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Datasheet for the decision of 20 January 2021

Case Number: T 1581/16 - 3.4.03

Application Number: 04810469.9

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IPC: G06Q10/00, G07F17/16, G07F9/02

Language of the proceedings: EN

Title of invention:
DISTRIBUTED SYSTEM AND METHOD FOR COLOR COORDINATION

Applicant:
Behr Process Corporation

Relevant legal provisions:
EPC Art. 123(2)
EPC 1973 Art. 56

Keyword:
Amendments - added subject-matter (yes)
Inventive step - (no)

Decisions cited:

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Case Number: T 1581/16 - 3.4.03

D E C I S I O N
of Technical Board of Appeal 3.4.03
of 20 January 2021

Appellant: (Applicant)	Behr Process Corporation 3400 W. Segerstrom Avenue Santa Ana, CA 92704 (US)
Representative:	Viering, Jentschura & Partner mbB Patent- und Rechtsanwälte Am Brauhaus 8 01099 Dresden (DE)
Decision under appeal:	**Decision of the Examining Division of the European Patent Office posted on 29 January 2016 refusing European patent application No. 04810469.9 pursuant to Article 97(2) EPC.**

Composition of the Board:

Chairman	G. Eliasson
Members:	M. Ley
	C. Almberg

Summary of Facts and Submissions

I. The appeal is against the decision of the examining division to refuse European patent application No. EP 04 810 469.9.

II. The examining division decided that the subject-matter of all claims of the main request, and of the first and second auxiliary requests did not involve an inventive step in the sense of Article 56 EPC 1973 in view of document D4 (US 6 563 510).

III. The appellant requests that the decision under appeal be set aside and a patent be granted based on either the main request, the first or second auxiliary request, all filed with letter dated 6 November 2015, or the third auxiliary request filed with the statement of grounds of appeal. Alternatively, a request for a telephone call as "another auxiliary request" under certain condition was formulated in the statement of grounds of appeal (see point 2.5). As an auxiliary request, the appellant requests oral proceedings.

IV. The Board issued a summons to oral proceedings scheduled to take place on 10 November 2020.

In a communication pursuant to Article 15(1) RPBA 2020, the Board gave its provisional opinion that the independent claims of the main request, of the first auxiliary request and of the second auxiliary request did not meet the requirements of Article 123(2) EPC and Article 84 EPC 1973, and that their subject-matter lacked an inventive step (Article 56 EPC 1973) in view of D4.

With respect to the third auxiliary request, the Board expressed its doubts whether claims 1 and 13 did comply with Article 123(2) EPC and was of the provisional opinion that the subject-matter of claim 1 was known from D4.

V. In a short letter dated 2 October 2020, the appellant informed the Board that it would not attend the oral proceedings. No further submissions were made.

VI. The Board cancelled the oral proceedings.

VII. Claim 1 according to the main request has the following wording (labelling (a) to (d3) added by the Board):

A system comprising:
(a) a remote terminal; and
(b) a server communicatively coupled to the remote terminal, the server configured
(b1) to receive a starting color from the remote terminal,
(b2) determine one or more complementary colors for the starting color, and
(b3) provide one or more color combinations to the remote terminal, each color combination including the starting color and one or more of the complementary colors,
(c) wherein the remote terminal displays one or more of the color combinations and stores a selected color combination in the server;
and
(d) wherein the server and terminal interact to enable fine-tuning a characteristic of a first of said colors
(d1) by accessing a first color data structure associated with the first color, the first color data structure being stored on a computer readable medium

and including a unique identifier for the first color data structure, a first plurality of color metrics defining the first color, and a plurality of references to other data structures representing neighboring colors in color space, each neighboring color having at least one color characteristic which differs from those of the first color,
(d2) by accessing a second color data structure specified by one of the references from the plurality of references to other data structures, and
(d3) by determining a second color, said second color being specified by a second plurality of color metrics defining the second color in the second color data structure.

Claim 1 of the first auxiliary request differs from claim 1 of the main request only in that it is specified that at least one of a tint and a shade of the first color is fined tuned (feature (d)).

