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**Datasheet for the decision  
of 24 February 2012**

**Case Number:** T 0933/08 - 3.5.05  
**Application Number:** 01101001.4  
**Publication Number:** 1118930  
**IPC:** G06F 3/023, G06F 3/033  
**Language of the proceedings:** EN

**Title of invention:**  
Single handed operation of a palmtop device

**Applicant:**  
SIEMENS AKTIENGESELLSCHAFT

**Headword:**  
Palmtop device/SIEMENS

**Relevant legal provisions:**  
EPC Art. 56

**Keyword:**  
"Inventive step (no)"

**Decisions cited:**  
-

**Catchword:**  
-



Case Number: T 0933/08 - 3.5.05

**D E C I S I O N**  
of the Technical Board of Appeal 3.5.05  
of 24 February 2012

**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 7 November 2007  
refusing European patent application  
No. 01101001.4 pursuant to Article 97(1) EPC  
1973.

**Composition of the Board:**

**Chair:** A. Ritzka  
**Members:** P. Corcoran  
F. Blumer

## Summary of Facts and Submissions

- I. This is an appeal against the decision of the examining division to refuse the European patent application No. 01 101 001.4, publication No. EP 1 118 930. The decision was announced during oral proceedings on 11 September 2007 and the written reasons were dispatched on 7 November 2007.
- II. The decision under appeal was based on a request comprising a set of claims 1 to 4 filed during oral proceedings on 11 September 2007. The examining division found that the subject-matter of claim 1 of said request lacked an inventive step in the light of the prior art acknowledged on p.2 l.10 et seq. of the application as originally filed (corresponding to [0004] of the published application) in combination with the disclosure of following document:
- D1: US 5 973 612 A.
- III. Notice of appeal was received at the EPO on 21 December 2007 with the appeal fee being paid on the same date. A written statement setting out the grounds of appeal was received at the EPO on 12 February 2008. A new main and sole request comprising claims 1 to 4 was filed with said written statement.
- IV. Claim 1 of the request filed with the written statement setting out the grounds of appeal reads as follows:

"A method of one-handed operation of a palmheld computer system (4.1) for interfacing with control systems used in a manufacturing facility (4.2), said system comprising a palmheld PC with a set of

keys (5.1, 5.2, 5.3, 5.4) accessible using said one hand, said palmheld PC having a front face and a right lateral face, said set of keys being vertically arranged on said right lateral face, said method comprising:

- (a) displaying a top-level menu; and
- (b) navigating through a hierarchy of menus arising from said top-level menu using said set of keys, said navigating being performed using only said one hand,
- (c) one of the menus (1.3) displaying electric current values on the screen (4.11) of the palmheld computer system for setting a current of the manufacturing facility."

V. In the written statement setting out the grounds of appeal, the appellant made submissions in support of the request. In particular, the appellant contested the relevance of D1. In this regard it was submitted that the arrangement of the navigation keys on the device disclosed in D1, as shown in Fig. 1 of said document, was substantially different from that specified in claim 1. Moreover, according to the appellant, the device of D1 was a paging device which was not suited for transmitting industrial control data in the context of a manufacturing facility because it only had data receiving capabilities and was designed solely for receiving messages.

VI. In said written statement the appellant also made submissions to the effect that a procedural violation had taken place during the proceedings before the examining division. Responding to a summons to oral proceedings, the then applicant had requested that the

oral proceedings be held as a video-conference. The examining division refused the applicant's request in an official communication dated 22 August 2007. According to the appellant, the actions of the examining division in this regard constituted a procedural violation because, *inter alia*, the division failed to exercise its discretionary power in a proper manner and the refusal was reasoned in a contradictory manner. The appellant did not, however, make any explicit request in relation to the alleged procedural violation.

VII. In a communication accompanying a summons to oral proceedings to be held on 24 February 2012, the board expressed the preliminary opinion that the appellant's request was not allowable.

