Datasheet for the decision of 2 August 2018

Case Number: T 2489/11 - 3.5.05
Application Number: 08103901.8
Publication Number: 1993032
IPC: G06F3/048
Language of the proceedings: EN

Title of invention:
Electronic devices with touch-sensitive navigational mechanisms, and associated methods

Applicant:
HTC Corporation

Headword:
Panning and scrolling/HTC

Relevant legal provisions:
RPBA Art. 12(4)
EPC Art. 84, 83
EPC R. 42(1)(e)

Keyword:
Amendments - appeal proceedings
Claims - clarity (no)
Sufficiency of disclosure - (no)
Decisions cited:
G 0010/93, T 0996/12

Catchword:
DECISION
of Technical Board of Appeal 3.5.05
of 2 August 2018

Appellant: HTC Corporation
(Applicant)
No. 23, Xinghua Road
Taoyuan District
Taoyuan City 330 (TW)

Representative: 2K Patentanwälte Blasberg Kewitz & Reichel
Partnerschaft mbB
Schumannstrasse 27
60325 Frankfurt am Main (DE)

Decision under appeal: Decision of the Examining Division of the
European Patent Office posted on 11 July 2011
refusing European patent application No.
08103901.8 pursuant to Article 97(2) EPC

Composition of the Board:
Chair A. Ritzka
Members: E. Konak
F. Blumer
Summary of Facts and Submissions

I. The appeal is against the decision of the examining division to refuse the application for violating the requirements of Articles 84 and 83 EPC.

II. With its statement setting out the grounds of appeal, the appellant filed claims of a main and seven auxiliary requests, amended pages 1 and 2 of the description and an amended figure 7. It requested that the decision be set aside and a patent granted on the basis of these requests, auxiliarily with figure 7 as originally filed. As a further auxiliary measure it requested oral proceedings.

III. In its preliminary opinion annexed to the summons to oral proceedings the board questioned the admissibility of the requests under Article 12(4) RPBA and raised objections under Articles 123(2), 84, 83 and 56 and Rule 42(1)(e) EPC.

IV. In reply to the summons to oral proceedings the appellant merely informed the board that it would not be attending the oral proceedings. Oral proceedings were thus held in its absence.

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

"An electronic device (100), comprising a display (108) presenting a user interface (120) to a user, a sensing component (109) sensing a first touch from an input mechanism (118), an input circuitry (110) measuring at least one parameter of the first touch via the sensing component (109), and a processor (114) performing an analysis of the measured at least one parameter of the
detected first touch and causing the user interface (120) to navigate on the display (108) based on the performed analysis, wherein
the input circuitry (110) is configured for measuring a duration of the first touch, and
the processor (114) is configured for comparing the measured duration of the first touch to a threshold and recognizing a navigational input based on said comparison,
characterized in that the processor (114) indicates that the first touch is an input for panning if the measured duration of the first touch is greater than the threshold and that the first touch is a click if the measured duration of the first touch is less than the threshold, wherein panning means unidirectional shifting of an entire screen of the user interface (120) and displaying a next frame of the user interface (120)."

VI.

Claim 1 of the first auxiliary request is identical to claim 1 of the second auxiliary request and differs from claim 1 of the main request in that it has the following additional features:

"wherein said sensing component (109) includes boundary portions (109a-109d) extending beyond the display (108), wherein the input circuitry (110) is further configured for measuring a duration and a position of the first touch, and wherein the processor (114) is further configured for comparing the measured position of the first touch to a location of the display (108), and
the processor (114) indicates that the first touch is an input for continuous panning if the measured duration of the first touch is greater than the
threshold and the measured position of the first touch extends beyond the display (108) and that the first touch is an input for panning once if the measured duration of the first touch is greater than the threshold and the measured position of the first touch does not extend beyond the display (108)."

VII. Claim 1 of the third auxiliary request differs from claim 1 of the first and second auxiliary requests in that it has the following additional features:

"wherein the processor (114) is further configured for causing the user interface (120) to continue said step of continuous panning or panning once as long as the first touch is not released and for causing the user interface (120) to selectively change between said step of continuous panning and said step of panning once in accordance with the measured position of the first touch and as long as the first touch is not released."

VIII. Claim 1 of the fourth auxiliary request and claim 1 of the fifth auxiliary request differ respectively from claim 1 of the third auxiliary request and claim 1 of the first or second auxiliary request in that they have the following additional features:

"wherein the input circuitry (110) is further configured for measuring a position of the first touch as a function of time and the processor (114) is further configured for calculating a positional change of the first touch based on the measured position of the first touch, wherein the processor (114) indicates an input for scrolling if the calculated positional change of the first touch exceeds a positional threshold and the first touch is released, wherein
scrolling means an act of sliding a horizontal or vertical presentation of text, drawings, images and/or content across the display (108)."