Claim 1 according to the second auxiliary request comprises features (a), (b), (b1), (b2), (b3) and (c), wherein the fine-tuning operation is defined by the following features (the differences with respect to claim 1 of the main request being emphasised by the Board):

(d') wherein the server and terminal interact to enable fine-tuning ~~a characteristic~~ a shade of a first of said colors
(d0) by receiving input for fine-tuning the shade of the first color;
(d1') by accessing a database of color data structures stored on the server and including a first color data structure associated with the first color, the first color data structure ~~being stored on a computer~~

~~readable medium and~~ including a unique identifier for the first color data structure, a first plurality of color metrics defining the first color, and a plurality of references to other data structures representing neighboring colors in color space, including a first reference to a second color data structure for a next darker color in the database and a second reference to a third color data structure for a next lighter color in the database, each neighboring color having at least one color characteristic which differs from those of the first color;

(d2') by accessing ~~a~~ one of the second color data structure specified by ~~one of the references from the plurality of references to other data structures~~ the first reference and the third color data structure specified by the second reference in response to the received input for fine tuning the shade of the first color, and

(d3') by determining a second color, said second color being specified by a second plurality of color metrics defining the second color in the accessed one of the second color data structure and the third color data structure.

Claim 1 according to the third auxiliary request has the following wording:

A device comprising:
a display device (404);
an input device; and
a processing unit (220) communicatively coupled to the display device (404) and the input device, the processing unit (220) configured to
receive a starting color (908, 1004, 2004) via the input device,

determine one or more complementary colors for the starting color (908, 1004,2004),
provide one or more color combinations (1010, 2012) via the display device (404), each color combination (1010, 2012) including the starting color (908, 1004, 2004) and one or more of the complementary colors, and
fine-tune the starting color (908,1004, 2004) to achieve desired second color, wherein the one or more complementary colors are complementary colors of the second color, the color data structures for each color including at least:
i) a field value (L) describing the luminosity of the color;
ii) at least 2 field values (A and B) identifying the color coordinates for particular color in a three-dimensional color model,
iii) a field value (C) identifying the color's chroma,
iv) a field value (H) identifying the color's hue;
and the second color is determined by at least one of:
a) a next darker or lighter color key where the field value (C) identifying the color's chroma and the field value (H) identifying the color's hue are the same as the first color but the field value (L) describing the luminosity is greater or less than that of the first color,
b) a next chroma or previous chroma color key where the field value (L) describing the luminosity of the color and the field value (H) identifying the color's hue are the same as of the first color but the field value (C) identifying the color's chroma is less or greater or than that of the first color, and
c) a next hue or previous hue color key where the field value (L) describing the luminosity of the color and the field value (C) identifying the color's chroma are the same as of the first color but the field value (H)

identifying the color's hue is greater or less than that of the first color.

The wording of the other independent claims is not relevant for the present decision.

VIII. The appellant's relevant arguments can be summarized as follows:

(a) As a basis for the amendments made to claim 1 according to the requests underlying the decision and, in particular, for features (d), (d1) to (d3), the appellant indicated page 46, paragraph [0155] to page 50, paragraph [0162], table 1 bridging pages 48 to 50 as well as paragraphs [0062], [0113] and figure 10, see the statement of grounds of appeal, page 3, last paragraph.

With respect to claim 1 of the third auxiliary request, the appellant did not indicate any basis in the application as originally filed.

(b) The appellant argued that D4 did not disclose features (d) and (d1) to (d3) and (c) of claim 1. The objective technical problem was to provide "a device which allows a faster and more efficient fine-tuning of the first color for a user". The appellant stated that a "more detailed fine-tuning" was achieved "by storing the colors in a data structure with references to the second color data structure" so as to achieve "the objective result of improved fine-tuning of the objective color characteristics".

Reasons for the Decision

1. The appeal is admissible.

2. Procedural issues

In preparation for the oral proceedings, the Board issued a preliminary opinion on the case raising objections against the requests under Articles 123(2)EPC, 84 EPC 1973 and 52(1) EPC in combination with Articles 54 and 56 EPC 1973.

The appellant's declaration of non-attendance at the oral proceedings is considered by the Board as equivalent to a withdrawal of its request for oral proceedings (see Case Law of the Boards of Appeal of the European Patent Office, 9th Edition, 2019, III.C. 4.3.2).

As the appellant chose not to comment on the preliminary opinion issued by the Board in preparation of the oral proceedings, the Board does not see any reason to deviate from its preliminary opinion and concludes that the case is ready for decision without oral proceedings.