VIII. The observations set forth in said communication which are of relevance for the present decision may be summarised as follows:

(i) The board expressed the opinion that the limitations implied by the relative terms "vertically" on the "right lateral face" as used in claim 1 were unclear. The use of these relative terms appeared to be based on Fig. 5 of the application according to which the keys of the illustrated device were arranged "vertically" on the "right lateral face" from the observer's viewpoint. The board expressed reservations as to whether the use of these relative terms complied with the requirements of Article 84 EPC.

(ii) Without prejudice to its observations concerning Article 84 EPC, the board was of the opinion the claim 1 was to be construed as defining a palm-held computer device in which a plurality of keys or buttons were arranged in a manner that facilitated the one-handed operation of the device, namely that said keys or buttons were aligned in a row on a lateral face of the device, i.e. a face which was substantially perpendicular to the display face as illustrated in Fig. 5 of the application. On the basis of this interpretation, the board was of the opinion that the subject-matter of claim 1 lacked an inventive step.

(iii) Referring to the appellant's submissions concerning D1, the board noted that other prior art appeared to be more relevant than D1 for the purposes of assessing inventive step, *inter alia* the following document which had been cited in the European Search Report of the present application:

D2: R. Want et al., "An Overview of the PARCTAB Ubiquitous Computing Experiment", IEEE Personal Communications, vol. 2, no. 6, December 1995, pp. 28-43, ISSN: 1070-9916.

(iv) With respect to D2 the following was noted:

D2 discloses a palm-held personal computing device ("the ParcTab mobile hardware") with a set of keys accessible using one hand (cf. D2: Section entitled "ParcTab Mobile Hardware" on p.30; Fig.1). The device is designed to support one-handed operation (cf. D2: section entitled "ParcTab System Design", p.29, second paragraph thereof;

section entitled "Display and Control Characteristics", p.30, second paragraph thereof).

The keys are aligned in a row on a lateral face of the device, i.e. a face which is substantially perpendicular to the display face as illustrated in Fig. 1 of D2, so that they "fall beneath the fingers of the same hand that holds the tab" thereby facilitating one-handed operation of the device (cf. D2: section entitled "Display and Control Characteristics", p.30, in particular second paragraph thereof). The keys can be used for menu navigation tasks which can be performed using only one hand (cf. D2: section entitled "Buttons vs. Touch Screen", p.32). D2 further discloses that the ParcTab device can be used for "remote control" purposes such as controlling power appliances (cf. D2: section entitled "Remote Control", p.38).

- (v) In the written statement setting out the grounds of appeal, the appellant had also made submissions to the effect that the adaptation of the palm-held device of claim 1 for setting currents of a manufacturing facility was a significant technical feature of the claimed invention (cf. written statement: p.6 last paragraph on page). In response to these submissions, the board noted that although the palm-held device of claim 1 was adapted to permit selection of a current value from a menu, it appeared that the device itself did not directly set the current value but was used to transmit a value selected by the user to a

control system of the manufacturing facility where it could be used for setting a current.

The "current value" specified in claim 1 thus appeared to be merely a numerical parameter or data item whose value was selected by the user and which was then transmitted by the palm-held device to a control system for further processing.

(vi) On the basis of the foregoing observations, the board expressed its preliminary opinion to the effect that an inventive step objection similar to that raised in the decision under appeal was applicable against claim 1 of the appellant's request, said inventive step objection relying on a combination of the prior art acknowledged in the application with the disclosure of D2, rather than that of D1.

IX. The board's communication additionally contained observations relating to the alleged procedural violation (cf. item VI. above). In particular, it was noted that whereas the EPC accorded an applicant a right to be heard in oral proceedings before the EPO, it did not guarantee any right to have oral proceedings before an examining division held as a video-conference. In the present case, it appeared from the file that oral proceedings before the examining division were held in the traditional manner on the premises of the EPO and that a representative of the applicant was present and participated at said proceedings. Having regard to these facts, the board expressed the view that the applicant's right to be heard had been respected, notwithstanding the refusal of the request to hold oral proceedings as a video conference. Thus,



the refusal of the examining division to allow the oral proceedings in the form of a video-conference did not appear to constitute a substantial procedural violation, in the sense of an objective deficiency affecting the entire proceedings (cf. J 0032/95, OJ EPO 1999, 713, reasons 4.1).

