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**Datasheet for the decision
of 19 April 2012**

Case Number: T 1973/08 - 3.4.03

Application Number: 04104475.1

Publication Number: 1638072

IPC: G09G 3/34

Language of the proceedings: EN

Title of invention:

Visual notification methods for mobilephones

Applicant:

RESEARCH IN MOTION LIMITED

Headword:

-

Relevant legal provisions:

RPBA Art. 13(1), 15(3)

Relevant legal provisions (EPC 1973):

EPC Art. 56

Keyword:

"Inventive step (no)"

Decisions cited:

T 0641/00

Catchword:

-



Case Number: T 1973/08 - 3.4.03

D E C I S I O N
of the Technical Board of Appeal 3.4.03
of 19 April 2012

Appellant: RESEARCH IN MOTION LIMITED
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Representative: Moore, Barry
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Decision under appeal: Decision of the Examining Division of the
European Patent Office posted 6 May 2008
refusing European patent application
No. 04104475.1 pursuant to Article 97(2) EPC.

Composition of the Board:

Chairman: G. Eliasson
Members: R. Q. Bekkering
T. Bokor

Summary of Facts and Submissions

- I. This is an appeal against the refusal of application 04 104 475 for added subject-matter, Article 123(2) EPC and for lack of an inventive step, Article 56 EPC 1973.
- II. The appellant applicant requested in writing that the decision under appeal be set aside and a patent granted on the basis of the main request or the auxiliary request, both filed with letter of 9 March 2012.
- III. Oral proceedings before the board, requested by the appellant, took place in the absence of the appellant.

The board was informed that the appellant would not attend the oral proceedings, following inquiries by the board noting the absence of the appellant on the day of the oral proceedings.

- IV. Claim 1 of the main request reads as follows:

*"A method of indicating inactivity of a powered on handheld wireless communications device (102, 202) having a display (222, 430) with a backlight comprising multiple light emitting diodes 'LEDs' (322, 324, 326), said method comprising:
tracking an inactivity time for said device;
comparing said inactivity time against a threshold; and
if said inactivity time exceeds said threshold,
activating a visual notification on said device to indicate inactivity of said device to said user by activating one or more but less than all of the LEDs (322, 324, 326) of the backlight at regular or at irregular intervals to produce a pulsing light signal."*

Claim 9 is directed at a corresponding handheld wireless communications device.

- V. Claim 1 of the first auxiliary request corresponds to claim 1 of the main request with the following addition:

"wherein the brightness of the activated LEDs are increased in a series of discrete steps and subsequently decreased in a series of discrete steps."

Claim 9 is directed at a corresponding wireless handheld communications device.

- VI. Reference is made to the following documents:

D2: EP 1 170 930 A

D3: US 6 278 887 B.

- VII. The appellant submitted in substance the following arguments:

Document D3 constituted the closest prior art, as it was concerned with the same problem as the application, namely indicating to a user whether the device was powered on when it appeared not to be so. Document D3 differed, however, from the claimed invention in that it provided a separate LED as power-on indicator.

Document D2 was unconcerned with the above problem, but with indicating to a user that already knew the device was powered on what its mode of operation was. There was no suggestion in D2 to use some, but not all of the

backlight LEDs. Accordingly, claim 1 was inventive in light of the combination of D3 and D2.

Regarding claim 1 of the auxiliary request, the technical effect of the added feature was that it enhanced the visual perceptible effect of the pulsing light signal thereby increasing the likelihood that a user noticed that a powered up device that appeared switched off was actually powered on and consuming battery power. All documents were silent on this feature, so that the claim met the requirements of Article 56 EPC.

Reasons for the Decision

1. The appeal is admissible.
2. *Procedural issues*

The appellant's main and auxiliary requests for the grant of a patent on the basis of amended claims were filed after oral proceedings before the board were arranged.

