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**Datasheet for the decision
of 20 January 2025**

Case Number: T 0371/23 - 3.5.05

Application Number: 17770869.0

Publication Number: 3433707

IPC: G06F3/01, G06F21/32, G06K9/00,
G06Q30/02

Language of the proceedings: EN

Title of invention:
Head mounted display system configured to exchange biometric
information

Patent Proprietor:
Magic Leap, Inc.

Opponent:
Peterreins Schley Patent- und Rechtsanwälte
PartG mbB

Headword:
Consent categories/MAGIC LEAP

Relevant legal provisions:
EPC Art. 56

Keyword:

Inventive step - all claim requests (no): distinguishing features relate to a mere administrative scheme

Decisions cited:

T 1802/13, T 0336/14



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Case Number: T 0371/23 - 3.5.05

D E C I S I O N
of Technical Board of Appeal 3.5.05
of 20 January 2025

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Decision under appeal: **Interlocutory decision of the Opposition
Division of the European Patent Office posted on
23 December 2022 concerning maintenance of the
European Patent No. 3433707 in amended form.**

Composition of the Board:

Chair K. Bengi-Akyürek
Members: E. Konak
C. AlMBERG

Summary of Facts and Submissions

I. The opponent (appellant) filed an appeal against the opposition division's interlocutory decision maintaining the opposed patent in amended form according to an "auxiliary request 1".

II. In the present decision, reference is made to the following prior-art document:

D1: US 2014/0139551 A1.

III. Since the proprietor (respondent) withdrew its request for oral proceedings in response to the board's preliminary opinion issued under Article 15(1) RPBA, the board decided in written proceedings (cf. Article 12(8) RPBA).

IV. The parties' requests are as follows:

- The opponent requests that the decision under appeal be set aside and that the patent be revoked.
- The proprietor requests that the appeal be dismissed, i.e. that the patent be maintained in amended form as found allowable by the opposition division (**auxiliary request 1**), or, in the alternative, that the patent be maintained on the basis of the claims of one of **auxiliary requests 2 to 7**, filed with its written reply to the statement of grounds of appeal.

V. Claim 1 of **auxiliary request 1** reads as follows:

"A head mounted display system comprising:

an image capture device (452) configured to capture eye images of an eye;

a display (208) configured to display virtual images to the eye (302, 304, 410) of a wearer (204) of the head mounted display (200, 400, 710); and

a hardware processor (224, 228, 450) programmed to: obtain the eye images of the wearer captured by the image capture device;

determine biometric information of the wearer based at least in part on the eye images, wherein the biometric information is associated with physiological or behavioral characteristics of the wearer;

display a user interface comprising a popup (824) including a consent request that includes a plurality of consent categories for the biometric information, wherein the plurality of consent categories includes a first consent category and a second consent category, and wherein the popup includes interactive buttons that are configured to receive input from the wearer indicating consent to share at least a portion of the biometric information;

receive a response to the consent request, wherein the response includes a consent indication from the wearer;

in response to a determination that the consent indication indicates that the wearer has not agreed to the first consent category, suppress transmission of biometric information that is associated with the first consent category, and;

in response to a determination that the consent indication indicates that the wearer has agreed to the second consent category, transmit, to an acquirer device, the biometric information that is associated with the second consent category."

Claim 1 of **auxiliary request 2** differs from claim 1 of auxiliary request 1 as follows (with the deletions ~~struck through~~):

"[...]

determine biometric information of the wearer based at least in part on the eye images, wherein the biometric information is associated with physiological ~~or behavioral~~ characteristics of the wearer; [...]"

Claim 1 of **auxiliary request 3** differs from claim 1 of auxiliary request 2 as follows (with the additions underlined and the deletions ~~struck through~~):

"A head mounted display system comprising:

~~an~~ first image capture device (452) configured to capture eye images of an eye;

a second image capture device configured to capture a plurality of outside world images;

a display (208) configured to display virtual images to the eye (302, 304, 410) of a wearer (204) of the head mounted display (200,400, 710); and

a hardware processor (224,228,450) programmed to:
obtain the eye images of the wearer captured by the first image capture device;

[...]

display, on the display (208), a user interface comprising a popup (824) including a consent request for biometric information from a biometric information acquirer computing device, the consent request including that includes a plurality of consent categories for the biometric information, wherein the plurality of consent categories includes a first consent category and a second consent category, and wherein the popup includes interactive buttons that are configured to receive input from the wearer indicating

consent to share at least a portion of the biometric information;

[...]

in response to a determination that the consent indication indicates that the wearer has agreed to the second consent category, transmit, to ~~an~~ the acquirer computing device, the biometric information that is associated with the second consent category."

Claim 1 of **auxiliary request 4** differs from claim 1 of auxiliary request 3 as follows (with the additions underlined and the deletions ~~struck through~~):

"[...]

in response to a determination that the consent indication indicates that the wearer has not agreed to the first consent category, ~~suppress transmission of~~ not transmit biometric information that is associated with the first consent category, and; [...]"

