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**Datasheet for the decision
of 4 April 2016**

Case Number: T 2409/12 - 3.5.05

Application Number: 05754248.2

Publication Number: 1756702

IPC: G06F3/14

Language of the proceedings: EN

Title of invention:

SYSTEMS AND METHODS FOR TRACKING SCREEN UPDATES

Applicant:

Computer Associates Think, Inc.

Headword:

TRACKING SCREEN UPDATES/COMPUTER ASSOCIATES

Relevant legal provisions:

EPC 1973 Art. 84

EPC Art. 123(2)

Keyword:

Amendments of application

Amendments - added subject-matter (no)

Claims - clarity after amendment (yes)

Remittal to the department of first instance - (yes)

Decisions cited:

Catchword:



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Case Number: T 2409/12 - 3.5.05

D E C I S I O N
of Technical Board of Appeal 3.5.05
of 4 April 2016

Appellant: Computer Associates Think, Inc.
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Decision under appeal: **Decision of the Examining Division of the European Patent Office posted on 6 July 2012 refusing European patent application No. 05754248.2 pursuant to Article 97(2) EPC.**

Composition of the Board:

Chair A. Ritzka
Members: M. Höhn
G. Weiss

Summary of Facts and Submissions

I. This appeal is against the decision of the examining division, posted on 6 July 2012 refusing European patent application No. 05754248.2 pursuant to Article 97(2) EPC on the grounds of Articles 84 EPC 1973 and 123(2) EPC.

The following document was referred to in the decision under appeal:

D1: US5913920 A1.

II. The notice of appeal was received on 11 September 2012. The appeal fee was paid on the same day. The statement setting out the grounds of appeal was received on 15 November 2012. The appellant requested that the appealed decision be set aside and that a patent be granted on the basis of the main request or auxiliary request, both filed with the statement setting out the grounds of appeal. Oral proceedings were requested on an auxiliary basis.

III. With a communication dated 3 March 2016 the board summoned the appellant to oral proceedings on 19 May 2016. In an annex to the summons the board expressed its preliminary opinion that the main request did not fulfil the requirements of Article 84 EPC 1973 and of Article 123(2) EPC. The auxiliary request was considered to overcome the objections in the decision under appeal.

IV. By letter dated 15 March 2016 the appellant withdrew its main request and also withdrew its request for oral proceedings.

V. Claim 1 according to the auxiliary request (sole request) reads:

"1. A method of capturing a screen, comprising:
monitoring screen changes on a first display system (22) and inserting (S30) screen change information into a queue (26);
reading (S32) the screen change information from the queue (26); and
maintaining a dirty region (34), said dirty region being a data structure representing areas of the screen which have been changed by drawing operations, characterised in that the information inserted into the queue (26) comprises serialised data packets, the screen change information includes a first type of screen change information comprising packets describing areas of the screen that have been modified and a second type of screen change information comprising packets containing instructions for reproducing drawing operations; and wherein areas affected by the first type of screen change information are added to the dirty region (34) and areas affected by the second type of screen change information are subtracted from the dirty region (34)."

Reasons for the Decision

1. Admissibility

The appeal complies with Articles 106 to 108 EPC (see Facts and Submissions, point II above). It is therefore admissible.

Auxiliary request (sole request)

2. Article 123(2) EPC

2.1 With regard to the characterising portion of claim 1, the present application discloses *inter alia*:

"For example, packets can include packets describing areas of the screen that have been modified (Dirty packets), simple drawing primitives (e. g. solid rectangle fills) (Obliterating packets), Screen to screen copy operations (Copy packets) and other miscellaneous packets (e.g. mouse cursor messages, etc.)" (see page 10, lines 24 to 27) and

"Areas of the Dirty region affected by Dirty packets add to the Dirty region, while those areas of the Dirty region affected by Obliterating packets subtract from the Dirty region" (see page 11, lines 10 to 12).