IX. Claim 1 of the sixth auxiliary request differs from claim 1 of the fourth auxiliary request in that it has the following additional features:

"wherein the processor (114) is further configured for calculating the positional change of the first touch by differentiating the position of the first touch with respect to time, wherein the positional change of the first touch is calculated over a predetermined period of time before the first touch is released."

X. Claim 1 of the seventh auxiliary request differs from claim 1 of the sixth auxiliary request in that it has the following additional features:

"wherein the input circuitry (110) is further configured for measuring a position of a second touch, subsequent to said first touch, as a function of time, and wherein the processor (114) is further configured for calculating a positional change of said second touch based on the measured position of the second touch, wherein the processor (114) indicates an input for stopping scrolling if the calculated positional change of the second touch is less than a second threshold."

Reasons for the Decision

1. Main request – admissibility (Article 12(4) RPBA)
1.1 Even though claim 1 as originally filed had a rather broad scope, the appellant replaced the claims as originally filed on three occasions during the examination proceedings, with its submissions of 17 December 2009 and 10 November 2010 and during the oral proceedings on 8 April 2011. Claim 1 of all of these new main requests or sole requests specified that the touch parameters comprised "a duration and a position of the touch" and were directed to the detection of the input for so-called "continuous panning" or "panning once" by means of both the duration and the location of the touch.

1.2 Thus at an early stage in the course of the examination proceedings the appellant replaced and withdrew its requests seeking protection for any subject-matter broader than distinguishing "continuous panning" or "panning once" by means of both the duration and the location of the touch (see T 996/12, Reasons 4, first four paragraphs).

1.3 Claim 1 of the main request filed with the appeal, however, merely comprises the measurement of the "duration of the touch" and the detection of the input as an input for either "panning" or "click" based on that duration, thereby attempting to reopen examination based on claims 1 and 2 as originally filed and creating a fresh case. Whether the main request is taken into consideration with amended figure 7 or with figure 7 as originally filed has no bearing on this finding.

1.4 This is contrary to the purpose of ex parte appeal proceedings, which "are primarily concerned with examining the contested decision" (see G 10/93, Reasons 4, OJ EPO 1995, 172). The boards have held that
the purpose of examination appeal proceedings cannot be to completely reopen the examination proceedings and that submission of a fresh case, particularly based on requests withdrawn during examination, is not admissible during appeal proceedings (see Case Law of the Boards of Appeal, 8th edition 2016, IV.E.4.3.3.c, pages 1150 and 1151 of the English version).

Accordingly, the board exercises its discretion under Article 12(4) RPBA and does not admit the main request, either with amended figure 7 or with figure 7 as originally filed.

2. Auxiliary requests - clarity (Article 84 EPC) and sufficiency of disclosure (Article 83 EPC)

2.1 Claim 1 of all auxiliary requests on file refers to "panning", and claim 1 of the fourth to seventh auxiliary requests refers to "scrolling". The board fully agrees with the assessment of the contested decision that these terms do not have a clear-cut distinction in the relevant art and hence lack clarity (Article 84 EPC).

2.1.1 The appellant submits that the application does not necessarily have to make use of the general conventions of "scrolling" and "panning" in the prior art and that the application may represent a dictionary of its own.

2.1.2 The definition of the term "panning" in the application is to be found in paragraph [0043], where it is stated that "panning ... refers to unidirectional (e.g. vertical or horizontal) shifting of an entire screen of a display (e.g. the user interface 120)". As a result the device would "display the next 'page' of the message list 124" [applicant's quotation marks around "page"]. There is an additional sentence in [0028]
stating that the user interface is panned "by displaying the next frame of the user interface". Although one passage refers to the next "page" and the other to the next "frame" of the user interface, the appellant seems to have merged these passages into a definition, as "panning means unidirectional shifting of an entire screen of the user interface and displaying a next frame of the user interface" in the claim language.

2.1.3 The definition of the term "scrolling" in the application is to be found in paragraph [0046], where it is stated that "scrolling ... refers to an act of sliding a horizontal or vertical presentation text, drawings, images, and/or other content screen across a screen". As a result the device would "slide each of the email messages 125 vertically across the display 108". The appellant seems to have incorporated this definition from paragraph [0046] into the claim language.

2.1.4 The board concurs with the contested decision that these definitions do not render the unclear terms "panning" and "scrolling" clearer. The definition of "panning" relies on technically unclear metaphors of "pages" or "frames", as also suggested by the use of "pages" in quotation marks in the description. The transitions in the user interface also rely on movement metaphors such as "sliding" and "shifting", which are almost impossible to distinguish in the context of user interfaces.

