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**Datasheet for the decision
of 13 January 2021**

Case Number: T 0262/18 - 3.5.05

Application Number: 09700007.9

Publication Number: 2137598

IPC: G06F3/048, G06F17/30

Language of the proceedings: EN

Title of invention:

TOUCH EVENT MODEL PROGRAMMING INTERFACE

Applicant:

Apple Inc.

Headword:

Touch-screen device providing touch control of web pages

Relevant legal provisions:

RPBA Art. 12(4)

EPC Art. 56

Keyword:

Amendment to case - amendment admitted (yes)

Inventive step - (yes)



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 0262/18 - 3.5.05

D E C I S I O N
of Technical Board of Appeal 3.5.05
of 13 January 2021

Appellant: Apple Inc.
(Applicant) One Apple Park Way
Cupertino CA 95014 (US)

Representative: Gillard, Matthew Paul
Withers & Rogers LLP
4 More London Riverside
London SE1 2AU (GB)

Decision under appeal: **Decision of the Examining Division of the
European Patent Office posted on 6 September
2017 refusing European patent application No.
09700007.9 pursuant to Article 97(2) EPC.**

Composition of the Board:

Chair A. Ritzka
Members: P. Tabery
D. Prietzel-Funk

Summary of Facts and Submissions

- I. The appeal is directed against the decision of the examining division to refuse European patent application No. EP09700007.9, dated 6 September 2017.
- II. The examining division made reference, *inter alia*, to the following documents:
- D4** US 2008/028327 A1, 31 January 2008
- D9** Michael Thörnlund: "Gesture Analyzing for Multi-Touch Screen Interfaces", Bachelor's Thesis, Luleå University of Technology, 17 September 2007, XP055318914, retrieved from the Internet: <http://epubl.ltu.se/1404-5494/2007/30/LTU-HIP-EX-0730-SE.pdf> [retrieved on 2016-11-11]
- III. The examining division decided that the application did not fulfil the requirements of Article 56 EPC (main request and first auxiliary request) and/or Article 123(2) EPC (all requests).
- IV. In its statement setting out the grounds of appeal, the appellant (applicant) requested that a patent be granted based on the claims in accordance with a main request or one of a first and a second auxiliary request, all submitted with the statement setting out the grounds of appeal. The claims of the main request were identical to the claims of the main request underlying the impugned decision. Likewise, the claims of the second auxiliary request were identical to the

claims of the second auxiliary request underlying the impugned decision.

- V. The board issued a summons to oral proceedings. In an annex to the summons, the board set out its provisional view of the case (Article 15(1) RPBA 2020).

In the summons, the board made reference to the following documents which it introduced into the procedure:

D10 Wikipedia: "Web 2.0", 3 March 2008, XP055721276, retrieved from the Internet: URL: https://en.wikipedia.org/w/index.php?title=Web_2.0&oldid=195641121 [retrieved on 2020-08-10]

D11 Wikipedia: "Web application", 29 February 2008, XP055721274, retrieved from the Internet: URL: https://en.wikipedia.org/w/index.php?title=Web_application&oldid=194888078 [retrieved on 2020-08-10]

The board considered that the **main request** and the **second auxiliary request** did not meet the requirements of Article 123(2) EPC, in line with the decision of the examining division.

With respect to the **first auxiliary request**, the board considered that it did not meet the requirements of Article 56 EPC, in line with the decision of the examining division.

VI. In a reply dated 11 December 2020, the appellant provided further arguments regarding the pending requests.

VII. Oral proceedings were held on 13 January 2021. The appellant withdrew the main request and the second auxiliary request on file and promoted the first auxiliary request to new main request.

Then the appellant requested that the decision under appeal be set aside and that a patent be granted based on the claims of the new main request (former first auxiliary request) and the documents referred to in the decision under appeal on page 6.

VIII. **Claim 1** of the **new main request** comprises the following features (as labelled by the board):

A method comprising:

- (i) at a multi-touch capable device (400) with a touch sensitive display (402):
- (ii) receiving (302), at the touch sensitive display (402), concurrent touch input signals associated with a respective region of a web page (100), wherein the respective region of the web page is associated with a plurality of event handlers or event listeners including an event handler or listener for a touch event and an event handler or listener for a gesture event;
- (iii) determining (304) two or more touch events based on the concurrent touch input signals;
- (iv) determining a gesture event by combining the touch events;
- (v) sending the gesture event to the web page;
- (vi) dynamically rotating an element associated with the respective region of the web page with the event

handler or listener for the gesture event based on a rotation value associated with the gesture event; and (vii) sending the touch events to the web page for processing.

The **new main request** further comprises an independent **claim 3**, which differs from claim 1 in that it replaces "rotating" by "resizing" and "rotation value" by "scaling value" in step (vi).

Independent **claims 8 and 9** are directed to a corresponding computer-readable medium and corresponding multi-touch capable device, respectively.

Reasons for the Decision

1. Admissibility (Article 12(4) RPBA 2007)

The board asserts that the **new main request** (submitted as first auxiliary request with the statement setting out the grounds of appeal) is an amended request which has not been presented in the procedure before.

The claim set of the **new main request** differs from the claim set of the **previous main request** in that **dependent claim 5** has been deleted. In the decision under appeal, this dependent claim 5 was found to contravene Article 123(2) EPC.

Since the **new main request** concerns a straightforward amendment which remedies the objection pursuant to Article 123(2) EPC without giving rise to new objections, the board has decided to admit this request into the procedure (Article 12(4) RPBA 2007).

