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**Datasheet for the decision
of 26 June 2019**

Case Number: T 2307/16 - 3.5.05

Application Number: 10010754.9

Publication Number: 2259170

IPC: G06F3/033, G09G1/00

Language of the proceedings: EN

Title of invention:

Systems and methods for adaptive interpretation of input from
a touch-sensitive input device

Applicant:

Immersion Corporation

Headword:

Touch input interpretation/IMMERSION

Relevant legal provisions:

EPC Art. 123(2), 84

Keyword:

Amendments - added subject-matter (no)
Claims - clarity (yes)

Decisions cited:



Beschwerdekammern
Boards of Appeal
Chambres de recours

Boards of Appeal of the
European Patent Office
Richard-Reitzner-Allee 8
85540 Haar
GERMANY
Tel. +49 (0)89 2399-0
Fax +49 (0)89 2399-4465

Case Number: T 2307/16 - 3.5.05

D E C I S I O N
of Technical Board of Appeal 3.5.05
of 26 June 2019

Appellant: Immersion Corporation
(Applicant) 50 Rio Robles
San Jose, CA 95134 (US)

Representative: Hofstetter, Schurack & Partner
Patent- und Rechtsanwaltskanzlei
PartG mbB
Balanstrasse 57
81541 München (DE)

Decision under appeal: **Decision of the Examining Division of the
European Patent Office posted on 20 May 2016
refusing European patent application No.
10010754.9 pursuant to Article 97(2) 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 examining division, posted on 20 May 2016, refusing European patent application No. 10010754.9. The sole request was refused because of the presence of added subject-matter in the claims (Article 123(2) EPC) and because of lack of clarity (Article 84 EPC).

As further remarks appended to the decision, the examining division expressed the view that it could not identify any inventive step in the claims of the sole request (Article 56 EPC) and raised an objection under Article 82 EPC against dependent claims 3 and 4.

II. Notice of appeal was received on 19 July 2016 and the appeal fee was paid on the same day. The statement setting out the grounds of appeal was received on 19 September 2016. The appellant requested that the decision be set aside and that a patent be granted based on a sole request submitted with the statement setting out the grounds of appeal. Oral proceedings were requested in the event that the request was not allowed.

III. A summons to oral proceedings was issued on 21 December 2018. In a communication pursuant to Article 15(1) RPBA sent on 14 January 2019, the board gave its preliminary opinion that the claims on file met the requirements of Article 123(2) EPC but still did not meet the requirements of Article 84 EPC. The board also suggested how the claims could be amended to overcome the clarity objections. The board further explained why it did not consider it appropriate to deal with the issue of inventive step and that, provided the appellant submitted an amended request

that overcame the objection under Articles 84 EPC, it intended to cancel the oral proceedings and remit the case to the examining division for further prosecution.

- IV. With a letter of response dated 14 February 2019, the appellant filed a new request, amended in the manner suggested by the board. The appellant acknowledged that the issue of inventive step should be remitted for consideration by the examining division. Furthermore, the appellant requested a partial reimbursement of the appeal fee within the meaning of Rule 103(2) EPC.
- V. With a notification dated 21 February 2019, the board indicated that the amended claims satisfied the requirements of Articles 84 and 123(2) EPC. However, the board also explained why a partial reimbursement of the appeal fee under Rule 103(2) EPC would not be granted.
- VI. With a letter of response dated 7 March 2019, the appellant withdrew the request for a partial reimbursement of the appeal fee and requested the case to be remitted to the examining division.
- VII. The board announced by notification dated 7 March 2019 that the oral proceedings were cancelled.
- VIII. Claim 1 according to the sole request reads as follows:

"A method performed by a processor (106) comprising the steps of:
receiving a pressure signal indicating a pseudo-pressure (Z) from a touch sensitive input device (102);
and
determining a change in pseudo-pressure (~Z) based on the pressure signal;

the method being **characterised by:**

comparing the pseudo-pressure (Z) to an upper threshold value (302) and if the pseudo-pressure does not exceed the upper threshold value, determining whether a conductor was previously touching the input device (304) and if so, comparing the pseudo-pressure to a lower threshold value (306);

if the conductor was previously touching the input device (102) and the pseudo-pressure is below the lower threshold: concluding that the conductor is not touching the input device (102);

if the pseudo-pressure is greater than the lower threshold (306) and the conductor was previously touching the input device (304): starting a first tick count (316) and concluding that the conductor is touching the input device (318);