2.1.5 Furthermore, the application does not describe how an example user interface is to be "panned" or "scrolled", contrary to the provisions of Rule 42(1)(e) EPC, according to which the description has to describe in
detail at least one way of carrying out the invention using examples. The lack of examples and the
difficulties the skilled person encounters when trying
to follow the various flowcharts (see 2.3 below) lead
to a situation where the skilled person cannot carry
out the claimed invention without undue burden,
contrary to the provisions of Article 83 EPC.

2.2 Claim 1 of all auxiliary requests further refers to
"continuous panning" and "panning once", which the
board also judges to be unclear (Article 84 EPC).

2.2.1 The appellant submits that the definition of "panning"
is "unidirectional shifting of an entire screen of the
user interface and displaying a next frame of the user
interface", and therefore "panning once" clearly means
shifting the entire screen only once, whereas
"continuous panning" means shifting an entire screen
continuously.

2.2.2 In the board's judgement, however, the plain meaning of
the words "once" and "continuously", contrary to what
the appellant suggests, does not remedy the lack of
clarity of the term "panning". The board even finds the
word "continuously" to be vague and unclear, as in
English it might mean either "unceasingly" or "at
regular, frequent intervals". As there is no further
explanation or example of the distinction between
"panning once" and "continuous panning" in the
description, let alone of "panning", contrary to the
requirements of Rule 42(1)(e) EPC, it is unclear what
kind of a change in the user interface is meant by
"panning once" or "continuous panning".

2.2.3 Furthermore, claim 2 of the first auxiliary request and
claim 1 of the third and fourth auxiliary requests
specify that the step of "panning once" or "continuous panning" is "continued ... as long as the first touch is not released". It is impossible to follow, even at an abstract, conceptual level and irrespective of what "panning once" and "continuous panning" should mean, how a "continued" "panning once" can ever be distinguished from a "continuous panning".

2.3 The board further agrees with the contested decision that the skilled person would not be able to follow the boxes of figure 4 after box 216 in particular and figure 7 in its entirety:

2.3.1 The only way of leaving the flowchart of figure 6, which depicts the details of the so-called "pan" operation (box 216 in figure 4), is when the touch is released in box 238 in figure 6. In figure 4, after box 216 the invention executes boxes 218 and 220. In box 220, however, a further check is made as to whether the touch is released. But the touch should already have been released in box 238 in figure 6 in order to reach box 220 in figure 4 in the first place. Thus, it is impossible to follow why this subsequent check is made.

2.3.2 A "positional change" is calculated in box 218 and then compared to a threshold in box 221 in figure 4. Calculation of the positional change is described in paragraphs [0044] and [0045] and in figure 5 as the positional change between a final point of the touch and any previous point, i.e. starting point or intermediate point. As a touch follows a continuous curve with an infinity of points, there would be infinite possibilities for calculating the "positional change". Given that the application does not specify what a meaningful selection for a previous point of the touch or a meaningful threshold should be, and does not
give any examples, the skilled person is faced with infinite possibilities for carrying out boxes 218, 221 and 222. Therefore claims 4 to 6 of the first auxiliary request, claims 2 and 3 of the second and third auxiliary requests, claims 2 to 4 of the fourth auxiliary request and claim 1 of the sixth and seventh auxiliary requests referring to this "positional change" are unclear (Article 84 EPC), and the invention is furthermore not clearly and completely disclosed (Article 83 EPC).

2.3.3 In figure 7 and paragraphs [0048] to [0049], first a timer is started (box 240 in figure 7). If no touch is detected in box 242 of figure 7, the flowchart enters box 244 checking whether the timer has expired. As there is no loop in figure 7 before box 242 waiting for a touch to be detected and as the touch has already been released after box 220 in figure 4 in order to reach the flowchart of figure 7 in the first place (box 224 in figure 4), the branch of the tree with "Yes" after box 242 in figure 7 should logically never be executed. Furthermore, as long as the timer started in 240 does not expire extremely fast, there would always be a period during which it did not expire at the beginning which would direct the process at box 244 to box 246. Thus according to the original disclosure, the process depicted in figure 7 should always lead to and then end in box 246, which starts automatic scrolling at a first speed. Therefore, the board finds it to be almost impossible for the skilled person to make sense of the whole "scrolling" depicted in figure 7.

2.3.4 Therefore, the invention is not disclosed in a manner sufficiently clear and complete for it to be carried out by a person skilled in the art (Article 83 EPC).
2.4 The amendment to figure 7 has no bearing on the objections raised under 2.1 and 2.2 above. Therefore, none of the auxiliary requests on file meet the requirements of Articles 84 and 83 EPC.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:  
The Chair:

D. Magliano  
A. Ritzka

Decision electronically authenticated