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**Datasheet for the decision
of 6 February 2014**

Case Number: T 0307/09 - 3.5.05

Application Number: 99900799.0

Publication Number: 1044118

IPC: B60R16/02

Language of the proceedings: EN

Title of invention:

GRAPHICAL INTERFACE COMPONENTS FOR IN-DASH AUTOMOTIVE
ACCESSORIES

Patent Proprietor:

MICROSOFT CORPORATION

Opponent:

Volkswagen AG

Headword:

API-based operator interface for automotive in-dash accessory/
MICROSOFT

Relevant legal provisions:

EPC Art. 56, 84, 123(2), 123(3)

Keyword:

Decisions cited:

Catchword:



**Beschwerdekammern
Boards of Appeal
Chambres de recours**

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Case Number: T 0307/09 - 3.5.05

**D E C I S I O N
of Technical Board of Appeal 3.5.05
of 6 February 2014**

Appellant: MICROSOFT CORPORATION
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Decision under appeal: **Decision of the Opposition Division of the
European Patent Office posted on 24 November
2008 revoking European patent No. 1044118
pursuant to Article 101(3)(b) EPC.**

Composition of the Board:

Chair: A. Ritzka
Members: P. Cretaine
D. Prietzel-Funk

Summary of Facts and Submissions

I. This appeal is against the decision of the opposition division, dispatched on 24 November 2008, to revoke the European patent No. 1 044 118,. The patent was revoked on the ground that claim 1 according to a main request, claim 1 according to a first auxiliary request and claim 1 according to a third auxiliary request lacked novelty (Article 54 EPC) having regard to the disclosure of

D8: WO 95/25397,

and that claim 1 according to a second auxiliary request and claim 1 according to a modified second auxiliary request did not meet the requirements of Article 123(2) EPC. A second modified second auxiliary request filed during the oral proceedings before the opposition division was considered late-filed and was not admitted into the proceedings under Article 114(2) and Rule 116(1) EPC.

II. The patentee's notice of appeal was received on 2 February 2009. The appeal fee was paid on the same day.

III. The statement setting out the grounds of appeal was received on 24 March 2009. The appellant (patentee) filed claims according to a main request and six auxiliary requests. The claims of the main request, the first auxiliary request, the second auxiliary request, the third auxiliary request, the fourth auxiliary request and the sixth auxiliary request corresponded respectively to the claims of the main request, the first auxiliary request, the second auxiliary request, the modified second auxiliary request, the second

modified second auxiliary request and the third auxiliary request on which the decision under appeal was based. The claims of the fifth auxiliary request were based on those of the second auxiliary request to which further features were added.

The appellant requested that the decision of the opposition division be set aside and that the patent be maintained on the basis of the claims of the main request or one of the first to sixth auxiliary requests, submitted with the statement setting out the grounds of appeal. Oral proceedings were requested on an auxiliary basis. In addition, the appellant requested that the appeal fee be reimbursed.

- IV. By letter received on 2 July 2009, the respondent (opponent) commented on the statement of grounds of appeal and requested that the appeal be dismissed because the main request and the first and sixth auxiliary requests did not meet the requirements of Articles 54 and 56 EPC, the second, third and fourth auxiliary requests did not meet the requirements of Articles 56 and 123(2) EPC, and the fifth auxiliary request did not meet the requirements of Article 56 EPC.

The respondent based its objections on

D8,

D1: US 5 555 172,

D2: US 5 089 826,

D3: DE 296 11 386,

D7: EP 0 366 132,

D9: DE 40 33 829 and

D12: EP 0 701 926.

V. By letter received on 12 January 2010, the appellant replied to the respondent's objections.

VI. A summons to oral proceedings scheduled to be held on 6 February 2014 was issued on 7 October 2013. In an annex to this summons, the board listed the points to be discussed during the oral proceedings.

