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**Datasheet for the decision  
of 19 January 2021**

**Case Number:** T 0268/17 - 3.5.05

**Application Number:** 10843654.4

**Publication Number:** 2507691

**IPC:** G06F3/041, G06F3/048

**Language of the proceedings:** EN

**Title of invention:**

USER INPUT

**Applicant:**

Nokia Technologies Oy

**Headword:**

Grouping and de-grouping of icons / Nokia

**Relevant legal provisions:**

EPC Art. 123(2), 56

**Keyword:**

Inventive step - main request (no) - obvious combination of known features

Amendments - auxiliary requests - added subject-matter (yes)



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Case Number: T 0268/17 - 3.5.05

**D E C I S I O N**  
**of Technical Board of Appeal 3.5.05**  
**of 19 January 2021**

**Appellant:** Nokia Technologies Oy  
(Applicant) Karakaari 7  
02610 Espoo (FI)

**Representative:** Swindell & Pearson Limited  
48 Friar Gate  
Derby DE1 1GY (GB)

**Decision under appeal:** **Decision of the Examining Division of the  
European Patent Office posted on 7 July 2016  
refusing European patent application No.  
10843654.4 pursuant to Article 97(2) EPC.**

**Composition of the Board:**

**Chair** A. Ritzka  
**Members:** N. H. Uhlmann  
D. Prietzel-Funk

## **Summary of Facts and Submissions**

- I. The appeal is against the examining division's decision refusing European patent application No. 10843654.4, which was filed on 20 January 2010.
- II. The examining division made reference to the following documents:  
  
D1 US 2009/019385  
D2 US 2002/057263
- III. The examining division decided that the claims of the main request and of the first and second auxiliary requests then on file did not involve an inventive step, and that claim 1 of the third auxiliary request then on file was not allowable for contravening the provisions of Article 123(2) EPC.
- IV. In its statement setting out the grounds of appeal the appellant submitted arguments and an amended main request and a first auxiliary request. The statement also referred to a second auxiliary request in section 2.1, yet no such request was actually submitted.
- V. The board summoned the appellant to oral proceedings.
- VI. In a communication pursuant to Article 15(1) RPBA 2020, the board set out its provisional view on the case.
- VII. With a letter dated 9 March 2020 the appellant submitted a new main request and renumbered the previous main and first auxiliary requests as the first and second auxiliary requests, respectively. Additionally, it attached copies of the following two publications to the letter:

"Challenges in Human-Computer Interaction Design for Mobile Devices" by Kuo-Ying Huang (Proceedings of the World Congress on Engineering and Computer Science 2009, vol. I)

"Mobile Usability: How Nokia Changed the Face of the Mobile Phone" by Christian Lindholm et al., pages 250 to 256

VIII. Final requests

The appellant requested that the decision under appeal be set aside and that a patent be granted based on the claims of the main request submitted with the letter dated 9 March 2020 or on the first or second auxiliary request submitted with the statement setting out the grounds of appeal as main request and first auxiliary request respectively.

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

"A method, comprising:  
causing a touch sensitive display (22) of a hand portable electronic device (30) to display a menu comprising a first graphical item (50), selectable to open a first software application, and a second graphical item (60), selectable to open a second software application, wherein the first graphical item (50) is at a first position, the second graphical item (60) is at a second position and the second graphical item is separated from the first graphical item by a first distance;  
detecting a first user digit (120) at the first position;  
reducing the first distance by moving the first graphical item across the touch sensitive display in response to detecting movement, across the touch sensitive display, of the first user digit;

creating a hierarchical structure in the menu, after determining that the first distance has been reduced such that the first graphical item is proximate the second graphical item, that comprises the first graphical item, the second graphical item and a third graphical item representing a grouping of the first and second graphical items, wherein the third graphical item is in a first level in the hierarchical structure and the first and second graphical items are in a second level of the hierarchical structure, different from the first level in the hierarchical structure; and responding to selection of the third graphical item in the first level of the hierarchical structure by providing the user with access to the first and second graphical items such that the first graphical item and the second graphical item both become individually selectable in the second level of the hierarchical structure, the first graphical item being selectable to open the first software application and the second graphical item being selectable to open the second software application."

- X. Claim 1 of the first auxiliary request corresponds to claim 1 of the main request, but the passage "providing the user with access to the first and second graphical items such that" has been replaced with "causing access to the second level in the hierarchical structure to then be provided, in which".
- XI. Claim 1 of the second auxiliary request corresponds to claim 1 of the main request, but the passage "providing the user with access to the first and second graphical items" has been replaced with "transitioning from the first level in the hierarchical

structure to the second level in the hierarchical structure".

