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**Datasheet for the decision
of 6 September 2016**

Case Number: T 2219/10 - 3.5.07

Application Number: 07102583.7

Publication Number: 1821226

IPC: G06F17/30

Language of the proceedings: EN

Title of invention:

Apparatus and method for displaying objects according to
object request order

Applicant:

Samsung Electronics Co., Ltd.

Headword:

Request objects in display order/SAMSUNG

Relevant legal provisions:

EPC Art. 56
EPC R. 137(3)
RPBA Art. 12(4)

Keyword:

Inventive step - (no)
Request not admitted in first instance - admitted (yes)

Decisions cited:

G 0007/93, T 0971/11

Catchword:



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Case Number: T 2219/10 - 3.5.07

D E C I S I O N
of Technical Board of Appeal 3.5.07
of 6 September 2016

Appellant: Samsung Electronics Co., Ltd.
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Representative: Grootscholten, Johannes A.M.
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Decision under appeal: **Decision of the Examining Division of the
European Patent Office posted on 21 June 2010
refusing European patent application
No. 07102583.7 pursuant to Article 97(2) EPC.**

Composition of the Board:

Chairman R. Moufang
Members: P. San-Bento Furtado
M. Rognoni

Summary of Facts and Submissions

- I. The appeal lies from the decision of the Examining Division to refuse European patent application No. 07102583.7 for lack of inventive step and lack of clarity of the subject-matter of the independent claims 1 and 3 of a first auxiliary request, and of claim 1 of each of a second and third auxiliary request.

The inventive-step objections were based on the following prior-art document

D1: Nakano, T. et al., "A Web Page Transmission Mechanism with Transmission Order Control of Inline Objects", Systems and Computers in Japan, Vol. 33, No. 4, pages 14 to 24, 2002.

A main request and a fourth auxiliary request, both submitted at the oral proceedings, were not admitted into the proceedings under Rule 137(3) EPC. The Examining Division was of the opinion that these requests were late-filed and introduced new clarity issues without overcoming the objection for lack of inventive step.

- II. In the statement of grounds of appeal, the appellant requested that the decision be set aside and that a patent be granted on the basis of the main request or of one of four auxiliary requests, all five requests filed with the grounds of appeal. The main request corresponds to the fourth auxiliary request which was not admitted by the Examining Division.
- III. The appellant was invited to oral proceedings. In a subsequent communication, the Board indicated that it was inclined to admit the main request and expressed

its preliminary opinion that claim 1 of the main request did not fulfil the requirements of Articles 84 and 123(2) EPC. With regard to the auxiliary requests, the Board found that the preliminary objections against the main request essentially also applied and mentioned further possible issues of lack of clarity and added subject-matter.

The Board explained that in order to assess inventive step for the claimed invention each of three prior-art devices would be an appropriate starting point, namely, a well-known web client device (or standard web client), the web client of document D1, or the "related art object display device 10" described on pages 2 and 3 with reference to Figure 1 of the original application. The Board was of the preliminary opinion that the subject-matter of claim 1 of the main request was not inventive over the disclosure of document D1 (Articles 52(1) and 56 EPC) and that a similar reasoning would apply when assessing inventive step starting from each of the other two mentioned devices, the well-known web client, or the prior art acknowledged in the application. Since claim 1 of each of the auxiliary requests recited substantially the same subject-matter as claim 1 of the main request, the inventive step reasoning given with respect to the main request equally applied to claim 1 of each of the auxiliary requests. Consequently, the first to fourth auxiliary requests did not appear to fulfil the requirements of Article 56 EPC either.

- IV. The appellant did not comment on the issues raised in the Board's communication and announced that it would not be present at the oral proceedings.

V. Oral proceedings were held on 6 September 2016 in the absence of the appellant. At the end of the oral proceedings, the chairman pronounced the Board's decision.

VI. The appellant requested that the decision under appeal be set aside and that a patent be granted on the basis of the claims of the main request or, in the alternative, on the basis of the claims of one of the first to fourth auxiliary requests.