3. The invention

A home painting process typically starts with color selection and this is typically the more emotional part of the process. Many consumers are concerned of making a mistake in the color selection process and then having to live with it or do it over, see paragraph [0004].

The present invention aims at helping consumers in a new painting project by providing a system comprising a remote terminal (e. g. a desktop computer) and a server communicatively coupled to the remote terminal. The server configured to receive a starting color provided by a customer at the remote terminal, for example, by providing a color's name, by using a color sample or by browsing through an "inspiration color library". The starting color can then be fine-tuned (e. g. made darker or lighter) by accessing a color data structure associated with the starting color and including *inter alia* references to other data structures representing neighboring colors in color space. The fine-tuned color is displayed on the remote terminal together with complementary colors. The terms "complement" or "complementary", such as "complementary colors", refer to a color approximately 180 degrees from a core color, such that complement plus core equals white, see paragraph [0031].

In this way, the remote terminal is configured to aid a customer in selecting a starting color (e. g. starting or desired paint color) as well as provide complementary, harmonious, and/or aesthetically pleasing corresponding colors, see paragraph [0046].

4. Main request

4.1 Added subject-matter - Article 123(2) EPC

The Board is of the opinion that claim 1 does not meet the requirements of Article 123(2) for the reasons as follows.

4.1.1 The Board understands features (d1) to (d3) such that the second color is the result of the fine-tuning of an

unspecified first color, i. e. the second color is the the "fine-tuned first color". It follows that, according to steps (d), (d1) to (d3) of claim 1, a first color is fined-tuned into a second color, and that, according to step (b2), the complementary colors are still being predetermined based on the unmodified starting color. Hence, according to features (b1) to (b3), it is the unmodified starting colour, that is displayed in a color combination with its respective "complementary colors", whereas, according to features (d), (d1) to (d3) an unspecified "first color", which possibly is different from the "starting color", is fine-tuned to obtain a "second color". A method including these operations is not disclosed in the application as originally filed.

In the Board's understanding of the method according to paragraphs [0155] to [0162], [0062], [0113], figure 10 (steps 1006, 1007 in figure 10, [0162]), the starting color is associated with a first color in a color database, the first color could be identical to the starting color or the closest matching color in the color database to the starting color (see paragraphs [0050], [0060], [0062] [0066], step 908/1004 in figure 10). The first color is fine-tuned (step 1006 in figure 10) to obtain a second color. It is the second color (i. e. the fine-tuned first color) that is used to determine "one or more complementary colors" according to feature (b2), see step 1008 in figure 10, and that is displayed by the remote terminal, see paragraph [0163].

4.1.2 According to feature (d1), only the first color data structure has these characteristics, whereas the second color data structure can be of any type. This

arrangement is not to be disclosed in the application as originally filed.

In the example of paragraphs [0155] to [0162], each of the first and second color data structures is stored on a computer readable medium and includes a unique identifier for the respective color data structure, a respective plurality of color metrics defining the respective color, and a plurality of references to other data structures representing neighboring colors in color space, each neighboring color having at least one color characteristic which differs from those of the respective color. From paragraph [0161], first sentence or from paragraph [0062], last sentence, the Board understands that all color data structures are stored in the computer readable medium and have the structure according to feature (d1). Only in this way it appears possible to perform a fine-tuning of the first color to obtain a second color and then to repeat the fine-tuning operation on this second color.

4.1.3 In the method disclosed from paragraphs [0155] to [0161], the first and second color data structures each include (see Table 1) a field value (L) describing the luminosity of the color, at least two field values (A, B) identifying the color coordinates for particular color in a three-dimensional color model, a field value (C) identifying the color's chroma, a field value (H) identifying the color's hue as the respective plurality of color metrics.

Furthermore, the first and second color data structures each include (see Table 1):
- a next darker or lighter color key where the field value (C) identifying the color's chroma and the field value (H) identifying the color's hue are the same as

the respective color but the field value (L) describing the luminosity is greater or less than that of the respective color,
- a next chroma or previous chroma color key where the field value (L) describing the luminosity of the color and the field value (H) identifying the color's hue are the same as of the respective color but the field value (C) identifying the color's chroma is less or greater or than that of the respective color and
- a next hue or previous hue color key where the field value (L) describing the luminosity of the color and the field value (C) identifying the color's chroma are the same as of the respective color but the field value (H) identifying the color's hue is greater or less than that of the first color as the plurality of references to other data structures representing neighboring colors in color space.