2.2 From these passages it is evident that for the present invention the first and second operations have to be different types of operations for which only a dedicated disclosure exists. Screen change information to be added to a dirty region are areas of the screen that have been modified (Dirty packets), whereas screen change information to be subtracted are simple drawing primitives (Obliterating packets). This difference is considered to be essential for the claimed invention.

2.3 Claim 1 as amended no longer covers any kind of operation affecting the display system including a change of resolution invoked by a user or the selection of a different gamma curve (either as first or second operation; see point 12.2 of the decision under

appeal), but specifies that the first and second operations are different.

2.4 The amendments made to claims 1, 8 and 15 are supported by the passages cited in point 2.1 above, by the passage "This region (known as dirty region) is read periodically from the screen as bitmap images, which are serialized into the data stream." on page 4, lines 11 to 13 and by original claims 2 to 4, 12 to 14 and 22 to 24.

2.5 The objections under Article 123(2) EPC against the independent claims according to the main request were therefore overcome.

3. Clarity - Article 84 EPC 1973

3.1 By specifying a dirty region being a data structure representing areas of the screen which have been changed by drawing operations, claims 1, 8 and 15 sufficiently define what the skilled reader would understand from the expression "dirty region" in the context of the present invention.

3.2 By deleting the expressions "first operation" and "second operation" and further specifying that a first type of screen change information comprising packets describing areas of the screen that have been modified and a second type of screen change information comprising packets containing instructions for reproducing drawing operations, claims 1, 8 and 15 clearly define what kind of operations are performed when changing the screen, and that they are different.

3.3 By specifying that information inserted into the queue comprises serialized information in the form of

serialized data packets, the objection of lack of clarity raised in the annex to the summons with respect to the then main request (see point 5.4) is regarded as overcome.

3.4 By replacing the expression "copy packets" objected to in point 12.6 of the decision under appeal by a third type of information comprising packets defining operations in which data is copied from one area of the screen to another area of the screen, the corresponding objection is considered overcome. By introducing a third type of information also in the form of data packets, the skilled person would conclude that those data packets are handled in the same way as serialised data packets in the queue. Claims 2 and 9 of this request are therefore considered to be sufficiently clear.

3.5 Present dependent claims 3 and 10 are no longer unclear in contrast to the reasoning in the decision under appeal (see point 12.7). It has been rendered clear what is to be understood by a "marker packet" from the wording of the claim. The same appears to be true for a "bitmap packet" the function of which is defined in the claim, i.e. describing screen areas for a corresponding area of the screen. The board agrees with the appellant that the term "corresponding" refers to the expression "smaller areas". It furthermore is clear that the term "describing" has to be understood in such a way that the bitmap packet is a digital representation in form of a serialised data packet of an area of the screen. The skilled reader is expected to understand how this can be realised in view of the other types of information represented in serialised data packets as specified in the preceding claims.

- 3.6 As far as the objection against the feature "... a predetermined event" is concerned, the board considers this feature to be broad, but not unclear. The appellant is correct in arguing that original claims 8 and 18 specify "the predetermined event comprises at least one of completion of scanning though the dirty region and a predetermined amount of information having been requested." Because of the expression "at least", the invention is not limited to the concrete specified events, but can be formulated as a functional feature.
- 3.7 The set of claims according to this request therefore fulfils the requirements of Article 84 EPC 1973.
- 3.8 Thus, the auxiliary request overcomes the objections in the decision under appeal.
4. Contrary to the appellant's view, the fact that the decision under appeal is silent on the requirements under Article 52 EPC does not lead to the conclusion that those requirements are fulfilled. In fact, objections were raised under Article 52 EPC during the first instance proceedings on the basis of prior art publication D1. The assessment of novelty and inventive step has not been properly concluded and is still open for substantive examination.
5. Exercising its discretion under Article 111(1) EPC, the board therefore remits the case to the department of first instance for further examination on the basis of the auxiliary request.

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 for further examination on the basis of the auxiliary request.

The Registrar:

The Chair:



L. Malécot-Grob

A. Ritzka

Decision electronically authenticated