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**Datasheet for the decision  
of 11 July 2023**

**Case Number:** T 0878/21 - 3.5.05

**Application Number:** 14807684.7

**Publication Number:** 2942703

**IPC:** G06F3/0484, H04L29/08

**Language of the proceedings:** EN

**Title of invention:**

APPLICATION SHARING METHOD AND APPARATUS

**Applicant:**

Huawei Device Co., Ltd.

**Headword:**

APPLICATION SHARING / Huawei

**Relevant legal provisions:**

EPC Art. 123(2)

RPBA 2020 Art. 12(6), 12(4), 12(2)

**Keyword:**

Amendments - added subject-matter (yes) - intermediate  
generalisation

Amendment to case - requirements of Art. 12(2) RPBA 2020 met  
(no) - amendment overcomes objection (no) - amendment admitted  
(no)



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Case Number: T 0878/21 - 3.5.05

**D E C I S I O N**  
**of Technical Board of Appeal 3.5.05**  
**of 11 July 2023**

**Appellant:**  
(Applicant)

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**Representative:**

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**Decision under appeal:**

**Decision of the Examining Division of the  
European Patent Office posted on 26 January 2021  
refusing European patent application No.  
14807684.7 pursuant to Article 97(2) EPC.**

**Composition of the Board:**

**Chairman** E. Mille  
**Members:** N. H. Uhlmann  
P. Tabery

## **Summary of Facts and Submissions**

I. The applicant appealed against the examining division's decision to refuse the European patent application in suit.

The examining division decided that the main request and auxiliary request 1 did not meet the requirements of Articles 123(2), 84 and 56 EPC.

II. With the statement setting out the grounds of appeal, the appellant maintained the main request and auxiliary request 1 and submitted further auxiliary requests 2 to 4.

III. The board summoned the appellant to oral proceedings and set out its provisional opinion on the case in a communication under Article 15(1) RPBA.

IV. With a letter dated 7 June 2023 the appellant withdrew the request for oral proceedings and requested "a decision on the basis of the file as it stands".

V. The board cancelled the oral proceedings and continued the appeal proceedings in writing by issuing the present decision.

VI. The appellant's requests are that the decision under appeal be set aside and a patent be granted on the basis of the claims of the main request or auxiliary request 1, both filed with a letter dated 2 November 2020, or of auxiliary requests 2 to 4, filed with the statement setting out the grounds of appeal.

VII. Claim 1 of the main request is worded as follows:

"An application sharing method, comprising:

displaying icons of multiple second applications on a display unit after an icon of a first application is selected, wherein the first application is a to-be-shared application, and the multiple second applications are applications used to share the first application;

obtaining (101, 201, 301) a distance between the icon of the first application and an icon of one of the multiple second applications;

determining (102, 202, 302) whether the distance is less than a preset distance;

if the distance is less than the preset distance, obtaining (103, 203, 303) application information of the first application in an application store on the Internet, wherein the application information comprises a link address of the first application in the application store; starting the second application and obtaining (103, 203, 303) information about a to-share-with user from the second application; and

sending (104, 204, 304) the link address to the to-share-with user by using the second application;

wherein the second application is a communications application, a social application, or the application store."

VIII. Claim 1 of auxiliary request 1 is based on claim 1 of the main request. The wording

"obtaining information about a to-share-with user from the second application"

has been replaced by

"selecting a to-share-with user from a friend list of the second application".

IX. Claim 1 of auxiliary request 2 is worded as follows:

"An application sharing method, comprising:

displaying an open option, and a share option on a display unit after an icon of a first application is selected;

displaying icons of multiple applications on the display unit after the share option is selected, wherein the icons of multiple applications include: an icon of a communications application, or an icon of a social application, wherein the first application is a to-be-shared application;

selecting a second application from the multiple applications as an application used to share the first application;

obtaining (101, 201, 301) a distance between the icon of the first application and the icon of the second application;

determining (102, 202, 302) whether the distance is less than a preset distance;

if the distance is less than the preset distance, obtaining (103, 203, 303) application information of the first application in an application store on the Internet, wherein the application information comprises a link address of the first application in the application store; starting the second application and obtaining (103, 203, 303) information about a to-share-with user from the second application; and

sending (104, 204, 304) the link address to the to-share-with user by using the second application."