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

"A client apparatus, such as a PDA or a printer, for displaying objects from an external device according to an object request order, the apparatus comprising:

a data reception unit (110) that receives, from the external device, data including object information, comprising display position information of objects and an arrangement order, according to which the objects are intended to be displayed by the external device, the object information regarding a plurality of objects stored in the external device;

an object arrangement unit (140) that determines the arrangement order of the plurality of the objects from the object information and generates an object request list to be sent by the client apparatus to the external device, in which the objects are arranged in said arrangement order, according to a result of the determination;

an object request unit (150) that transmits the object request list to the external device; and

a display unit (170) that displays the objects received from the external device in the order of the transmitted object request list,

CHARACTERISED IN THAT

the object arrangement unit (140) updates the generated object request list according to a display order of the objects in the object information which display order is determined by the object arrangement unit (140) from the display position information."

- VIII. Claim 1 of the first auxiliary request differs from claim 1 of the main request in that the text "according to which the objects are intended to be displayed by the external device" of the main request was amended to "according to which the objects are intended by the external device to be displayed".
- IX. Claim 1 of the second auxiliary request was drafted on the basis of claim 1 of the first auxiliary request by amending the phrase "such as a PDA or a printer" to "being a PDA or a printer".
- X. Claim 1 of the third auxiliary request differs from that of the first auxiliary request in that the text "a display order of the objects in the object information" in the characterising feature was amended to "a display order of the objects corresponding to the object information".
- XI. Claim 1 of the fourth auxiliary request differs from that of the third auxiliary request in that the phrase "such as a PDA or a printer" was amended to "being a PDA or a printer".
- XII. The appellant's arguments relevant for the present decision are discussed in detail below.

Reasons for the Decision

1. The appeal complies with the provisions referred to in Rule 101 EPC and is therefore admissible.

Invention

2. The application relates to displaying in a client apparatus a plurality of objects retrieved from an external device, for example displaying in a client device a web page including a plurality of images and/or videos from other devices on the Internet, or printing specified objects from an external device on a printer (page 1, lines 1 to 16, and page 11, lines 10 to 14, of the application as originally filed). In order to avoid delays in displaying the objects the apparatus of the invention obtains the objects in the order necessary for displaying (see page 3, line 15, to page 4, line 4, page 9, line 13, to page 10, line 2).

The apparatus of the invention includes an object arrangement unit. When a plurality of objects is to be displayed, the object arrangement unit determines the order of display of the objects based on position information and generates an object request list, in which the objects are arranged according to the determined display order (page 9, line 13, to page 10, line 6, original claim 1). According to the description on page 10, lines 7 to 21, after having arranged the objects in the object request list according to the display order, in some embodiments the object arrangement unit may re-arrange the list taking into account the "number of networks", "data receiving speed" and size of the objects.

Admissibility of the requests

3. The main request in the appeal proceedings corresponds to the fourth auxiliary request which the Examining Division had not admitted into the proceedings under Rule 137(3) EPC. The auxiliary requests in the appeal proceedings are based on the main request and contain only minor modifications of it.

3.1 According to Article 12(4) RPBA the Board has the power to hold inadmissible facts, evidence or requests which could have been presented or were not admitted in the first-instance proceedings.

In decision G 7/93 (OJ EPO 1994, 775), the Enlarged Board of Appeal stated that a board of appeal should only overrule the way in which a first-instance department had exercised its discretion if it came to the conclusion either that the first-instance department had not exercised its discretion in accordance with the right principles or that it had exercised its discretion in an unreasonable way (reasons 2.6). Although in decision G 7/93 the context was that of reviewing the discretionary power of an examining division not to admit amendments filed at a very late stage, i.e. after a communication according to Rule 51(6) EPC 1973 (as then in force), it has been considered to apply more generally (see, for example, Case Law of the Boards of Appeal of the EPO, 8th edition 2016, IV.E.4.3.3).

In decision T 971/11 of 4 March 2016 (reasons 1.3) the responsible board was of the opinion that "a document which would have been admitted into appeal proceedings if it had been filed for the first time at the outset of those proceedings should not [...] be held

inadmissible for the sole reason that it was already filed before the department of first instance (and not admitted)". The board found that a filing made with the statement of grounds of appeal should not be considered inadmissible if it was an appropriate and immediate reaction to developments in the previous proceedings and to the non-admission. The appellant should be given the opportunity to fill the gaps in its arguments by presenting further submissions on appeal. The board had to establish whether those submissions were admissible; by doing so it would not be re-exercising the discretion of the department of first instance based on the case as it was presented then. Rather, the board could be confronted with additional facts and different circumstances. The board had to exercise its discretion under Article 12(4) RPBA independently, giving due consideration to the appellant's additional submissions (see T 971/11, reasons 1.2).