Any such request entails inter alia an assessment by the board as to the conformity of the request with procedural requirements, the request being filed after the statement setting out the grounds of appeal have been submitted and thus its admission and consideration being subject to the board's discretion (Article 13(1) RPBA), as well as an assessment as to the conformity of the claimed subject-matter with the requirements of the EPC, notably clarity, added subject-matter, novelty and

inventive step, as a result of which grounds for a decision adversely affecting the appellant may arise. An appellant submitting such a request should, therefore, expect such grounds to be advanced.

An appellant renouncing to come to oral proceedings before the board to which it was duly summoned must be taken to waive its right to present comments on any such grounds (Article 113(1) EPC 1973).

It is, moreover, noted that a different conclusion, ie that the appellant should be given the opportunity to comment, specifically on his request being held inadmissible or not allowable, would make a continuation of the proceedings in writing necessary and thus oblige the board to delay its decision in the proceedings by reason only of the absence at the oral proceedings of the party, contrary to Article 15(3) RPBA.

In view of the fact that the requests were filed in advance of the oral proceedings, constitute an attempt to overcome the objections raised and are provided with reasons in support thereof, and as the board is satisfied that it is able to deal with the requests in substance, it exercises its discretionary powers under Article 13(1) RPBA so as to admit the requests into the proceedings.

3. *Main request*

3.1 *Novelty*

3.1.1 *Document D3*

Document D3 is directed towards a system and method for conserving power in portable devices such as, for example, wireless communication handsets. As acknowledged by the appellant, document D3 is in fact concerned with the same underlying problem addressed in the application of notifying the user that the device is powered-on and in standby (cf column 1, line 50 to column 2, line 9; column 5, lines 23 to 50).

Inactivity of the device is tracked by setting a timer to a predetermined time value T1. The timer begins counting time until time T1 has expired. If time T1 has expired and the user has not entered a keystroke on the device, the liquid crystal display is turned off. Thus, if the LCD display is on and the user is not entering information via the keypad, the LCD display will automatically turn off after a time T1 has expired (column 4, lines 56 to 63; figure 2).

In particular, document D3 discloses in the terminology of claim 1 a method of indicating inactivity of a powered on handheld wireless communications device having a display comprising:
tracking an inactivity time for said device;
comparing said inactivity time against a threshold; and
if said inactivity time exceeds said threshold,
activating a visual notification on said device to indicate inactivity of said device to the user.

The solution in D3 is to provide a flashing LED, preferably provided outside of any area which may be covered by a flip panel, such that the visual alert can

be viewed by the user when the device is in its closed configuration (column 5, lines 47 to 50).

- 3.1.2 Not disclosed in D3 is to provide the visual notification by activating one or more but less than all of the LEDs of the backlight of the display at regular or at irregular intervals to produce a pulsing light signal.

The subject-matter of claim 1 of the main request is, thus, new over document D3 (Article 54 EPC 1973).

3.2 *Inventive step*

- 3.2.1 Document D3 is considered to provide the closest prior art.

In view of the above difference of the subject-matter of claim 1 over document D3, the objective problem to be solved relative to D3 is to provide an alternative visual notification indicating inactivity.

- 3.2.2 Document D2 is concerned with providing clearly noticeable visual notifications of various conditions of a mobile communication device. The device has a display backlight system including LEDs emitting light of different colours such as eg red, green and blue LEDs (cf paragraphs [0002], [0006], [0019]; figure 1). In particular, in case of eg a low battery, the display flashes in red (cf paragraph [0031]). In this case eg only the red LED of the display backlight is activated to produce a pulsing light signal (cf paragraph [0019] and figure 1).

It is obvious to a person skilled in the art addressing the above objective problem to adopt the clearly noticeable alternative visual notification proposed in D2 in the method of D3.

Incidentally it is noted that this is all the more true for mobile devices without flip panel, where the problem of the display being covered by the flip panel mentioned in D3 does not exist and, as would be readily appreciated by the skilled person, the display is available for visual notification at all times and clearly suitable for this purpose.