Having regard to the provisions of Rule 103(1)(a) EPC, the board further noted that it would only be inclined to pursue the matter of the alleged procedural violation in the event that the appellant succeeded in establishing that the appeal was allowable with respect to matters of patentability.

- X. In a letter dated 30 January 2012, the appellant notified the board to the effect that it would not be represented at the scheduled oral proceedings. The letter contained a further statement to the effect that a decision according to the state of the file was requested ("Vielmehr wird eine Entscheidung nach Aktenlage beantragt"). The appellant made no substantive response to the observations set forth in the board's communication.
- XI. The appellant has requested that the decision under appeal be set aside and that a patent be granted on the basis of claims 1 to 4 of the request filed with the written statement setting out the grounds of appeal.
- XII. Oral proceedings were held as scheduled on 24 February 2012 in the absence of the appellant. The chairperson summarised the relevant facts as appearing from the file. After the board had deliberated on the basis of

the appellant's request and written submissions, the chairperson proceeded to announce the decision.

### **Reasons for the Decision**

1. The appeal is admissible.
2. In its communication, the board informed the appellant in detail of the reasons for its preliminary opinion that the request filed with the written statement setting out grounds of appeal was not allowable (cf. Facts and Submissions, items VII. and VIII. above).
3. The appellant neither filed a substantive response to the communication nor appeared at the oral proceedings despite being duly summoned. Having reconsidered its reasoned objections as set out in said communication and making express reference thereto, the board sees no reason to depart from them. It is particularly noted in this regard, that the appellant did not make any attempt to refute the preliminary opinion expressed by the board in its communication to the effect that a combination of the prior art acknowledged in the application with the disclosure of D2 would be prejudicial to the inventive step of the claimed invention (cf. Facts and Submissions, item VIII(vi) above).
4. The board judges that the relative terms "vertically" and "right lateral face" as used in claim 1 are to be construed as defining the alignment of a plurality of keys or buttons on a lateral face of a palm-held computer so as to facilitate the one-handed operation

of the device substantially as illustrated in Fig. 5 of the application.

5. On the basis of the aforementioned interpretation of claim 1, which has not been disputed by the appellant, the subject-matter of said claim is found to lack an inventive step in the light of the prior art acknowledged on p.2 l.10 et seq. of the application as originally filed (corresponding to [0004] of the published application) in combination with the disclosure of D2 (cf. Facts and Submissions, item VIII(iv) to VIII(vi) above).
6. In view of the foregoing, the appellant's request is not allowable.
7. In the absence of an allowable request the appeal must be dismissed.
8. *Alleged procedural violation*
  - 8.1 Referring to the appellant's submissions concerning the procedural violation which is alleged to have taken place during the proceedings before the department of first instance (cf. Facts and Submissions, items VI. and IX. above), the following observations are made.
  - 8.2 Even if the examining division had not exercised its discretion correctly when refusing the request to hold the oral proceedings as a video-conference - for which the board does not see any indication - the then applicant and present appellant had and took the opportunity to argue its case in oral proceedings held in the traditional manner before the department of

first instance (cf. Facts and Submissions, item IX. above). Thus, notwithstanding the refusal of the request to hold the oral proceedings in the form of a video-conference, the appellant's right to be heard (Article 113 EPC) was fully respected. Consequently, in the board's judgment, there was neither a violation of the appellant's right to be heard nor any other substantial procedural violation which could give rise to a remittal to the department of first instance under Article 11 of the Rules of Procedure of the Boards of Appeal.

- 8.3 With regard to the reimbursement of the appeal fee as a possible consequence of a substantial procedural violation, the board notes that in accordance with Rule 103(1)(a) EPC a prerequisite for such reimbursement is that the appeal be allowed. In the present case, a reimbursement of the appeal fee is excluded on the sole ground that the appeal is not allowable (cf. Facts and Submissions, item IX. above).

**Order**

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

The appeal is dismissed.

The Registrar:

The Chair:

K. Götz

A. Ritzka