

Internal distribution code:

- (A) [-] Publication in OJ
- (B) [-] To Chairmen and Members
- (C) [-] To Chairmen
- (D) [X] No distribution

**Datasheet for the decision
of 10 November 2020**

Case Number: T 1762/17 - 3.5.05

Application Number: 12782531.3

Publication Number: 2708986

IPC: G06F3/041, G06F3/023,
G06F3/048, H03M11/04, H04M1/00,
H04M1/02, G06F3/0488, H04M1/23,
G06F3/0484

Language of the proceedings: EN

Title of invention:
INPUT DEVICE

Applicant:
NEC Corporation

Headword:
Different combinations in the same area/NEC

Relevant legal provisions:
EPC Art. 84, 83

Keyword:
Claims - clarity - all requests (no)
Sufficiency of disclosure - clarity of disclosure (no)



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 1762/17 - 3.5.05

D E C I S I O N
of Technical Board of Appeal 3.5.05
of 10 November 2020

Appellant: NEC Corporation
(Applicant) 7-1, Shiba 5-chome
Minato-ku
Tokyo 108-8001 (JP)

Representative: Vossius & Partner
Patentanwälte Rechtsanwälte mbB
Siebertstrasse 3
81675 München (DE)

Decision under appeal: **Decision of the Examining Division of the
European Patent Office posted on 15 March 2017
refusing European patent application No.
12782531.3 pursuant to Article 97(2) EPC.**

Composition of the Board:

Chair A. Ritzka
Members: E. Konak
E. Mille

Summary of Facts and Submissions

- I. The appeal is against the decision of the examining division to refuse the patent application for lack of clarity (Article 84 EPC) and inventive step (Articles 56 EPC) of the main request and for lack of inventive step (Articles 56 EPC) of auxiliary requests 1 and 2.
- II. With its statement setting out the grounds of appeal, the appellant re-filed the requests on which the contested decision was based and filed further auxiliary requests 3 and 4. It requested that the decision be set aside and that a patent be granted based on one of these requests. It requested oral proceedings as an auxiliary measure.
- III. In its preliminary opinion issued in preparation for the oral proceedings, the board raised objections, *inter alia*, under Articles 123(2), 84 and 83, and Rule 42(1)(e) EPC.
- IV. In reply to the summons to oral proceedings, the appellant filed auxiliary requests 0, A, A', 1', 2', 3' and 4'. It submitted the ordering of its auxiliary requests to be 0, A, A', 1, 1', 2, 2', 3, 3', 4 and 4'.
- V. Oral proceedings were held before the board.
- VI. The appellant requested that the decision under appeal be set aside and that a patent be granted based on the main request or one of auxiliary requests 0, A, A', 1, 1', 2, 2', 3, 3', 4 and 4' in this order of preference.
- VII. Claim 1 of main request reads as follows:

"An input device comprising:
a display unit (110) that displays a plurality of input areas for entering information;
an input unit (120) that enters information based on one of the input areas which includes a position that is touched or approached;
an area editor (130) that edits a layout of the input areas based on an input applied to said input unit; and
an area controller (140) that controls the input areas displayed by said display unit (110) based on the edited layout from said area editor, wherein the layout and shape of input areas is registered with respect to each of applications involved, and the layout and shape of input areas is controlled depending on one of the applications that is activated,
wherein information that is displayed in the input areas represents numerals and characters, e.g. alphabetic characters or Japanese kana characters, wherein said numerals and characters may be controlled so as to belong to positions that are different from each other, and wherein said numerals and characters may be controlled so as to be displayed in different combinations."

VIII. Claim 1 of auxiliary request 1 differs from claim 1 of the main request as follows (with the additions underlined and the deletions ~~struck through~~):

"[...]
an area controller (140) that controls the input areas displayed by said display unit (110) based on the edited layout from said area editor, wherein the layout and shape of input areas is registered with respect to each of several applications involved, and the layout and shape of input areas is controlled depending on one

of the applications that is activated,
[...]"

- IX. Claim 1 of auxiliary request 2 differs from claim 1 of auxiliary request 1 in that the last paragraph reads as follows:

"wherein information that is displayed in the input areas represents numerals and characters, e.g. alphabetic characters or Japanese kana characters, wherein said numerals and characters may be controlled so as to belong to positions that are different from each other, and wherein said numerals and characters may be controlled so that as to be displayed in different combinations of numerals and characters can be displayed in the same input area."

- X. Claim 1 of auxiliary request 3 differs from claim 1 of auxiliary request 2 as follows:

"[...]
an area editor (130) that edits a layout of the input areas based on an input applied to said input unit; and an action determiner (150) that determines a given action, the action determiner comprising pressure sensors in the form of dents defined in respective left and right surfaces of a casing of the input device; and a memory (160) that stores the action and the layout of the input areas which has been edited by said area editor, in association with each other;
an area controller (140) that controls the input areas displayed by said display unit (110) based on the edited layout from said area editor, wherein the layout and shape of input areas is registered with respect to each of several applications involved, and the layout and shape of input areas is controlled depending on one

of the applications that is activated,
wherein said area controller (140) reads the input area
corresponding to the action determined by said action
determiner from said memory, and controls the input
areas displayed by said display unit, and
[...]"

XI. Claim 1 of auxiliary request 4 differs from claim 1 of auxiliary request 3 in that the text "the dents being positioned in a range engaged by the index finger when a user holds the input device with one hand" was added to the end of the paragraph describing "an action determiner (150)".