The board also expressed its preliminary opinion that the main request and the first and sixth auxiliary requests met the requirements of Article 54 EPC but did not meet the requirements of Article 56 EPC.

Moreover, the board itself raised clarity objections (Article 84 EPC) against the claims of the second, third, fourth and fifth auxiliary requests, taking into account that these claims had been filed during the opposition proceedings and were not based on a straightforward combination of granted claims (cf. G0009/91).

VII. By letter received on 3 January 2014, the appellant filed auxiliary requests 2A to 5A and 2B to 5B in response to the clarity objections raised by the board.

VIII. Oral proceedings were held on 6 February 2014. During the course of the proceedings, the appellant submitted an amended auxiliary request 3A replacing auxiliary request 3A on file and withdrew all other

requests, including the request for refund of the appeal fee.

The appellant requested that the decision under appeal be set aside and that the patent be maintained on the basis of claims 1 to 18 of amended auxiliary request 3A, submitted during the oral proceedings as sole main request.

The respondent requested that the appeal be dismissed.

At the end of the oral proceedings, the decision of the board was announced.

IX. Claim 1 of the sole main request reads as follows:

"1. An in-dash automotive accessory comprising a computer-readable storage medium (91, 92) having instructions for implementing an operator interface in the in-dash automotive accessory running an operating system supporting multiple application programs, the operating system including an application programming interface, API, having functions that are callable by the application programs to create and use a visual control (68, 100, 120), the visual control having a plurality of items that are vertically scrolled through a fixed focus position, the visual control being configurable by the application programs through the application programming interface to contain any one or more of an edit item (141) having a variable that is editable in response to a user select command, an adjustable item (132) having a variable that is changeable through a series of predefined values in response to user adjustment commands, a selection item (124) opening a secondary control in response to a user select command, and a combination item (151) having a

variable that is changeable through a series of predefined values in response to user adjustment commands and opening a secondary control in response to a user selection command, the instructions being executable to perform steps comprising:

scrolling a plurality of application icons (102) in response to user scroll commands, wherein the application icons (102) correspond to different ones of said application programs in the in-dash automotive accessory;

focusing on any application icon that is scrolled to the fixed focus position;

activating the application program corresponding to the focused application icon (104) in response to a user selection command."

Reasons for the Decision

1. Admissibility of the appeal

The appeal complies with the provisions of Articles 106 to 108 EPC (cf. points II and III above) and is therefore admissible.

2. Admissibility of the sole main request filed in oral proceedings

Claims 1 to 18 of the sole main request (named "amended auxiliary request 3A" when filed) are identical to claims 1 to 18 of auxiliary request 3A, filed in response to the summons to oral proceedings. Claims 1 to 18 of auxiliary request 3A are based on claims 1 to 18 of the third auxiliary request, which was filed with

the statement setting out the grounds of appeal, and have been amended in response to the clarity objections raised by the board in the communication annexed to the summons to oral proceedings. Claims 1 to 18 of the third auxiliary request were identical to claims 1 to 18 of the modified second auxiliary request filed and admitted into the proceedings during the oral proceedings before the opposition division.

The opponent did not object to the admissibility of amended auxiliary request 3A, submitted by the appellant as sole main request during the oral proceedings before the board.

Therefore the board decided to admit the sole main request into the appeal proceedings in the exercise of its discretionary power under Articles 12(4) and 13(1) RPBA.

3. Article 84 EPC

Claim 1 of the present request is based on claim 1 of the third auxiliary request filed with the statement of grounds of appeal. Since it is not a straightforward combination of granted claims, its compatibility with the requirements of Article 84 EPC has been considered by the board, in accordance with the findings of G0009/91. The subject-matter of claim 1 of the third auxiliary request was directed to a computer-readable storage medium having instructions for implementing an operator interface **in** an automotive accessory running an operating system. The application icons corresponding to the application programs were handled by the instructions of the claimed storage medium while the visual control relating to the application programs was handled by an application programming interface of

the operating system, which was however itself not part of the claimed subject-matter. This led to a lack of clarity in the definition of the matter for which protection was sought, contrary to Article 84 EPC.