if the pseudo-pressure exceeds the upper threshold, determining whether the conductor was previously touching the input device (314), and if the user was previously touching the input device, concluding that the conductor is touching the input device (318), and if the user was not previously touching, starting the first tick count (316) and concluding that the conductor is touching the input device (318);

if it is concluded that the conductor is touching the input device (102):

comparing the speed at which the conductor is moving over the surface of the input device (102) to a speed threshold value (320); and

if the speed is less than the speed threshold value, comparing the change in pseudo-pressure ($\sim Z$) to a change in pseudo-pressure threshold value (322); and if the change in pseudo-pressure ($\sim Z$) is greater than the change in pseudo-pressure threshold value, determining whether a time interval measured by the

first tick count has elapsed (324) and if so concluding that the conductor is pressing the input device (326)."

The request comprises a further independent claim (claim 4) directed to a corresponding computer-program product.

Reasons for the Decision

1. The appeal is admissible (see point II).
2. Article 123(2) EPC

The objections raised in point 2.2 of the Reasons are moot since the appellant has taken up the suggested amendments.

With respect to the objection raised in point 2.3 of the Reasons, the board holds that the wording "if the conductor was previously touching the input device and the pseudo-pressure is below the lower threshold: concluding that the conductor is not touching the input device" in lines 10 and 11 of claim 1 finds support in Figure 3 and the corresponding passage of the description on page 10, lines 11 to 21. According to Figure 3, when the results are "YES" in step 304 and "NO" in step 306 and independent of whether the result of step 308 is "YES" or "NO", the method goes back to START, and step 318, which is the only step in Figure 3 wherein a touching is reported, cannot be reached, i.e. the method "concludes" that the conductor is not touching.

In respect of the objection raised in point 2.4 of the Reasons, the board agrees with the appellant that the swapping of the reference signs 218 and 220 on page 8,

removing an inconsistency between the description and Figure 2, represents the correction of an obvious error. It is indeed unambiguously disclosed both on page 8, lines 7 to 9, and in the text of the flow-chart in Figure 2 that if the first tick count has elapsed, the threshold is set to the move threshold for the key, and that if the first tick count has not elapsed, the threshold is set to the first threshold for the key.

For these reasons, the board holds that the request meets the requirements of Article 123(2) EPC.

3. Article 84 EPC

The board is satisfied that the clarity objections raised in point 3 of the Reasons and in the communication of the board have all been addressed.

Claim 1 now clearly reflects the flow-chart of Figure 3 and defines all the circumstances where a touching or a pressing is detected. In particular, claim 1 now specifies that when the pseudo pressure is greater than the lower threshold and the conductor was previously touching the input device, it is concluded, after starting the first tick count, that the conductor is touching the input device, thereby correctly reflecting the path 304yes - 306yes - 316 - 318 of Figure 3. In the same way, claim 1 now correctly reflects the paths 302yes - 314yes - 318 and 302yes - 314no - 316 - 318 of Figure 3 by defining that when the pseudo-pressure exceeds the upper threshold, a determination is made whether the conductor was previously touching the input device, and if the user was previously touching the input device, it is concluded that the conductor is touching the input device, whereas if the user was not previously touching the input device, a first tick

count is started and it is concluded that the conductor is touching the input device.

Furthermore, the board agrees with the appellant that the determination of the change in pseudo-pressure is clearly described on page 11, lines 1 to 3, and that the change in pseudo-pressure threshold value has a clear meaning as a threshold value to be compared with the change in pseudo-pressure, as described on page 11, lines 3 to 8.

For these reasons, the board holds that the claims meet the requirements of Article 84 EPC.

4. Remittal

The decision was based solely on the grounds of Articles 123(2) and 84 EPC (see Reasons 4). Rather, the examining division made some remarks about the relevance of a prior-art document (D1), see Reasons 5.2 and 5.3, and expressed in substance the general view that claim 1 represented an arbitrary selection of a specific sequence and combination of method steps known from the available prior art. In the annex to the summons to oral proceedings, the examining division made some remarks about the relevance of some prior-art documents (D1, D3, D4). A detailed reasoning with respect to inventive step based on the disclosure of these prior-art documents has however not been provided by the examining division, as also acknowledged by the appellant in the statement setting out the grounds of appeal (see the first paragraph on page 3).

For these reasons, the board does not consider it appropriate to deal with the issue of inventive step. The board thus decides, in agreement with the appellant

(see points IV and VI), to remit the case to the examining division for further prosecution.

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 prosecution.

The Registrar:

The Chair:



K. Götz-Wein

A. Ritzka

Decision electronically authenticated