The Board cannot find any indication in the application as originally filed that the fine-tuning according to claim 1 could also be performed using other color data structures.

4.2 Inventive step - Article 56 EPC 1973

4.2.1 Both the examining division and the appellant considered D4 as the closest prior art. The Board sees no reasons to deviate from this choice.

4.2.2 In the wording of claim 1, D4 discloses a system comprising: a remote terminal (col. 21, lines 45 to 64, col. 22, lines 46 to 66, "home or office computer"); and
a server ("system 36", col. 21, lines 45 to 64, col. 22, lines 46 to 66) communicatively coupled to the remote terminal,

the server configured to receive a starting color from the remote terminal (col. 15, line 45 to col. 16, line 47, figure 11: steps S104, S114, S126, S134), determine one or more complementary colors for the starting color ("five-way harmony", figure 5, col. 7, line 45 to col. 8, line 4, figure 11: step S148), and
provide one or more color combinations to the remote terminal, each color combination including the starting color and one or more of the complementary colors (figures 11, 19 and 20, col. 16, lines 48 to col. 17, line 22, figure 11: step s150),
wherein the remote terminal displays one or more of the color combinations and stores a selected color combination in the server (figures 11, 19 and 20, col. 16, lines 48 to col. 17, line 22);
and
wherein the server and terminal interact to enable fine-tuning a characteristic of a first of said colors (figures 14 and 15, col. 14, line 54 to col. 15, line 13)
by accessing a first color data structure associated with the first color, the first color data structure being stored on a computer readable medium (e. g. table 3) and including a unique identifier ("CSP") for the first color data structure, a first plurality of color metrics (table 3: L, a, b, c, h) defining the first color, and ~~a plurality of references~~ one reference to other data structures representing neighboring colors in color space, each neighboring color having at least one color characteristic which differs from those of the first color (col. 13, lines 29 to 60, col. 8, line 30 to col. 9, line 24, figures 7 and 10),
by accessing a second color data structure specified by ~~one of~~ the reference~~s~~ ~~from the plurality of references~~ to other data structures, and

by determining a second color (figures 14 and 15), said second color being specified by a second plurality of color metrics defining the second color in the second color data structure.

In the method of D4, the first color can be identical to the starting color, e. g. when the user directly chooses the first color from a database (figure 11, step s104) or is determined by the server from the starting color (figure 11: steps s114, s126, s134), i. e. the starting color is "matched" (figure 11: steps s124, s132, s140) to a first color in the database. Consequently, the user's input of a starting color and the step of determining a first color are done in the same way as in the present application, see section 4.1.1 above, second paragraph. As in the present application, in D4, it is the fine-tuned first color (i. e. the second color) that is displayed together with complementary colors in the sense of feature (b3).

According to D4, col. 8, lines 30 to 45, the data base 48 contains color data structure of about 65000 colors. The color space, defined by value, i. e. luminosity L, chroma C and hue H, is divided into a plurality of "fixed non-overlapping contiguous portions 50", each of these color space portions 50 "defining as the space of all colors within a band of hues within the color space", see figure 7, col. 8, lines 58 to 62, col. 9, lines 5 to 25. All colors of the database are graphically located within one of the color space portions and the data base includes for each color represented by a point I a "linked identification" of its color space portion 50_I, see col. 13, lines 29 to 46, figure 10. In other words, in D4, the color data structure of a given first color includes a reference to its associated color space portion 50 and, thereby,

a "reference to other neighbouring colors", namely all other colors within the same color space portion 50.

In the fine-tuning of the first color, the device of D4 displays a number of second colors having substantially the same hue H, but different chroma C or different values L, see col. 14, lines 54 to 65, figure 14. The Board understands that in order to display colors of substantially the same hue (see figure 14 and figure 11, step S144, col. 16, lines 57 to 65), i. e. of the same color space portion 50, the "reference to other neighbouring colors" as defined in the previous paragraph is used. Hence, D4 discloses the step of accessing a second color data structure specified by said "reference to other data structures" in the sense of feature (d2).