### **Reasons for the Decision**

1. The application in this case pertains to a method for grouping and ungrouping graphical items displayed on a touch-sensitive display.
2. Document D1 discloses techniques for merging and unmerging icons.

### **Main request**

3. Admissibility

The main request was amended after the board issued its preliminary opinion. However, it addresses - and resolves - the added-matter objections set out in the opinion and does not introduce any new problems. Consequently, the board admitted the amended main request into the proceedings.

4. Patentability

The subject-matter of claim 1 does not involve an inventive step within the meaning of Article 56 EPC.

- 4.1 The appellant argued that document D1 did not disclose a "hand portable electronic device".

However, according to the description of the application in suit (page 5, lines 26 to 30), a hand portable electronic device could be "a mobile phone, a personal music player, a personal digital assistant, a computer, a game console or a camera". In view of this very broad definition, the board considers that the digital processing system in D1, which may execute the

Windows Vista operating system, anticipates the hand portable electronic device as recited in claim 1.

- 4.2 The appellant submitted that D1 did not disclose a hierarchical structure in a menu and the creation of any such structure.

The board disagrees. Document D1 (Figures 3A to 3C and paragraphs 51 to 55) discloses that dragging a gadget 335-2 towards another gadget 335-1 results in the grouping together, or merging, of these two gadgets and the creation of a super gadget 338. Hence, D1 discloses a first and a second graphical item (335-1 and 335-2) and a third graphical item (338). Since the third graphical item represents a grouping of the first and the second graphical items, the third item anticipates a hierarchical level, while the first and second items anticipate another hierarchical level.

- 4.3 In this regard, the appellant argued that "a person skilled in the art would understand that a 'hierarchical structure' is a data structure having predetermined levels that are defined in the data structure".

The board is not convinced because neither claim 1 nor the description includes any details regarding the "hierarchical structure". Moreover, the board holds that the broad and abstract term "hierarchical structure" does not imply any such further limitations.

- 4.4 The appellant submitted that the two gadgets in D1 did not become individually selectable in response to a selection of the super gadget.

This argument is not persuasive. D1 (paragraphs 39 and 64 and claim 6) discloses that as a reaction to a user request, a previously merged third icon is unmerged to

first and second icons that are displayed individually and separately.

- 4.5 To illustrate what was meant by a "hierarchical menu structure", the appellant referred to the two publications attached to its letter dated 9 March 2020 and to extracts from two further publications.

The board notes that these publications do not refer to any "data structure" and, more importantly, the claimed method relates not to a generally known predefined hierarchical menu (e.g. Figure 7-10 on page 4 of this letter), but to a specific menu in which a hierarchical structure is created when two graphical items are dragged to each other. Furthermore, when compared with Figure 7-10, Figures 4 to 8 of the application confirm that the menu displayed according to claim 1 differs significantly from the menus referred to in these publications.

Consequently, the appellant's statement on page 4 of the letter:

"Thus, the term 'hierarchical structure' when used in the context of a menu of an electronic device is something that would be readily understood by the skilled person as having predetermined levels that are defined in a data structure which pertain to different submenus."

is not convincing.

- 4.6 At the oral proceedings, the appellant presented a number of further arguments, as follows:

- D1 did not disclose that a graphical item is selectable to open a software application; the gadgets in D1 were already open; "selectable to open" implied that the application was not yet visible.



- "Hierarchical structure" in claim 1 implied that the three items were not visible at the same time; by contrast, Figure 3D in D1 showed that all three tabs are visible and selectable.
- The display space was of particular concern.
- The unmerging in D1 in fact corresponded to the ungrouping described on page 14 of the application, not to the claimed steps.
- The hierarchical structure as claimed still existed once the user had been given access to the first and second graphical items.

4.7 The board is not convinced, as indicated during the oral proceedings.

Paragraph 46 of document D1 teaches that "gadgets in that environment can have flyouts that temporarily show more information. Flyouts are displayed by clicking the gadget, and dismissed by clicking anywhere outside the flyout". This disclosure corresponds to the claimed "selectable to open a first software application".

Document D1 discloses that a third, merged, icon may be displayed instead of the first and second icons (paragraph 16). This is also apparent from Figures 3B and 3C.

D1 (paragraph 17) discloses reducing the space required on a display interface.

The fact that the unmerging in D1 also corresponds to the ungrouping on page 14 of the description does not mean that the steps in lines 21 to 26 of claim 1 are not disclosed in document D1. See also the explanation in section 4.4 above.

Document D1 discloses the possibility that the super gadget remains in existence after a gadget is dragged away (paragraph 79). Furthermore, Figure 3D of D1 shows that the super gadget and the gadgets are selectable.