Claim 1 of **auxiliary request 5** differs from claim 1 of auxiliary request 3 as follows (with the additions underlined):

"[...]

in response to a determination that the consent indication indicates that the wearer has not agreed to the first consent category, not transmit biometric information that is associated with the first consent category, and if a transmission of biometric information exists due to a prior consent of the wearer, ~~suppress transmission of~~ ~~transmit~~ biometric information that is associated with the first consent category, and; [...]"

Claim 1 of **auxiliary request 6** differs from claim 1 of auxiliary request 5 as follows (with the additions underlined and the deletions ~~struck through~~):

"A system (700) comprising a plurality of A head mounted display systems (710), a plurality of biometric information acquirer computing devices (715) and a biometric information exchange system (705) for exchanging information between wearable display systems (710) and biometric information acquirer computing devices (715) through a network (720), each head mounted display system (710) comprising: [...]".

Claim 1 of **auxiliary request 7** differs from claim 1 of auxiliary request 6 as follows (with the additions underlined and the deletions ~~struck through~~):

"[...]

in response to a determination that the consent indication indicates that the wearer has agreed to the second consent category, transmit, to the acquirer computing device, the biometric information that is associated with the second consent category,
wherein the biometric information corresponds to at least one of eye patterns, eye movements, eye fixations, or eye browsing history."

Reasons for the Decision

1. Auxiliary request 1 - Inventive step (Article 56 EPC)
- 1.1 Claim 1 of **auxiliary request 1** found allowable by the opposition division has the following limiting features:

- F1.1 A head mounted display system comprising:
- F1.2 an image capture device configured to capture eye images of an eye;
- F1.3 a display configured to display virtual images to the eye of a wearer of the head mounted display;
- F1.4 a hardware processor programmed to:
 - F1.4.1 obtain the eye images of the wearer captured by the image capture device;
 - F1.4.2 determine biometric information of the wearer based at least in part on the eye images, wherein the biometric information is associated with physiological or behavioral characteristics of the wearer;
 - F1.4.3 display a user interface comprising a popup including a consent request that includes a plurality of consent categories for biometric information,
 - F1.4.4 wherein the plurality of consent categories includes a first consent category and a second consent category, and
 - F1.4.5 wherein the popup includes interactive buttons that are configured to receive input from the wearer indicating consent to share at least a portion of the biometric information;
 - F1.4.6 receive a response to the consent request, wherein the response includes a consent indication from the wearer;
 - F1.4.7 in response to a determination that the consent indication indicates that the wearer has not agreed to the first consent category, suppress transmission of biometric information that is associated with the first consent category;
 - F1.4.8 in response to a determination that the consent indication indicates that the wearer

has agreed to the second consent category, transmit, to an acquirer device, the biometric information that is associated with the second consent category.

1.2 The opposition division identified **features F1.4.3 to F1.4.8** as distinguishing features of claim 1 of auxiliary request 1 over the closest prior art **D1**.

1.3 The opponent argues that these features do not contribute to the technical character of the invention, as they merely define a business or administrative scheme and do not represent anything more than an abstract plan for allowing the wearer to choose categories of their personal data that they agree to share with a third party.

The opposition division was not convinced by this argument and argued that, even though the distinguishing features related to a "presentation of information", they credibly assisted the user in performing the technical task of "transmitting or not transmitting *biometric information*" by means of a continued and guided human-machine interaction process (referring to **T 336/14** and **T 1802/13**).

1.4 The board does not agree with the opposition division. As the opponent rightly observed, the human-machine interaction in the case at hand does not control in any manner how the technical transmission of data actually takes place. The user's consent does not change the way how information is technically transmitted. Instead, it merely gives the user's approval to the categories of information which can be shared with third parties. However, it is not a "technical task" to give consent to sharing of information. In the absence of a

technical task, the opposition division's application of the test of T 336/14 and T 1802/13 fails from the very beginning. Instead, as the opponent again rightly argues, distinguishing features F1.4.3 to F1.4.8 are merely the implementation of an administrative scheme which cannot contribute to the technical character of the claimed invention.

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

2. Auxiliary requests 2 to 7 - Inventive step (Article 56 EPC)
 - 2.1 **Auxiliary requests 2 to 7** were filed with the proprietor's written reply to the statement of grounds of appeal.

 - 2.2 As to their substantiation, the proprietor briefly stated for each auxiliary request that it "*addresses the objection of insufficiency of disclosure*", "*addresses the objection of added subject-matter*" or "*addresses inter alia the objections of inventive step*". However, it did not further substantiate how these requests actually addressed the opponent's objections.

 - 2.3 In its preliminary opinion issued under Article 15(1) RPBA, the board stated that, irrespective of admittance issues, the board agreed with the opponent that the objection of lack of inventive step against auxiliary request 1 applied *mutatis mutandis* to auxiliary requests 2 to 7.

2.4 The proprietor did not reply in substance to the board's preliminary opinion. After reconsideration, the board sees no reason to change its preliminary opinion.

2.5 In consequence, the subject-matter of claim 1 of auxiliary requests 2 to 7 does not involve an inventive step either (Article 56 EPC).

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