4.2.3 Therefore, in the Board's view, the subject-matter of claim 1 differs from D4 only in that the first color data structure includes at least a further "reference to other data structures representing neighboring colors in color space".

The examining division held that the subject-matter of claim 1 differed from the method of D4 in that the first color data structure includes a plurality of references to other data structures representing neighboring colors in color space, each neighboring color having at least one color characteristic which differs from those of the first color and by the step of accessing a second color data structure specified by one of the references from the plurality of references to other data structures.

For the reasons given above, the Board is of the view that D4 discloses one single "reference to other data

structures representing neighboring colors in color space", but not "a plurality" so that the difference between the subject-matter of claim 1 and the teaching of D4 is even smaller than the one identified in the contested decision.

4.2.4 The appellant argued that D4 did not disclose features (d), (d1) to (d3) and (c) of claim 1. The passages indicated by the examining division did not disclose the claimed data structure.

The Board does not share the appellant's view, because the method known from D4 clearly comprises a fine-tuning step performed by accessing a first color data structure and by determining a second color specified by a second plurality of color metrics. D4 also discloses that color combinations are shown on the remote terminal (i. e. the display of the home or office computer, see figures 19 and 20) and that these color combinations are implicitly stored in the server (system 36 with database 48).

4.2.5 In the statement of grounds of appeal, the appellant argued that, according to the minutes, the examining division discredited the distinguishing features (identified under point 3. of the contested decision, see section 4.2.3 above) by "alleging that they do not serve a technical purpose". The appellant argued that the problem to be solved by the distinguishing features was to obtain a higher processing speed of a computer, which was related to a technical effect.

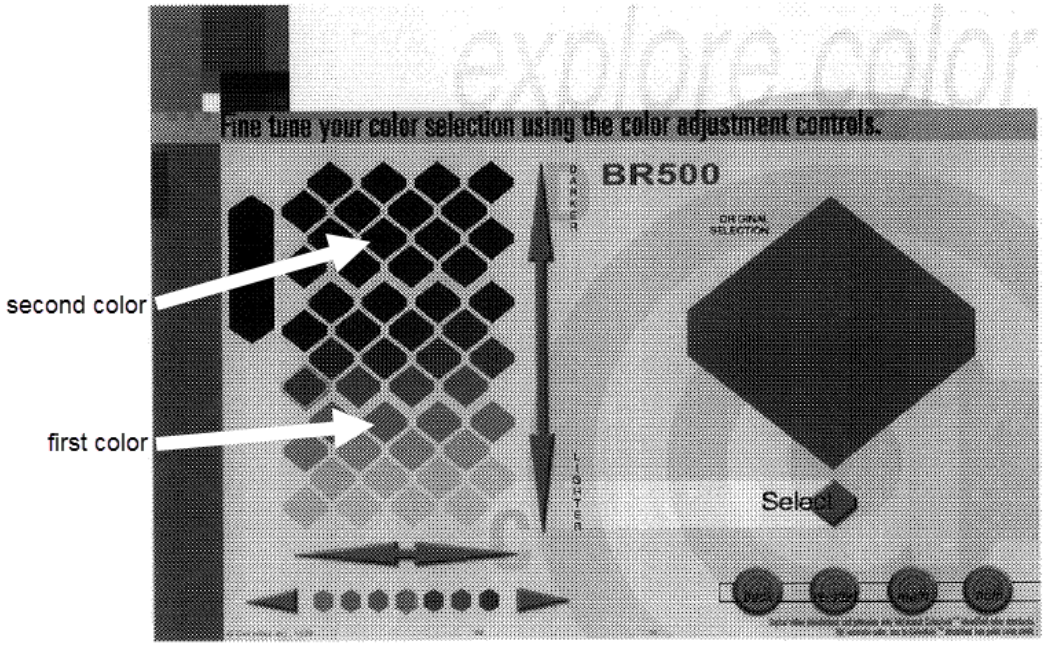
The Board notes that the examining division's position at the beginning of oral proceedings (see the minutes, points 2.1 to 2.5) is dropped in the contested decision, see point 3.2. The Board agrees with the

appellant that the problem of how to modify the method of D4 in order to obtain a higher processing speed of the computer implementing this method is a priori a technical problem. However, the Board is of the view that this technical problem is not solved by the distinguishing features of claim 1 as identified in section 4.2.3 above.