X. Claim 1 of auxiliary request 3 is worded as follows:

"An application sharing method, comprising:

displaying an icon of a second application on a display unit after an icon of a first application is selected, wherein the first application is a to-be-shared application, and the second application is a communications application used to share the first application;

obtaining (101, 201, 301) a distance between the icon of the first application and an icon of the second application;

determining (102, 202, 302) whether the distance is less than a preset distance;

if the distance is less than the preset distance, obtaining (103, 203, 303) application information of the first application in an application store on the Internet, wherein the application information comprises a link address of the first application in the application store; starting the second application, displaying a friend list of the second application on the display unit, and selecting a to-share-with user from the friend list of the second application; and sending (104, 204, 304) the link address to the to-share-with user by using the second application."

XI. Claim 1 of auxiliary request 4 is worded as follows:

"An application sharing method, comprising:

displaying an open option, and a share option on a display unit after an icon of a first application is selected;

displaying icons of multiple applications on a display unit after the operation to share the first application

is selected, wherein the first application is a to-be-shared application;

selecting a second application from the multiple applications as an application used to share the first application, wherein the second applications is [sic] a communications application;

obtaining (101, 201, 301) a distance between the icon of the first application and an icon of the second application;

determining (102, 202, 302) whether the distance is less than a preset distance;

if the distance is less than the preset distance, obtaining (103, 203, 303) application information of the first application in an application store on the Internet, wherein the application information comprises a link address of the first application in the application store; starting the second application, displaying a friend list of the second application on the display unit, and selecting a to-share-with user from the friend list of the second application; and

sending (104, 204, 304) the link address to the to-share-with user by using the second application."

### **Reasons for the Decision**

1. The patent application in this case pertains to a software application sharing method. A first application is to be shared via a second application. When an icon of the first application is selected, an icon of the second application is displayed. A user may drag the first icon towards the second icon. When the distance between the icons is under a predetermined value, a sharing process is started. A link address of the first application in an online application store is

obtained, the second application is started and information about the target user is obtained from the second application. Then, the link address is sent to the target user using the second application.

### **Main request**

2. Article 123(2) EPC

2.1 The examining division held that claim 1 as amended did not comply with the provisions of Article 123(2) EPC.

The board agrees that there is no basis in the application as filed for "multiple second applications" as stated in claim 1.

It is correct, as argued by the appellant, that Figures 4a and 4b and page 10, lines 8 and 9 of the description disclose a plurality of second applications. However, this passage of the description and the passage referring to these figures (page 13, line 26 to page 14, line 1) clearly teach that "the user may **drag** the icon of the first application to an icon of any second application" (emphasis added). There is no apparent basis for claiming "multiple second applications" without a dragging step.

Furthermore, there is no apparent basis for the "obtaining a distance" step as claimed, in particular for the "one of the multiple second applications". The application as filed does not explain which distance is to be obtained when the icons of multiple second applications are displayed.

2.2 The feature "obtaining information about a to-share-with user **from the second application**" has been added to claim 1. The appellant (see letter dated 2 November 2020) pointed to page 9, lines 8 to 10 of the



description and to the example described with respect to Figure 6.

The board is not convinced. The passage on page 9 does not pertain to obtaining information; line 12 on this page merely states that the information is obtained but does not specify where from. Furthermore, the disclosure on page 8, line 32 to page 9, line 5 refers to a communication application or social application, and claim 1 specifies that the second application is a communications application, a social application or the application store.

The description passage relating to Figure 6 begins on page 14, line 26. It discloses that a friend list pops up and a user selects a friend. Alternatively, in the case of a social application, the information is obtained by using the second application and is stored in a file. As a further alternative, in the case where the second application is the application store, the to-share-with user is "a friend added by the user after the user registers an account in the application store application" (page 15, lines 22 to 24). Additionally, claim 4 as filed discloses different techniques for obtaining this information.

In sum, there is no basis in the application as filed for the broad wording "obtaining ... from the second application".

- 2.3 For these reasons, the main request does not meet the requirements of Article 123(2) EPC.

**Auxiliary request 1**

3. Amendments

- 3.1 In the letter dated 2 November 2020, the appellant argued that the amendment in claim 1 (see point VIII).

above) was based on page 14, lines 29 to 32 of the description as filed.

