons for the Decision

1. The patent in suit concerns a "touch screen" comprising a display, touch sensor, pressure sensor and unit providing tactile sensation by vibration. When the touch screen receives an input at a certain position, the "display state" at this position is changed. When a pressure load satisfies a threshold, a "pressing tactile sensation" is generated and, when, thereafter, the pressure load satisfies another, lower threshold, a "release tactile sensation" is generated.

2. Prior-art document **E4** discloses a touch input device generating haptic feedback for emulating a push button.

3. Main request - patent "in its granted form" - prohibition of *reformatio in peius*

3.1 Claims 1 and 2 of the main request are identical to the claims of the patent as granted. However, the claims of

the patent as maintained by the opposition division relate to a more restricted subject-matter.

3.2 The interlocutory decision of the opposition division was appealed only by the opponent, i.e. the sole appellant. In this procedural situation, the principle of prohibition of *reformatio in peius* applies (see **G 9/92**, Headnote 2; **G 1/99**, Headnote, first sentence). Hence, amended claims which - as the claims of the main request - would put the opponent and sole appellant in a worse situation than if it had not appealed must be rejected. Moreover, the exceptions set out in **G 1/99** (see Headnote, second sentence) do not apply in the case at hand.

3.3 For these reasons, the main request is rejected as inadmissible.

4. First auxiliary request - prohibition of *reformatio in peius*

4.1 In the procedural situation of the present appeal case, the principle of prohibition of *reformatio in peius* also applies to the first auxiliary request. In particular, the proprietor and respondent is primarily restricted in the appeal proceedings to defending the **patent as maintained**; amendments proposed by the proprietor and respondent could be rejected as inadmissible if they were neither appropriate nor necessary (**G 9/92**, Headnote 2).

4.2 The sole amendment to the claims of the first auxiliary request vis-à-vis the claims of the patent as maintained consists in replacing the phrase "and an

input position" by the expression "at an input position" in feature (c) of claim 1.

4.3 According to the proprietor's written reply to the statement of grounds of appeal, this amendment constitutes "no more than an editorial amendment for harmonising the wording of the claims". However, such an "editorial amendment" is evidently neither necessary nor appropriate.

4.4 For these reasons, the first auxiliary request is likewise rejected as inadmissible.

5. Second auxiliary request - claim 1 - Article 123(2) EPC

5.1 The opponent argued that the application as filed did not disclose "pressing action sensation" and "release action sensation" within the meaning of **features (i)** and **(k) to (n)**.

5.2 The board agrees, because the application as filed consistently refers to "pressing sensation" and "release sensation" instead. Paragraphs [0056] and [0058] as filed do not include any relevant implicit disclosure, contrary to the proprietor's allegation in its letter dated 28 February 2024.

5.3 As a result, the second auxiliary request is not allowable under Article 123(2) EPC.

6. Third to sixth auxiliary requests

Regardless of admittance considerations under all relevant parts of Article 12 RPBA, claim 1 of each of the third to sixth auxiliary requests is not allowable

under Article 123(2) EPC for the reasons set out above with regard to the second auxiliary request.

7. Seventh auxiliary request

7.1 Regardless of admittance considerations under all relevant parts of Article 12 RPBA, claim 1 of the seventh auxiliary request is not allowable under Article 123(2) EPC for the reasons set out above with regard to the second auxiliary request and for the following further reason.

7.2 The board agrees with the opponent's argument that **feature (n7)** also extends beyond the content of the application as filed. No basis is apparent for setting the standard higher *by* setting the timing. In fact, according to paragraph [0050] as filed, the setting of the timing is the *result* of setting the standard higher. Consequently, Article 123(2) EPC is not complied with.

8. Eighth to seventeenth auxiliary requests

Regardless of admittance considerations under all relevant parts of Article 12 RPBA, claim 1 of each of these auxiliary requests is not allowable under Article 123(2) EPC for the reasons set out above with regard to the third to seventh auxiliary requests.

9. Eighteenth auxiliary request

9.1 Regardless of admittance considerations under Articles 12 and 13(1) RPBA, claim 1 of the eighteenth auxiliary request is not allowable under Article 123(2) EPC for the reasons set out above with regard to the

second auxiliary request and for the following further reason.

9.2 Paragraph [0050] as filed in fact discloses "setting the timing [...] later". Differently, according to **feature (n18)**, the "timing [...] is later". No basis is however apparent for omitting the "setting" of the timing as disclosed in this paragraph (Article 123(2) EPC).

10. Decision in written proceedings

The announcement of non-attendance by the proprietor and the respective unmet condition set by the opponent mean that there is no pending request for oral proceedings, and the board does not consider expedient to hold such proceedings (Article 116(1) EPC). Hence, the decision is taken based on the board's preliminary opinion, on which the parties have had opportunities to comment (Article 113(1) EPC). The decision is thus handed down in written proceedings (Article 12(8) RPBA).

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.

2. The patent is revoked.

The Registrar: The Chair:

B. Brückner K. Bengi-Akyürek

Decision electronically authenticated