In D4, according to the Board's view, a number of second colors having substantially the same hue H, but different chroma C or different values L, is displayed (figure 14) by using the "linked identification" of the color space portion 50 included in the first color data structure. The user has then the possibility to fine-tune the first color by directly selecting a second color of different value (lighter or darker) or different chroma (figure 14). In other words, the method of D4 uses one single "reference to other neighbouring colors", namely the "linked identification" to the color space portion 50 associated to the first color, to display the set of colours shown in figure 14 and to allow the user to adjust chroma, value and hue of the first color. The Board opines that the use of one or more additional references to neighbouring colors included in the color data structure of the first color does not have any influence on the processing speed of the computer implementing the method known from D4.

For a better understanding of the Board's position, an annotated figure 14 is shown below. If in D4 a user starting with a first color would like to darkening it, he/she can directly select the corresponding color of the set of colors shown in figure 14.

FIG. 14



If the user performs the same operation with the method according claim 1, starting from the same first color (see annotated figure 14), the system accesses the first color data structure and identifies the reference to next darker color. Then, the system accesses the color data structure of said next darker color, identifies the reference to the second-next darker color, accesses the color data structure of the second-next darker color, identifies the reference to the third-next darker color and finally accesses the data color structure of the third-next darker color, i. e. the "second color" in the annotated figure 14. The Board is of the opinion that the operations to be performed by the method of claim 1 do not necessarily increase the processing speed.

Regarding the argument that a "more detailed fine-tuning" would be achieved, the Board is of the view that the degree of detail of the fine-tuning depends

essentially on the total number of colors stored in the server's database, but not on the number of references to neighbouring colors. As claim 1 is silent about the number of colors stored in the database, the system according to claim 1 does not have any features which allowed the fine-tuning to be "more detailed" than the one known from D4.

4.2.6 Therefore, no technical effect is associated with the fact that one or more additional references to neighbouring colors are included in the color data structure of the first color, said additional references not being used at all in performing the fine-tuning operation. Therefore, an inventive step in the sense of Article 56 EPC 1973 based on the distinguishing features identified in section 4.2.3 cannot be acknowledged.

5. Auxiliary request 1

Claim 1 of auxiliary request 1 differs from claim 1 of the main request only in that it is specified that at least one of a tint and a shade of the first color is fined tuned.

As D4 discloses this feature (see figure 14 and the related text), the objections under Articles 123(2) EPC and 56 EPC 1973 raised against claim 1 of the main request are not overcome.

6. Auxiliary request 2

The Board is of the opinion that the amendments made to claims 1 of auxiliary requests 2 do not overcome the objections under Article 123(2) EPC raised against claim 1 of the main request.

Regarding an inventive step (Article 56 EPC 1973), the Board notes that D4 discloses step (d0), see figure 14, col. 14, line 54 to column 15, line 1, "darker" and "lighter". As explained above, the first color data structure comprises a reference ("linked identification") to the color space portion 50 (figure 8) associated to the first color, i. e. a same reference to all color data structures of this color space portion 50, and, hence, also to a second color data structure for a next darker color in the database and to a third color data structure for a next lighter color in the database. D4 discloses accessing one of the second color data structure specified by the reference and the third color data structure specified by the reference in response to the received input for fine tuning the shade of the first color, see figure 14, and the step of determining a second color according to step (d3).

The subject-matter of claim 1 of auxiliary request 2 differs from D4 in that first and second references are included in the first color data structure for a next darker color and for a next lighter color in the database. In D4, according to the Board's view, one same reference is used to display a next darker color and next lighter color, see figure 14.

The Board does not agree that the effect provided by this distinguishing feature necessarily speeds up the processing of the method known from D4 for the reasons given for the main request. The objective technical problem is nothing more than to provide an alternative way of accessing the color data structures of the colors shown in figure 14 of D4.

The Board is of the opinion that it would be obvious for the skilled person using normal programing skills to use primary keys and foreign keys in relational databases in order to solve the objective technical problem. Once a first color has been determined, it would be obvious to use foreign keys in the first data color structure referencing to the next darker and next lighter colors in order to display the colors as shown in figure 14.