XII. Claim 1 of auxiliary requests 0, 1', 2', 3' and 4' differs from claim 1 of the main request and auxiliary requests 1, 2, 3 and 4 respectively in that the following text was added at the end:

"wherein the input device is applicable as a device having a touch panel function, such as a cellphone, a mobile terminal, a tablet or notebook personal computer, an electronic book terminal, a smartphone, a personal digital assistant, a game machine, or the like."

XIII. Claim 1 of auxiliary requests A and A' differs from claim 1 of the main request and auxiliary request 0 respectively in adding text as follows:

"[...]
a memory (160) that stores the layout of the input
areas which has been edited by said area editor, in
association with each other,
wherein information that is displayed in the input areas represents numerals and characters, e.g.

alphabetic characters or Japanese kana characters,
wherein said numerals and characters may be controlled
so as to belong to positions that are different from
each other, and wherein said numerals and characters
may be controlled so as to be displayed in different
combinations,
wherein a plurality of registration entries are stored
in the memory, each registration entry defining a
layout of the input areas for one of the applications
involved,
wherein the input areas comprise a learning key,
wherein the area controller successively reads the
registration entries from the memory upon selection of
the learning key and changes to the layouts of the
registration entries that are read
[...]"

Reasons for the Decision

1. Main request

1.1 The following features of claim 1 of the main request
give rise to objections under Articles 84 and 83 EPC
(with the feature numbering given by the appellant in
its statement setting out the grounds of appeal).

F6 wherein the layout and shape of input areas is
registered with respect to each of applications
involved, and the layout and shape of input areas
is controlled depending on one of the applications
that is activated

F8 wherein said numerals and characters may be
controlled so as to be displayed in different
combinations

- 1.2 Regarding feature F6, it is unclear what the "applications involved" are. The only passage in the description which is the basis for this feature is paragraph [0088] that consists of one single sentence. It refers, without any context or precedent in preceding paragraphs, to "each of the applications involved [emphasis by the board]" but does not explain what they are and what they are involved in. The appellant argued that although its wording was somewhat unusual, feature F6 was not unclear since "applications involved" would have been understood by the skilled person, in this context, to refer to applications involved with the input unit or, in other words, the applications requiring user input. However, this argument does not convince the board as it does not go beyond mere speculation in view of the complete silence of the entire application on "applications". Therefore, feature F6 renders claim 1 unclear (Article 84 EPC).
- 1.3 Regarding feature F9, in the statement setting out the grounds of appeal, the appellant argued with reference to paragraph [0089] of the description that "displayed in different combinations" meant that "in a first situation, a first combination of numerals and characters (e.g. "5A") is displayed in an input area and, in a second situation, a second combination of numerals and characters (e.g. "5E") is displayed in the same input area". It was "evident that the claimed combination [had] to comprise at least a numeral and a character [emphases by the board]" and the skilled person would have understood that "the combinations of numerals and characters vary [emphasis by the appellant] for different situations or points in time" (see the statement setting out the grounds of

appeal, page 3, third paragraph; the sentence bridging pages 5 and 6; and page 6, third paragraph).

- 1.4 Already in its preliminary opinion, the board raised doubts whether the wording "different combinations" in feature F9 necessarily expressed the combination of at least a numeral and a character. In the board's preliminary view, the claim wording did not rule out other combinations such as "AB", "6931", "&*!" or "Kk". The board reiterated this question at the oral proceedings. The appellant did not comment.

- 1.5 Irrespective of what information these "different combinations" encompass, it is obscure in the application as filed how and why the combinations in the same input area vary for different situations or at different points in time. Contrary to Rule 42(1)(e) EPC, which requires that the description describe in detail at least one way of carrying out the invention claimed, paragraph [0089] merely states that the combination in the same input area might vary, e.g. between "5A" and "5E", but does not describe what triggers such a change, in which situations or how often it happens. More crucially, the description leaves the meaning and purpose of this change in complete obscurity.

- 1.6 The appellant argued at the oral proceedings that feature F9 was quite broad and should be read together with the preceding feature, namely "wherein said numerals and characters may be controlled so as to belong to positions that are different from each other". This does not, however, remedy the insufficient disclosure in the application.

- 1.7 Therefore, with regard to feature F9, the application does not meet the requirements of Article 83 EPC, which requires that an application disclose the invention in a manner sufficiently clear and complete for it to be carried out by a person skilled in the art.

2. Auxiliary requests 0 to 4'
 - 2.1 Claim 1 of all auxiliary requests has feature F6, although in auxiliary requests 1 to 4', the word "several" was added before "applications involved". This amendment does not address the objection of lack of clarity raised with regard to "applications involved".

 - 2.2 Likewise, claim 1 of all auxiliary requests has feature F9, although auxiliary requests 2 to 4' use an alternative wording (numbered F9' by the appellant in the statement setting out the grounds of appeal, see page 8, section IV) . The wording of feature F9' is "wherein said numerals and characters may be controlled so that different combinations of numerals and characters can be displayed in the same input area". This slightly different claim wording does not remedy the insufficient disclosure of the application as filed.

 - 2.3 Therefore, the same objections under Articles 84 and 83 EPC as for the main request apply also to all auxiliary requests.

3. Thus, none of the requests is allowable, and the appeal has to 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