2. Closest prior art

In the impugned decision, the examining division used document **D4** as the closest prior art, the teaching of which was then combined with the teaching of document **D9**. As the claimed subject-matter is directed to determining a gesture event by combining two or more touch events based on concurrent touch input signals, whereas document **D4** does not deal with touch control, the board rather considers document **D9** as the closest prior art.

3. Novelty (Article 54(1) EPC)

Document **D9** discloses the following features of **claim 1** (the references in parentheses referring to said document; strike-through is used to mark undisclosed features; alternative features disclosed in this document are underlined):

A method comprising:

(i) at a multi-touch capable device with a touch sensitive display (*"multiple finger inputs on the screen", see page 1, line 8*):

(ii) receiving, at the touch sensitive display, concurrent touch input signals (*"multiple finger inputs on the screen", see page 1, line 8*) associated with a respective region of ~~a web page~~ an application (*"Bbox", see page 11, last line*), wherein the respective region ~~of the web page~~ is associated with a plurality of event handlers or event listeners (*"Gesture pointer sent to the listener", see page 11, line 10*) including an event handler or listener for a touch event (*"Point [gesture] holds a TouchData, which is simply all the data from TouchLib", see page 11, lines 12-13, and Figure 13*;

TouchData contains *x* and *y* screen coordinates, see page 12, lines 5-9), and an event handler or listener for a gesture event ("Rotate", see page 11, line 19, and Figure 13; "Move", see page 12, line 1, and Figure 13);

(iii) determining two or more touch events based on the concurrent touch input signals (*implied*);

(iv) determining a gesture event by combining the touch events (*"gather the [finger] input data [...] and analyze what kind of gesture it generates"*, see page 6, lines 3-4);

(v) sending the gesture event to the ~~web page~~ application (*"listener will get an event of a rotation occurring"*, see page 11, last 3 lines);

(vi) dynamically rotating an element associated with the respective region of the ~~web page~~ application with the event handler or listener for the gesture event based on a rotation value associated with the gesture event (*implied by: "The listener will get an event of a rotation occurring, with information on the affected Bbox along with the updated amount of rotation"*, see page 11, last 3 lines; *that the rotation is actually applied is evident from page 5, first paragraph*); and

(vii) sending ~~the~~ touch events to the web page application for processing (*"Gesture pointer sent to the listener"*, see page 11, line 10; *"Every finger pressed onto the screen will initially compose a [Point] gesture"*, see page 11, lines 15-16).

Hence the differences between the subject-matter of **claim 1** and that of document **D9** are

- (A) that *the application is a web page,*
and the step of
- (B) sending *the touch events [that were used to determine the gesture event]* to the web page for processing.

The subject-matter of **claim 1** is therefore novel over what is known from document **D9**.

The board agrees with the appellant that document **D9** fails to disclose unambiguously that both the recognized gesture and the underlying touch events are provided to the application: on the one hand, document **D9** discloses that "*[every] finger pressed onto the screen will initially compose a gesture of [the point] type*" (see page 11, lines 15-16); on the other hand, it is stated that "*the Gesture pointer sent to the listener will have the type of the corresponding subclass*" (see page 11, lines 10-11). Hence, as soon as a gesture is recognized, this gesture supersedes the point gesture containing the touch events. Consequently, the set of touch events that was used to recognize the gesture is not transmitted to the application.

4. Inventive step (Article 56 EPC)

Distinguishing feature (B) achieves the technical effect of enabling touches to be used in a wider range of scenarios, thereby allowing for richer interaction.

The objective technical problem may thus be formulated as how to enable touches to be used in a wider range of scenarios, thereby allowing for richer interaction.

The board asserts that document **D9** is concerned with providing a gesture analyzing software library, which is to work as an intermediate layer between the hardware screen and the application(s) projected on it (see page 2, Introduction). Since its purpose is to have a common software library for gesture recognition, the skilled person would neither be pointed to the above problem nor to its solution. And even if the skilled person were faced with the objective technical problem stated above, following the teaching of document **D9** they would most probably consider extending the common software library. They would not find any pointer to implementing added functionality in a particular application instead, which would then necessitate providing the raw touch events to said application, i.e. distinguishing feature (B).

Therefore the claimed solution would not be obvious to the skilled person based on document **D9**.

The same would apply if the skilled person were starting from document **D4**, which is concerned with conventional mouse input. When combining this with the multi-touch input known from document **D9**, the above considerations regarding document **D9** again apply: the principle of document **D4** (providing input to the web page) would be overwritten by document **D9**'s overarching principle of recognizing gestures, which are then provided to the application as the input. Therefore, even when using document **D4** as the closest prior art, the skilled person would not arrive at the claimed solution in an obvious manner. Consequently, the board disagrees with the examining division's assertion that it would have been obvious to provide that the underlying touch events are also provided to the web page.

5. Consequently, based on the available prior art, the subject-matter of **claim 1 of the new main request** involves an inventive step (Article 56 EPC).
6. The subject-matter of the **independent method claim 3** differs from the cited prior art in the same distinguishing features as identified with respect to claim 1. Thus it is inventive for the same reasons.
7. Equally, the computer-readable medium and multi-touch capable device claimed in independent claims 8 and 9 respectively are inventive, because they comprise means which are specifically adapted to perform the method steps of claims 1 or 3. Consequently, the same considerations apply *mutatis mutandis*.

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.
2. The case is remitted to the examining division with the order to grant a patent on the basis of the following documents:
 - claims 1 to 9 of the new main request (submitted as first auxiliary request with the statement setting out the grounds of appeal),
 - the description and figures, to be adapted.

The Registrar:

The Chair:



A. Chavinier-Tomsic

A. Ritzka

Decision electronically authenticated