Hence, the subject-matter of claim 1 of the auxiliary request 2 lacks an inventive step (Article 56 EPC 1973).

7. Auxiliary request 3

7.1 The Board notes that, in the device according to claim 1 of auxiliary request 3, the starting color (i. e. the user's input color) is used to provide one or more color combinations provided via the display. The Board further notes that, according to claim 1, it is the starting color that is fined-tuned to achieve a second color, the starting color not having necessarily a corresponding color data structure in the database. Method claim 1 only states the elements of the color data structures for each color, without however specifying how the data color structures are used to fine-tune the starting color to achieve the second color.

The appellant did not indicate in the statement of grounds of appeal any basis for the amendments made to claim 1 according to the auxiliary request 3. The Board is of the view that the combination of features according to claim 1 cannot be directly and unambiguously derived from the application as

originally filed by a skilled person using his common general knowledge so that the requirements of Article 123(2) EPC are not fulfilled.

7.2 The Board further notes that D4 discloses (in the wording to claim 1) a device comprising:
a display device (52, figure 10);
an input device (col. 15, line 45 to col. 16, line 47); and
a processing unit ("processor 40", col. 8, lines 5 to 17, col. 14, lines 5 to 11, col. 15, lines 45 to col. 16, line 47) capable of being remotely reconfigured to update its operation communicatively coupled to the display device and the input device, the processing unit configured to
receive a starting color via the input device ("input reference color", col. 3, lines 5 to 64, col. 13, lines 47 to 49, col. 15, line 45 to col. 16, line 47, figure 11: steps S100 to S140),
determine one or more complementary colors for the starting color ("five-way harmony", figure 5, col. 7, line 45 to col. 8, line 4, figure 11: steps S148),
provide one or more color combinations via the display device, each color combination including the starting color and one or more of the complementary colors (figures 11, 19 and 20, col. 16, lines 48 to col. 17, line 22), and
fine-tune the starting color (figures 14 and 15, col. 14, line 54 to col. 15, line 13) to achieve desired second color, wherein the one or more complementary colors are complementary colors of the second color,
the color data structures (table 3: L, a, b, c, h, col. 8, lines 5 to 29) for each color including at least:
i) a field value (L) describing the luminosity of the color;

ii) at least 2 field values (a, b) identifying the color coordinates for particular color in a three-dimensional color model;
iii) a field value (c) identifying the color's chroma;
iv) a field value (h) identifying the color's hue.

As explained in the context of the main request and of auxiliary request 2, in the method of D4, the second color is determined by a reference ("linked identification") to other neighbouring colors of the color space portion 50 associated to the starting color to be fine-tuned. As this specific color space portion necessarily comprises a next darker or lighter color, a next chroma or previous chroma color or a next hue or previous hue color, the linked identification can be considered as a color key in the sense of features a) to c) of claim 1 according to the auxiliary request 3.

Hence, the subject-matter of claim 1 is known from D4 (Article 52(1) EPC and Article 54(1) and (2) EPC 1973)

8. Applicant's "another auxiliary request"

8.1 In the statement of grounds of appeal, the appellant stated : "As another auxiliary request, if the Boards of Appeal can identify presumably allowable subject matter, specifically according to MR and AR1 to AR3 but also negotiable other subject matter, or if the Boards of Appeal decides to remand the application back to the Examining Division, a telephone call to the undersigned patent attorney is requested with the goal of arriving at allowable subject matter prior to the oral proceedings, thereby making conducting oral proceedings moot."

8.2 For the reasons given above, the Board considers the main request and the auxiliary requests unallowable and has no intention to "remand the application back to the examining division".

The Board notes that according to Article 113(2) EPC the European patent office can decide upon the European patent application only in the text submitted to it, or agreed, by the applicant. Hence, it is the appellant's responsibility to provide an amended version of the claims it considers suitable to overcome the reasons for the refusal and allowable under the EPC.

The Board is under no obligation to identify and to indicate to a party any potentially allowable subject-matter, and, even less, to enter into "negotiations" with an appellant with the goal to arrive at the grant of a patent.

Hence, the appellant's request for a telephone conversation in order to render moot oral proceedings was not be granted.

9. As no allowable request is on file, the appeal must fail.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar: The Chairman:

S. Sánchez Chiquero G. Eliasson

Decision electronically authenticated