The board is satisfied that claim 1 of the present request is now directed to an in-dash automotive accessory which comprises both the computer-readable storage medium providing the instructions for the application icons and the operating system supporting the visual control. The board therefore judges that the requirements of Article 84 EPC are met.

4. Article 123(2) and (3) EPC

4.1 The respondent argued that granted claims 1 and 8 were the only clear basis for claim 1. The deletion of the feature of a visual control **for display and entry of parameters** (emphasis added) represented, in the respondent's view, added subject-matter.

In the board's judgement, claim 1 is based on the description as originally filed, in particular on the passages in page 3, lines 9 to 18, page 5, lines 1 to 3, page 11, lines 21 to 24, page 11, lines 25 to page 12, line 6, and page 12, lines 14 to 24 of the published application (these passages correspond to paragraphs [0012], [0020], [0044], [0045] and [0047], respectively, of the patent specification). The feature "**for display and entry of parameters**" objected to is not present in paragraphs [0012] and [0047] which describe the visual control according to the claimed invention. Therefore the board judges that this feature is not essential for the definition of the visual control and that its omission in claim 1 does not contravene Article 123(2) EPC.

4.2 The respondent further argued that the combination of icons and items is not originally disclosed (Article 123(2) EPC) since claim 8 as granted mentioned that items were icons and the description itself presented the two features as separate alternatives. Further, the respondent argued during the oral proceedings before the board that, since claim 8 as granted only defined that icons were items but not that icons and items co-existed, the protection conferred by claim 1 had been extended with respect to the granted claims, contrary to Article 123(3) EPC.

The board is not convinced by these arguments for the following reasons. The icons are described as corresponding to applications (see for instance paragraphs [0009] and [0029] to [0032] of the patent specification) and the visual controls are described as being used by applications (see for instance paragraphs [0012] and [0044] to [0047] of the patent specification). Both the icons and the items are displayed on the interface, although not simultaneously (see Figures 3 to 5 and 6 to 14). Therefore the combination of icons and items, as defined in claim 1, does not contravene Article 123(2) EPC. Moreover, claim 1 has been clearly limited with respect to claim 1 as granted by defining the visual control in addition to the application icons. Thus, the protection conferred by claim 1 has not been extended with respect to claim 1 as granted, claim 8 as granted being a dependent claim only.

Therefore the board judges that the main request meets the requirements of Article 123(2) and (3) EPC.

5. Article 56 EPC

5.1 Procedural matters

The sole main request on file is based on the modified second auxiliary request which was refused by the opposition division on the sole ground of Article 123(2) EPC. The issue of inventive step was not discussed before the opposition division. The board, with the approval by the parties, decided to examine the issue of inventive step on the basis of the prior-art documents on file, rather than remitting the file to the department of first instance for further prosecution.

5.2 Prior art

In the course of the discussion about previously higher-ranked requests which were subsequently withdrawn by the appellant, the board considered that the mobile phone disclosed in D8 could not be considered as an automotive accessory. Moreover, due to the limitation to an **in-dash** automotive accessory now present in claim 1, the board judges that D8 is not suitable as starting point for the assessment of inventive step.

5.3 Document D7 relates to an operator interface in an automotive accessory comprising a rotary knob for the selection of application icons. Therefore D7 represents, in the board's judgement, the closest prior art. The differences between the subject-matter of claim 1 and the disclosure of D7 are the following:

a) instructions are provided enabling scrolling of the application icons to a fixed focus position for

subsequent activation, instead of scrolling a focus position through the application icons as in D7;

b) the automotive accessory runs an operating system including an application programming interface API, having functions callable by the applications programs to create and use a visual control, the visual control being configurable by the application programs through the application programming interface;

c) the visual control has a plurality of items that are vertically scrolled to a fixed position, the items being defined in claim 1, lines 6 to 14.