Although decision T 971/11 concerned the admission of documents in opposition, similar considerations apply with respect to the question of whether sets of claims filed with the grounds of appeal which have not been admitted in the first-instance proceedings should be admitted into the appeal proceedings. This is all the more so in *ex-parte* proceedings, in which issues of equal treatment of adverse parties do not arise.

- 3.2 In the present case, there is no need to examine whether the Examining Division correctly exercised its discretion in not admitting the then fourth auxiliary request filed at a late stage of the first instance proceedings, since in the exercise of its own discretion under Article 12(4) RPBA the Board admits all the appellant's requests, including the main

request, into the proceedings. The reasons for admitting are as follows:

All these requests were submitted with the grounds of appeal, i.e. at an early stage of the appeal proceedings. They are not fundamentally different from the originally filed claims and diverge from each other only to a small extent. The higher-ranking requests submitted before the Examining Division are not maintained. The new set of requests constitutes a reasonable and streamlined attempt of the appellant to obtain a decision on the patentability of that subject-matter which it considers to be the core of the invention.

Main request

4. *Interpretation of the claim*

4.1 Claim 1 relates to a client apparatus comprising a data reception unit, an object arrangement unit, an object request unit and a display unit.

The data reception unit is defined as follows:

"a data reception unit (110) that receives [...] data including object information, comprising display position information of objects and an arrangement order, according to which the objects are intended to be displayed by the external device".

In its communication the Board was of the preliminary opinion that this feature lacked clarity because the phrase "by the external device" could be interpreted as relating either to the intention to arrange the objects according to an arrangement order or to the display of

the objects. Since it is clear from the further features of the claim that the objects are displayed by the client, not by the external device, the Board concludes that the skilled person would assume the first interpretation and understand that the claim specifies that the arrangement order reflects the "intention of the external device" with regard to the order of the objects.

- 4.2 With regard to the "arrangement order", in the grounds of appeal the appellant argued that it was the order "dictated to the client by the external device". The description on page 1, lines 5 to 16, explains that in general "objects (e.g., images, moving images, and so forth) included in data that is received through a network, such as the Internet, are displayed so that object information, which includes object names and storage paths of objects, is extracted from the received data, and objects intended to be displayed are requested in the order of their arrangement in the extracted object information". Furthermore, that object information is usually "composed of a document prepared through a markup language, and specified objects are requested in the order of their arrangement in the object information composed of the markup language". On page 2, lines 22 to 25, the description explains, with respect to the acknowledged prior-art web client, that the object request unit generates an object request list in the arrangement order of the objects in the analysed object information, and transmits the generated object request list to the Internet server, which then transmits the objects to the client according to the transmitted object request list.

The "intention of the external device" or "arrangement order" therefore corresponds to the order according to

which the (references to the) objects appear, i.e. are arranged, in the object information.

- 4.3 The appellant argued that the display order was "the order of displaying the objects to be displayed", and that requesting the objects in that order had the effect that objects which were to be displayed/printed first were loaded first.

The characterising part of claim 1 of the main request specifies that "the object arrangement unit updates the generated object request list according to a display order of the objects in the object information", the display order being "determined by the object arrangement unit from the display position information".

According to the paragraph bridging pages 9 and 10, that is done taking into account that "the display of the specified web page starts from the upper side of the display screen". In the Board's view, this means that the display order of images reflects the order of the images (as they are displayed) on the screen, the position of the images being given by the display position information. Similarly, with regard to the printer embodiment, the display order is the "order of the printed objects", and the objects are requested in that order to "improve the printing speed" (page 11, lines 10 to 14).

