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**Datasheet for the decision
of 22 January 2016**

Case Number: T 0675/13 - 3.5.05

Application Number: 08159307.1

Publication Number: 2079015

IPC: G06F3/14, G09G5/36

Language of the proceedings: EN

Title of invention:

Data processing unit with multi-graphic controller and method for processing data using the same

Applicant:

LG Electronics Inc.

Headword:

Adaptive graphic controllers/LG

Relevant legal provisions:

EPC 1973 Art. 113(2)
RPBA Art. 15(3), 13(1), 12(4)

Keyword:

Oral proceedings - non-attendance of the party
Admission of new claims filed prior to oral proceedings -
(no): "shift of focus" and "forum shopping"
Claims submitted or agreed by appellant - (no)

Decisions cited:

R 0001/13, T 0980/08, T 1940/11, T 2017/14



**Beschwerdekammern
Boards of Appeal
Chambres de recours**

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Case Number: T 0675/13 - 3.5.05

D E C I S I O N
of Technical Board of Appeal 3.5.05
of 22 January 2016

Appellant: LG Electronics Inc.
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Representative: Vossius & Partner
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Decision under appeal: **Decision of the Examining Division of the
European Patent Office posted on 20 July 2012
refusing European patent application
No. 08159307.1 pursuant to Article 97(2) EPC.**

Composition of the Board:

Chair A. Ritzka
Members: K. Bengi-Akyuerek
G. Weiss

Summary of Facts and Submissions

I. The appeal is against the decision of the examining division to refuse the present European patent application on the grounds of added subject-matter (Article 123(2) EPC) in respect of the claims of a main request and lack of novelty (Article 54 EPC) with respect to an auxiliary request, having regard to the disclosure of

D1: WO-A-2007/140404.

II. With the statement setting out the grounds of appeal, the appellant submitted as its main request the claims of the main request underlying the appealed decision, and an amended set of claims as an auxiliary request. It requested that the decision of the examining division be set aside and that a patent be granted on the basis of the main request or the auxiliary request. In addition, oral proceedings were requested as an auxiliary measure.

Claim 1 of the **main request** had the following wording:

"A data processing apparatus, comprising:
a first graphic controller configured to process a first image, the first image being one of a first still, moving image;
a second graphic controller having a processing speed faster than a processing speed of the first graphic controller, the second graphic controller configured to process a second image, the second image being one of a second still, moving and three dimensional (3D) image,
wherein the first graphic controller is integrated into a chipset adapted to perform at least one function

in addition to processing the first image, and

wherein the second graphic controller is not integrated into the chipset; and

a controller operatively connected to the first and second graphic controllers and configured to

determine whether an executable application has been previously assigned to the second graphic controller or has been previously assigned to the first graphic controller, and

change the second graphic controller from an inactive state to an enabled state to thereby process or display a graphic image associated with the executable application when the executable application has been determined to have been assigned to the second graphic controller,

wherein if the second graphic controller is changed from the inactive state to the enabled state, the first graphic controller and the second graphic controller are maintained in an enabled state."

Claim 1 of the **auxiliary request** comprised all the features of claim 1 of the main request, while adding the following clauses:

"wherein, the first memory is coupled with the first graphic controller, and the second memory is included in the second graphic controller"

and

"wherein if the executable application is terminated, the second graphic controller is changed from the enabled state to the inactive state, and data associated with the second graphic controller and stored in the second graphic controller is transmitted to the first memory

during a window of the time which starts a predetermined time before the second graphic controller changes to the inactive state and which ends when the second graphic controller changes to the inactive state."