- 3.2 The board is not persuaded. According to this passage, the icon of the first application is dragged to an instant messaging icon, an instant messaging application is started, a friend list is displayed, the user selects a friend and then the link address of the first application is sent to the friend, i.e. a to-share-with user. The wording in claim 1 corresponds to a limited subset of these features for which there is no apparent basis.

Additionally, according to page 14, last line to page 15, line 2, in the case of a social application (which is mentioned in claim 1 as well), the information about the to-share-with user is stored in a file related to the social application.

Furthermore, the board notes that the common general knowledge of the skilled person cannot be used to supplement the disclosure of the application as filed.

- 3.3 The objection set out in point 2.1 above applies similarly to auxiliary request 1.

- 3.4 For these reasons, auxiliary request 1 does not meet the requirements of Article 123(2) EPC.

#### **Auxiliary requests 2 to 4**

#### 4. Admission

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

- 4.2 The appellant explained that the "new claims of the 2nd, 3rd, and 4th auxiliary requests are closely based on the originally filed claims, but are also in-line [sic] with the subject matter of the claims in the main request as refused" and that these auxiliary requests had been filed "in order to overcome the decision of the Examining Division".
- 4.3 The appellant did not provide any further reasons for submitting auxiliary requests 2 to 4 in the appeal proceedings.
- 4.4 Features from the description have been added to the independent claims of these requests.
- 4.5 After the summons to the first-instance oral proceedings, on 2 November 2020 the appellant submitted a main request and an auxiliary request 1, both including amendments based on the description. By letter dated 5 November 2020, the appellant announced that it would not be attending the oral proceedings scheduled for 2 December 2020 and requested a decision according to the state of the file. The oral proceedings took place as scheduled; nobody attended for the appellant. The application was refused for, among other things, not complying with Article 123(2) EPC.
- 4.6 In choosing not to attend the scheduled oral proceedings, the appellant apparently turned down the opportunity to discuss the main request and auxiliary request 1, to make arguments and, if appropriate, to submit amended claims addressing objections discussed during the oral proceedings.
- Instead, the appellant chose to present auxiliary requests 2 to 4 only on appeal.

- 4.7 In this particular situation, the board holds that the appellant should have submitted (further) requests, at least on an auxiliary basis, in the course of the first-instance proceedings and not only on appeal if it wanted to have the claimed subject-matter examined by the examining division and this decision reviewed in a judicial manner.
- 4.8 The board notes that the appeal proceedings are not a continuation of the first-instance proceedings; the primary object of the appeal proceedings is to review the decision under appeal in a judicial manner (Article 12(2) RPBA).
- 4.9 The board notes further that Article 12(6), second sentence, RPBA expresses and codifies the principle that each party should submit all arguments and requests that appear relevant as early as possible so as to ensure a fair, speedy and efficient procedure. Appellants are not at liberty to shift their case as they please for the appeal proceedings, thus compelling the board either to give a first ruling on the critical issues or to remit the case to the examining division. Giving appellants such freedom would run counter to orderly and efficient appeal proceedings. In effect, it would allow for a kind of "forum shopping", which would jeopardise the proper distribution of functions between the departments of first instance and the boards of appeal and would be unacceptable for procedural economy generally.
- 4.10 The board holds that admitting these auxiliary requests would be detrimental to the need for procedural economy.
- Auxiliary request 2 does not resolve at least the issues stated in points 2.1 and 2.2 above.

- Auxiliary request 3 does not resolve at least the issues stated in point 3.2 above.
- Auxiliary request 4 does not resolve at least the issues stated in points 2.1 and 3.2 above.

4.11 Furthermore, it is noted that objections corresponding to those under points 2.1 and 3.2 above had also been set out in the decision under appeal.

4.12 Lastly, the board is not aware of any circumstances in the appeal case which could justify the admittance of auxiliary requests 2 to 4.

4.13 For these reasons, the board does not admit auxiliary requests 2 to 4 into the appeal proceedings under Article 12(4) and 12(6), second sentence, RPBA.

## Order

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

The appeal is dismissed.

The Registrar:

The Chairman:



L. Stridde

E. Mille

Decision electronically authenticated