- 4.4 As an example, one may assume that the client device displayed web pages starting from the upper side and received the markup-language code for a web page shown on Figure 3. This data includes two markup-language elements 210 and 220 which constitute object information regarding two images, "ts_mail.gif" and

"daum.gif" respectively. The arrangement order of the two objects is the order of their appearance in the code, i.e. ts_mail.gif (210), daum.gif (220), independently of whether the data also includes display position information according to which the image ts_mail.gif (210) is to be displayed before/above or after/below the image daum.gif (220).

- 4.5 The Board is aware that in some embodiments described in the application, as mentioned under point 2 above, the object arrangement unit may arrange the objects in the object request list according to other criteria, for example, the "number of networks", the "data receiving speed", or the relative sizes of the objects (page 10, lines 7 to 13). However, claim 1 does not mention those criteria. Furthermore, the passages describing the function of the object arrangement unit explain that it "can update the object request list according to position information of the objects", i.e. according to the display order (page 9, line 23 to page 10, line 4, page 12, lines 13 to 23), and that "after it arranges the objects [...] according to the display order [...] the object arrangement unit 140 may rearrange the objects according to the number of networks and the data receiving speed" (page 10, lines 7 to 9, underlining added) or re-update/rearrange two consecutive objects so that the object with the smaller size precedes that with the larger size (page 10, lines 10 to 21, page 12, line 24 to page 13, line 3). It is therefore clear that the display order determined on the basis of the position information solely reflects the order of displaying the objects and is unrelated to the other criteria.

5. *Inventive step*

5.1 Web client devices, such as a computer, a personal digital assistant (PDA) or a smartphone connected to the Internet and equipped with a World Wide Web (web) browser, were notoriously known at the date of priority of the present application in the year 2006. Such a web client device constitutes a "client apparatus for displaying objects from an external device according to a request order" as recited in claim 1 of the main request.

The "related art object display device 10" described on page 2, line 7, to page 3, line 6, and depicted in Figure 1 of the present application is described as "a client that accesses an Internet server" for receiving data such as web pages including objects (page 2, lines 15 to 18) and, as the Board explained in its communication, is such a well-known web client device.

In its preliminary opinion, the Board considered the well-known web client device to constitute acknowledged prior art and to be an adequate starting point for assessing inventive step of the claimed invention. This has not been contested by the appellant.

5.2 It is generally known, and it follows from its well-known functionality of retrieving data from the Internet such as web pages including links to multimedia objects stored in other devices, that such a prior-art well-known web client includes a data reception unit to receive data including object information, an object request unit and a display unit, such as those recited in claim 1 of the main request. This is also described in the application with regard to the acknowledged prior art on page 2, line 7, to

page 3, line 6, of the application as originally filed (see also Figure 1). In some web pages the object information, e.g. coded in a markup language, includes display position information of the objects and an arrangement order (see also page 2, lines 15 to 25, of the description).

Additionally, such a prior-art well-known web client device determines, from the object information in a web page, the plurality of objects to be retrieved, for example images or videos, and generates an object request. It therefore also includes a unit corresponding to the object arrangement unit specified in the claim. The objects are typically requested in a list according to the arrangement order in the object information. This is also described in the application with respect to the acknowledged prior-art client (see page 2, lines 9 to 14 and 19 to 25, Figure 1).

- 5.3 The subject-matter of claim 1 of the main request therefore differs from the prior-art well-known web client device in that
- the object arrangement unit determines a display order from the display position information in the object information and updates the generated object request list according to that display order of the objects.

The distinguishing feature is the characterising feature of the claim, considered by the appellant as the feature distinguishing the invention from the prior art (see, in particular, the description, page 3, lines 3 to 6, and the grounds of appeal, page 2, third full paragraph).

5.4 In the appellant's opinion, the problem solved by the distinguishing feature was "how to improve the browsing/printing speed for a user".

The Board notes that that problem is stated in the presumption that the objects are to be displayed/printed in an order based on their position information, e.g. "from the upper side" (see paragraph bridging pages 9 and 10 of the application). This can be seen as either a well-known hardware prerequisite of e.g. the printer or the display screen, or a non-technical requirement e.g. regarding how a web page should be presented to the user. In either case, the skilled person would be aware of it.

Even accepting that presumption, the Board finds the problem suggested by the appellant too general because "browsing/printing" broadly refers to the activities of a user browsing in the web or printing documents. In the Board's view, the distinguishing feature instead solves the problem of

- reducing the latency for displaying/printing the objects.