4.8 Hence, the board considers that the distinguishing features are:

(a) a touch-sensitive display, and

(b) detecting a first user digit and its movement.

4.9 In combination, these features lead to the technical effect of providing a further technique for performing user input operations.

4.10 The skilled person is thus faced with the problem of how to provide a further technique for performing user input operations. To do so, they would use the touch-sensitive displays for the digital processing system in D1, which were widely known at the filing date of the application, and arrive in an obvious way at the subject-matter of claim 1.

#### **First auxiliary request**

5. Amendments

5.1 Claim 1 of the first auxiliary request is based essentially on original claim 1, the passage of the description on page 11, line 5 to page 12, line 21, and Figures 7A, 7B and 7C.

5.2 With regard to the "hierarchical structure in the menu" and the first and second levels of the hierarchical structure (claim 1, lines 14 to 21), the board notes that the description refers to related features only in lines 8 to 12 on page 12. This passage does not explicitly disclose any "creating" operation, even less so "creating a hierarchical structure in the menu".

Furthermore, the wording "menu having a hierarchical structure" (lines 8 and 9) specifies the structure of the menu but does not teach that the menu includes a hierarchical structure.

However, the board considers that the skilled person would be able to derive the wording of this part of the claim, as formulated in broad functional terms.

5.3 Claim 1 further recites "causing access to the second level in the hierarchical structure to then be provided" (lines 23 and 24). However, the relevant passage in the description (page 12, lines 14 to 19) does not teach any kind of access to a level in the hierarchical structure, rather only to first and second graphical items. Hence, this amended feature does not meet the requirements of Article 123(2) EPC.

5.4 In the letter dated 9 March 2020, the appellant argued that, in view of page 12, lines 8 to 19 of the application in suit and of the explanations made with regard to the main request, the skilled person would understand that "the level of the hierarchical structure in which the first and second graphical items reside is, in effect, a submenu". Additionally, this passage of the description meant that "access to the second level in the hierarchical structure is being provided when access to the first and second graphical items is provided", in particular in view of the different "ungrouping process described from page 14, line 21 onwards".

5.5 The board is not convinced. The passage on page 12, lines 14 to 20 clearly states that access to the first and second items is provided; these items are displayed and are then individually selectable. The fact that the first and second items are individually selectable **items in** a particular level of the menu (page 12, lines

9 and 10) does not mean that access to this **level** of the menu is provided. Furthermore, Figure 7C of the application does not resemble the submenu in Figure 7-10 on page 4 of the letter dated 9 March 2020. Lastly, the passage on page 14 from line 21 onwards does not change the interpretation of the details on page 12 of the application.

- 5.6 Consequently, the first auxiliary request does not meet the requirements of Article 123(2) EPC and is not allowable.

### **Second auxiliary request**

#### 6. Amendments

- 6.1 Claim 1 refers to transitioning from the first level in the hierarchical structure to the second level in the hierarchical structure (lines 23 and 24).
- 6.2 In the statement setting out the grounds of appeal, the appellant stated that this amended feature was based on the same passage as stated above in section 5.1. However, the description of the application in suit does not disclose any transitioning between levels, or indeed any kind of switching from one level to another level. Instead, the passage on page 12, lines 14 to 19 refers to the first, second and third graphical items.
- 6.3 Pointing to page 4, lines 8 to 12 and page 12, lines 14 to 19 of the description, and to the further publications referred to in its letter dated 9 March 2020, the appellant argued that it was "implicit that when the user is provided with access to the first and second graphical items, a transition from one level of the hierarchical structure to another level in the hierarchical structure is occurring". The board is not convinced. The hierarchical menu as claimed differs significantly from the hierarchical

menus in the cited publications. Furthermore, the passages of these publications reproduced by the appellant do not refer to any "transition". Additionally, lines 18 and 19 on page 12 teach that "the third graphical item 70 **may** be removed from display after selection" (emphasis added). The formulation "may be removed" does not exclude the possibility that the third item may stay on the display. Having all three items on the display does not provide any basis for unambiguously deriving a transition between levels.

6.4 The appellant's argument that page 14, lines 5 to 6 and 14 to 17 provided support for the transitioning feature is not persuasive. Lines 5 and 6 refer to the step of "creating a hierarchical structure" in claim 1. Lines 14 to 17 do not teach or imply any transitioning between levels.

6.5 For these reasons claim 1 extends beyond the content of the application as originally filed, contrary to the requirements of Article 123(2) EPC.

### **Conclusion**

7. None of the requests is allowable. The appeal must therefore be dismissed.

**Order**

**For these reasons it is decided that:**

The appeal is dismissed.

The Registrar:

The Chair:



K. Götz-Wein

A. Ritzka

Decision electronically authenticated