- III. In a communication under Rule 100(2) EPC, the board gave its preliminary opinion on the appeal. In particular, it raised objections under Article 123(2) EPC and made some remarks on the question of novelty and inventive step in view of D1.
- IV. With a letter of reply, the appellant submitted an amended set of claims as its sole claim request, replacing the former main and auxiliary requests on file, and reiterated its request for oral proceedings as an auxiliary measure.
- V. In an annex to the summons to oral proceedings pursuant to Article 15(1) RPBA, the board indicated that it was minded not to admit the sole claim request on file into the appeal proceedings under Article 13(1) RPBA, since it seemed to shift the focus from an embodiment of the present invention, as covered by the main and auxiliary requests submitted with the statement setting out the grounds of appeal, to another embodiment as already encompassed by a set of claims filed and then abandoned in the first-instance proceedings. It also raised objections under Articles 123(2) EPC and 56 EPC 1973 with respect to that sole request.
- VI. By letter of reply dated 14 December 2015, the appellant submitted an amended set of claims as its sole request, replacing the former claim request on file. Moreover, it informed the board that it was withdrawing its request for oral proceedings and that

it would not be attending those scheduled.

VII. Oral proceedings were held on 22 January 2016 in the absence of the appellant. The board established from the file that the appellant's final request was that the decision under appeal be set aside and that a patent be granted on the basis of claims 1 to 18 filed with letter dated 14 December 2015. After due deliberation on the basis of that final request and the written submissions, the decision of the board was announced at the end of the oral proceedings.

VIII. Claim 1 of the **sole request on file** reads as follows:

"A data processing apparatus, comprising:

a first memory;

a second memory;

a first graphic controller configured to process a first image, the first image being one of a first still, moving image;

a second graphic controller having a processing speed faster than a processing speed of the first graphic controller, the second graphic controller configured to process a second image, the second image being one of a second still, moving and three dimensional (3D) image,

wherein the first graphic controller is integrated into a chipset adapted to perform at least one function in addition to processing the first image,

wherein the second graphic controller is not integrated into the chipset, and

wherein the first memory is coupled with the first graphic controller and the second memory is included in the second graphic controller; and

a controller operatively connected to the first and second graphic controllers and configured to:

operate only the first graphic controller when the amount of image data to be processed is lower than a first amount of image data, while keeping the second graphic controller in the Link power state L0s or L1;

change the system state into a state of only operating the second graphic controller when the amount of image data to be processed increases and exceeds the first amount of image data, and transit the first graphic controller into the Link power state L0s or L1;

change the system state into a state of operating the first graphic controller and the second graphic controller together when the amount of image data to be processed increases and exceeds a second amount of image data;

wherein the amount of image data to be processed is determined by one of measuring the number of bits of data, the required processing speed of the image data, and the number and type of the applications to be executed."

Reasons for the Decision

1. *Non-attendance of the appellant at oral proceedings*
 - 1.1 The appellant decided not to attend the scheduled oral proceedings before the board and withdrew its request for them (cf. point VI above). Pursuant to Article 15(3) RPBA, the board is not "obliged to delay any step in the proceedings, including its decision, by reason only of the absence at the oral proceedings of any party duly summoned who may then be treated as relying only on its written case."
 - 1.2 In the present case, the appellant filed an amended set of claims and provided comments in support of its

patentability in response to the objections raised in the board's communication under Article 15(1) RPBA. The board considered the new claim request and noticed that claim 1 - though appearing to overcome the objections under Article 123(2) EPC raised in the board's communication - still gave rise to admissibility concerns and further objections under Article 123(2) EPC (cf. points 2.3 and 2.4 below). So, in the exercise of its discretion conferred by Article 15(3) RPBA, the board took a decision at the end of the oral proceedings, in the absence of the appellant (Article 15(6) RPBA).

2. *Admission of latest claims into appeal proceedings*

2.1 The claims now on file were filed for the first time with the appellant's letter of reply to the summons to oral proceedings before the board. The admissibility of requests filed after the appellant has filed its statement setting out the grounds of appeal, which "shall contain a party's complete case" (cf. Article 12(2) RPBA), and after a board has arranged oral proceedings is governed by Article 13(1) RPBA.

By virtue of Article 13(1) RPBA, a board's discretion in admitting any amendment to a party's case after it has filed its statement setting out the grounds of appeal "shall be exercised in view of inter alia the complexity of the new subject-matter submitted, the current state of the proceedings and the need for procedural economy". The board notes that the list of criteria set out in Article 13(1) RPBA is not exhaustive ("in view of inter alia"). Thus, other well-established criteria relevant to the admissibility issue may also be taken into account, such as the question whether a claim request clearly overcomes the

outstanding objections (see e.g. R 1/13 of 17 June 2013, reasons 16.2). Another criterion used by several Boards of Appeal is whether a claim request could have been presented in the first-instance proceedings, by analogy with the criterion first mentioned in Article 12(4) RPBA, albeit the latter applies for sets of claims submitted with the statement setting out the grounds of appeal.