The Board notes that this problem is formulated on the further assumptions that according to the claimed solution the display unit displays the received objects in the order of the list (as recited in the claim) and that it starts displaying each received object as soon as possible without waiting for all the objects to be received before starting to display them. Although the validity of the latter assumption is questionable with regard to claim 1 of the main request, the Board accepts it for the sake of argument.

5.5 It is common sense that, for reasons of processing efficiency, it is preferable to obtain the input needed for the individual tasks of a series of tasks to be performed in the order needed for execution of the series of tasks. The Board also finds that it is standard practice in computer systems to improve the processing of tasks in that manner.

It follows that the skilled person confronted with the problem of speeding up the display of a web page containing objects such as images to be downloaded from an external device would immediately consider obtaining the objects in the order of display.

This is especially the case since the idea of requesting and obtaining objects from an external device in a particular order at a client web device was known at the date of priority of the present application. In particular, as explained in the appealed decision, document D1 discloses techniques for displaying web pages with multiple objects at a client device. The solutions of document D1 use an MGET request for retrieving multiple objects in a specified order for the purpose of controlling the subsequent display of the plurality of in-line objects of a web page (see page 19, left column, upper eight lines, section 4.3.2 and Figure 9).

It would hence be obvious for the skilled person to modify the object arrangement unit of the prior-art well-known web client device to generate the object request list according to the display order instead of the arrangement order and, using known solutions (e.g. that of document D1), obtain the objects from the external device in that order. The Board notes that the claim does not specify how the objects are obtained

from the external device in a particular order, so that no distinction can be established in that regard.

The determination of the display order from the display position information follows immediately from the prerequisite or non-technical requirement mentioned in the preceding point.

In the grounds of appeal the appellant argued that the claimed invention was inventive over the client device of document D1, in which the object order in the object request list was determined by the user (which the Board assumes to be e.g. the designer of the web page), not by the client device. Document D1 taught away from the solution of the present invention. However, the Board finds that those arguments are no longer relevant because the above assessment of inventive step is not based on document D1 as closest prior art. Document D1 is used mainly to illustrate that it was known from the state of the art to request and subsequently obtain a list of objects to display in a particular order by a web client device. The appellant did not reply to the Board's preliminary opinion according to which the invention did not seem inventive over the well-known web client device.

- 5.6 From the above reasoning, the Board concludes that the subject-matter of claim 1 of the main request does not involve an inventive step (Articles 52(1) and 56 EPC).

Auxiliary requests

6. Claim 1 of each of the auxiliary requests differs only marginally from claim 1 of higher-ranking requests.

In particular, the following minor amendments of features of the main request were carried out:

- (a) "according to which the objects are intended to be displayed by the external device" of the main request was amended to "according to which the objects are intended by the external device to be displayed" in each of the four auxiliary requests (see sections VIII to XI above);
- (b) "such as a PDA or a printer" was amended to "being a PDA or a printer" in the second and fourth auxiliary requests (see sections IX and XI);
- (c) "the object arrangement unit (140) updates the generated object request list according to a display order of the objects in the object information [...]" was amended to "the object arrangement unit (140) updates the generated object request list according to a display order of the objects corresponding to the object information [...]" in the third and fourth auxiliary requests (see sections X and XI).

7. *Inventive step*

- 7.1 Amendments (a) and (c) were introduced to clarify features and do not change the claimed subject-matter with regard to claim 1 of the main request as interpreted by the Board.
- 7.2 Amendment (b) simply limits the client device to a PDA or a printer. As the Board mentioned in its communication and under point 5.1 above, PDA client devices were well known before the priority date of the present application. This has not been contested by the appellant.

7.3 Consequently, the inventive-step reasoning given under point 5 above with respect to claim 1 of the main request equally applies to the subject-matter of claim 1 of each of the auxiliary requests.

7.4 The first to fourth auxiliary requests therefore do not fulfil the requirements of Article 56 EPC either.

Conclusion

8. Since none of the requests on file is allowable, the appeal is to be dismissed.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:



I. Aperribay

R. Moufang

Decision electronically authenticated