5.4 With respect to feature a) the board agrees with the respondent that the problem to be solved by said feature can be defined as finding an alternative to the selection of the displayed application icons. The person skilled in the art of graphical user interfaces would take the teaching of D8 into account, since this document relates to an operator interface having a limited space for display and control elements. The skilled person would apply the scrolling of icons through a fixed focus position disclosed in D8 in page 25, lines 19-21 in combination with Figure 4, to the operator interface of D7 without the exercise of inventive step. The appellant argued that D8 does not disclose the selection of applications but rather the selection of commands within an application. The board is not convinced by this argument since the relevant feature that the skilled person would consider in D8 is the scrolling of icons to a fixed focus position and not the information, or the level of information, represented by these icons.

Therefore, for these reasons based on the technical discussion of D7 and D8 above alone, the board judges that feature a) does not contribute to an inventive step of the subject-matter of claim 1.

- 5.5 Feature b) provides the technical effect that a visual control may be created on the operator interface specifically by the application programming interface for each application program running on the automotive accessory. The objective technical problem can thus be formulated as how to adapt the automotive accessory of D7 to enable control of additional application programs.

The operator interface of D7 does not rely on an application programming interface. The skilled person faced with the above-mentioned technical problem would thus consider a hardware change of the automotive accessory in order to introduce new applications and to adapt the display accordingly. The skilled person would not get any hint to use an application programming interface for creating visual control from the other cited prior-art documents D1, D7, D8 or D9 either. In particular the cellular phone disclosed in D8 relies on proprietary software only.

Moreover, the appellant plausibly argued that feature b) makes it possible to greatly improve the programming of an operator interface in an automotive accessory, as the automotive accessory does not need to be changed in order to be enriched with new functionalities. In particular, the user of the automotive accessory does not have to reorganise the screen display himself; the application programs implementing the new functionalities automatically use the application programming interface for this purpose.

The development of new application programs for an in-dash automotive accessory is thus significantly facilitated.

For these reasons the board judges that feature b) alone confers inventive step on the subject-matter of claim 1.

The respondent argued that operating systems were disclosed in D7 and D8. Moreover, D8 mentioned in page 23, lines 3 to 6, that the display should generate icons resembling a Windows type of user interface, which would imply that a Windows operating system was used. Such operating systems were already using application programming interfaces, as also mentioned in the application itself at paragraph [0003]. Therefore, according to the respondent, the use of an application programming interface was disclosed in, or at least rendered obvious by, documents D7 and D8.

The appellant disagreed and challenged the assertion that paragraph [0003] of the application referred to publicly available prior art. The paragraph rather referred to the appellant's internal prior art.

The board is not convinced by the argumentation of the respondent, since paragraph [0003] of the published application only makes a vague reference to application programming interfaces in the context of popular desktop operating systems, which cannot be considered as a detailed prior-art reference. Furthermore, the skilled person does not find any indication at all in D8 that the operating system may involve an application programming interface. D8 refers only to icons and symbols resembling a Windows type of operating system. At the publication date (1995) of D8 and at the

priority date (1998) of the present application it was common practice to use proprietary software as the operating system for mobile phones. D8 does not provide any hint to any different solution.

5.6 Since it has been shown above that feature b) alone confers an inventive step on the subject-matter of claim 1, it is not necessary to analyse in detail the contribution of feature c). In the board's judgement however, the items listed in claim 1 represent common measures in the field of graphical user interfaces.

5.7 The board therefore judges that claim 1 of the sole main request meets the requirements of Article 56 EPC.

6. In conclusion, the sole main request overcomes the grounds for opposition.

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.
2. The case is remitted to the department of first instance with the order to maintain the patent with claims 1 to 18 according to the sole main request submitted during the oral proceedings, and a description to be adapted.

The Registrar:

The Chair:



K. Götz

A. Ritzka

Decision electronically authenticated