2.2 In the case at hand, the claims on file are obviously related to the embodiment based on Figure 2 of the present application and concerned with adaptively controlling the *number* and type of graphic controllers in consideration of the amount of image data to be processed (cf. application as filed, page 8, line 8 to page 11, line 4; page 16, line 10 to page 17, line 9 in conjunction with Figure 2). Similar claims relating to the same embodiment had already been filed by the then applicant and were objected to by the examining division under Article 56 EPC in the first-instance proceedings (see applicant's letter dated 14 May 2009 and the examining division's communications dated 13 July 2010 and 14 April 2011). The then applicant, of its own volition, subsequently replaced those claims with an amended set of claims directed to an embodiment ("third embodiment") based on Figure 6 of the present invention (cf. application as filed, page 16, lines 8-9 and page 18, line 11 to page 19, line 3), concerned with selecting *one* appropriate graphic controller based on the "application type" criterion, in order to overcome those objections (cf. applicant's letter dated 16 September 2011). On the basis of that amended set of claims, the application was ultimately refused under Articles 123(2) and 54 EPC (cf. appealed decision, section 2) and was also further pursued at the start of the appeal proceedings with the statement setting out

the grounds of appeal.

- 2.3 In view of the above, the board finds that the present claim set constitutes a shift of focus as to the claimed subject-matter from the "third embodiment" of the present invention (directed to selecting a *single* graphic controller out of multiple controllers for *application-based* image processing), as covered by the main and auxiliary requests submitted with the statement setting out the grounds of appeal, to a different embodiment (directed to operating an *adaptive number* of available graphic controllers for *amount-based* image processing), as covered by present claim 1. Its admission at this procedural stage, however, would arguably have necessitated remittal to the examining division, contrary to the criterion of procedural economy as expressly mentioned in Article 13(1) RPBA (see also e.g. T 980/08 of 14 March 2012, reasons 4; T 1940/11 of 7 November 2014, reasons 4.1). Therefore, the board judges, for those reasons alone, that the present claim set cannot be admitted into the proceedings.

In addition, the embodiment which present claim 1 covers, i.e. adaptively changing the number and type of graphic controllers in consideration of the amount of image data to be processed, had already been pursued in the first-instance proceedings and was then abandoned, thus preventing that aspect of the invention from being decided on its merits by the examining division. Its reinstatement would allow a kind of inadmissible "forum shopping" (see e.g. T 2017/14 of 6 March 2015, reasons 3.3). The board concludes from the foregoing that claims directed to the present embodiment not only *could* but also *should* have been prosecuted in the examination proceedings (Article 12(4) RPBA), so that

they would have been subject to an appealable decision.

2.4 Furthermore, the added feature of present claim 1, i.e. "operate only the first graphic controller when the amount of image data to be processed is lower than a first amount of image data, while keeping the second graphic controller in the Link power state L0s or L1" (emphasis added) gives rise to additional objections under Article 123(2) EPC, since the application as originally filed teaches that the power state of one of the two graphic controllers is transited to (rather than *kept at*) the power states L0s or L1 in the event that the other graphic controller is operated (see e.g. page 12, lines 3-7). Thus, claim 1 is not clearly allowable.

2.5 Hence, in the exercise of its discretionary power under Article 13(1) RPBA taken alone or in combination with the criterion of Article 12(4) RPBA, the board declined to admit the sole set of claims on file into the appeal proceedings.

3. As there is no other set of claims submitted or agreed by the appellant within the meaning of Article 113(2) EPC 1973, the present application has consequently no claims in the sense of Article 78(1)(c) EPC 1973. The appeal must therefore be dismissed.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chair:



L. Malécot-Grob

A. Ritzka

Decision electronically authenticated