3.2.3 The appellant argued that D2 was unconcerned with indicating to a user whether the device was powered on when it appeared not to be so, but with indicating to a user that already knew the device was powered on what its mode of operation was. There was no suggestion in D2 to use some, but not all of the backlight LEDs. Accordingly, the revised claim 1 was inventive in light of the combination of D3 and D2.

As noted above, document D3 discloses indicating to a user whether the device is powered on when it appears not to be so. On proper application of the problem-solution approach and taking into consideration the objective problem to be solved relative to D3 as stated above, it is irrelevant that D2 does not disclose a visual indication of whether the device is powered on when it appeared not to be so, D2 being consulted by the skilled person for alternative ways of providing visual notification only. It is noted in this respect that if D2 were also to address specifically this condition, it would in fact disclose all features of

claim 1. By arguing that document D2 fails to do so, the appellant unduly equates the requirement for inventive step with that for novelty.

Moreover, it is noted that, contrary to the appellant's contention, document D2 does suggest using some, but not all of the backlight LEDs. According to D2, for example red, green and blue LEDs may be provided for the display backlight. Each LED is connected to a current generator allowing to adjust the intensity of the respective LED. Any colour can be produced by adjusting the respective intensities of the red, green and blue LEDs (cf paragraph [0019]). It is understood that for example the red visual notification discussed above requires activation of the red LED, but not of the green and blue LEDs.

Accordingly, the subject-matter of claim 1 of the main request is obvious to a person skilled in the art and, thus, lacks an inventive step (Article 56 EPC 1973).

3.2.4 The above also applies in substance to the claim 9 directed at a corresponding handheld wireless communications device.

3.2.5 Hence, the appellant's main request is not allowable.

4. *Auxiliary request*

4.1 Claim 1 of the first auxiliary request corresponds to claim 1 of the main request with the following addition:

"wherein the brightness of the activated LEDs are increased in a series of discrete steps and subsequently decreased in a series of discrete steps."

4.2 According to the appellant, the technical effect of this added feature was that it enhanced the visual perceptible effect of the pulsing light signal thereby increasing the likelihood that a user noticed that a powered up device that appeared switched off was actually powered on and consuming battery power.

This is, however, in contradiction with the effect disclosed in the application as originally filed according to which *"LED brightness may be ramped up and ramped down to provide a type of "breathing" or "heartbeat" effect to make flashing less harsh - a benefit in dark or dimly lit conditions"*, rather suggesting a reduction of the conspicuousness of the visual notification (cf paragraph [0031]).

In view of the above inconsistency and in the absence of any indication as to other possible technical effects brought about by the above additional feature, no technical effect can be attributed to this feature, the only effect provided, thus, being aesthetic (ie the provision of a *"breathing"* appearance).

As aesthetic creations are considered to be non-technical, the aesthetic effect as such cannot contribute to inventive step. Accordingly, in formulating the corresponding problem to be solved, the aesthetic effect as such is to be taken as an aim to be achieved (cf T 641/00, OJ 2003, 352, Reasons 7).

The problem to be solved in this respect, thus, is how to achieve the specific aesthetic effect, ie its technical implementation.

The technical implementation as claimed, increasing and subsequently decreasing the brightness of the activated LEDs in a series of discrete steps, is a straightforward solution for obtaining the specified aesthetic ("*breathing*") effect on the display and would be obvious to a skilled person in the field of display technology. Accordingly, the above additional feature does not add anything inventive to the method, which for the rest is not inventive for the reasons given above with respect to the main request.

Accordingly, the subject-matter of claim 1 of the auxiliary request is also obvious to a person skilled in the art and, thus, lacks an inventive step (Article 56 EPC 1973).

4.3 The above applies to claim 9 directed at a corresponding handheld wireless communications device as well.

4.4 Hence, the appellant's auxiliary request is not allowable either.

Order

For these reasons it is decided that:

The appeal is dismissed.

Registrar

Chair

S. Sánchez Chiquero

G. Eliasson