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**Datasheet for the decision
of 23 August 2022**

Case Number: T 0551/18 - 3.5.04

Application Number: 12819650.8

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Language of the proceedings: EN

Title of invention:

SYSTEMS AND METHODS FOR RENDERING USER INTERFACE ELEMENTS IN
ACCORDANCE WITH A DEVICE TYPE

Applicant:

Google LLC

Headword:

Relevant legal provisions:

EPC Art. 84
RPBA Art. 12(4)

Keyword:

Main request - Clarity (no)
First and second auxiliary requests - Admittance (no)

Decisions cited:

Catchword:



Beschwerdekammern
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Chambres de recours

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Case Number: T 0551/18 - 3.5.04

D E C I S I O N
of Technical Board of Appeal 3.5.04
of 23 August 2022

Appellant: Google LLC
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Decision under appeal: **Decision of the Examining Division of the
European Patent Office posted on 4 October 2017
refusing European patent application
No. 12819650.8 pursuant to Article 97(2) EPC.**

Composition of the Board:

Chair G. Decker
Members: B. Le Guen
M. Paci

Summary of Facts and Submissions

- I. The appeal is against the decision of the examining division to refuse European patent application No. 12 819 650.8.
- II. One of the grounds for refusing the application was that claim 1 of the sole request then on file was not clear (Article 84 EPC).
- III. The applicant (appellant) filed notice of appeal and a statement setting out the grounds for appeal. With the statement, the appellant filed amended claims according to a main request, a first auxiliary request and a second auxiliary request.
- IV. The appellant requested that the decision under appeal be set aside and that a European patent be granted on the basis of the claims of the main request filed with the statement of grounds of appeal or, alternatively, on the basis of the claims of one of the first and second auxiliary requests filed with the statement of grounds of appeal. Oral proceedings were also requested in the event that the board were minded to refuse the main request.
- V. The board issued a summons to oral proceedings and a communication under Article 15(1) RPBA 2020 (OJ EPO 2019, A63) dated 2 November 2021. Under point 4.2 of its communication, the board expressed its preliminary opinion that the amendments made according to the main request overcame the clarity objection raised by the examining division. However, under points 4.3 to 4.6, the board gave reasons for its preliminary opinion that

claim 1 of the main request still lacked clarity. Under section 7, the board furthermore gave reasons why, in its view, it had the power under Article 12(4) RPBA 2007 (see OJ EPO 2007, 536) to hold the first and second auxiliary requests inadmissible. The board saw no reason to exercise its power in the appellant's favour.

VI. The appellant did not reply in substance to the board's communication. With a letter dated 9 August 2022, the appellant withdrew its request for oral proceedings.

VII. Oral proceedings took place on 23 August 2022, as scheduled, in the appellant's absence (Article 116(1) and Rule 115(2) EPC).

At the end of the oral proceedings, the chair announced the board's decision to dismiss the appeal.

VIII. Claim 1 of the **main request** reads as follows:

"A method for rendering one or more user interface elements on a display screen of a first device, comprising:

coupling a computer system (114) to the first device (112), the computer system being a companion device to the first device, the computer system comprising one or more processors and memory storing one or more programs, for execution by the one or more processors, for rendering the one or more user interface elements on the display screen of the first device;

receiving, by the computer system, a request (502) for rendering a first user interface element without an orientation preference;

identifying (504), by the computer system, a type of the first device;

identifying, by the computer system, a type of the first user interface element; and

in accordance (506) with a determination, by the computing system, that the type of the first device is a first device type corresponding to television devices and the first user interface element corresponds to a first user interface element type, rendering the first user interface element as a vertical user interface element in a first display region of the display screen, wherein the television devices are televisions."

IX. Claim 1 of the **first auxiliary request** reads as follows (features added to or deleted from claim 1 of the **main request** are underlined or crossed out, respectively):

"A method for rendering one or more user interface elements on a display screen of a first device, comprising:

coupling a computer system (114) to the first device (112), the computer system being a companion device to the first device, the computer system comprising one or more processors and memory storing one or more programs, for execution by the one or more processors, for rendering the one or more user interface elements on the display screen of the first device;

receiving, by the computer system, a request (502) for rendering a first user interface element without an orientation preference, the first user interface

element (402-1) including a plurality of layouts (406), each of which includes information for rendering the first user interface element (402-1) and each layout corresponding to a particular device type;

identifying (504), by the computer system, a type of the first device;

identifying, by the computer system, a type of the first user interface element; and

in accordance (506) with a determination, by the computing system ~~device~~, that the type of the first device is a first device type corresponding to television devices and the first user interface element corresponds to a first user interface element type, rendering the first user interface element as a vertical user interface element in a first display region of the display screen, wherein the television devices are televisions."

- X. Claim 1 of the **second auxiliary request** reads as follows (features added to or deleted from claim 1 of the **main request** are underlined or crossed out, respectively):

"A method for rendering one or more user interface elements on a display screen of a first device, comprising:

coupling a computer system (114) to the first device (112), the computer system being a companion device to the first device, the computer system comprising one or more processors and memory storing one or more programs, for execution by the one or more processors,

for rendering the one or more user interface elements on the display screen of the first device;

receiving, by the computer system, a request (502) for rendering a first user interface element without an orientation preference, wherein the first user interface element (402-1) includes a plurality of layouts (406) including a vertical layout for rendering the user interface element (402-1) as a vertical user interface element and a horizontal layout for rendering the user interface element (402-1) as a horizontal user interface element;

identifying (504), by the computer system, a type of the first device;

identifying, by the computer system, a type of the first user interface element; and

in accordance (506) with a determination, by the computing system~~device~~, that the type of the first device is a first device type corresponding to television devices and the first user interface element corresponds to a first user interface element type, rendering, based on the vertical layout, the first user interface element as a vertical user interface element in a first display region of the display screen, wherein the television devices are televisions."

Reasons for the Decision

1. The appeal is admissible.
2. *Main request, clarity (Article 84 EPC)*
 - 2.1 According to Article 84, second sentence, EPC, the claims must be clear.
 - 2.2 It is established case law that a claim lacks clarity if the exact distinctions which delimit the scope of protection cannot be learnt from it. The meaning of the essential features should be clear to the person skilled in the art from the wording of the claim alone (see Case Law of the Boards of Appeal of the European Patent Office, 9th edition, 2019, II.A.3.1).
 - 2.3 Claim 1 of the main request specifies rendering the first user interface element as a vertical user interface element in a first display region of the display screen *"in accordance (506) with a determination, by the computing system, that the type of the first device is a first device type corresponding to television devices ..., wherein the television devices are televisions"*.

The board finds that the conditions for the first device to be regarded as being of a type "corresponding to" a television are not clear.

The term "television" encompasses any system capable of receiving and displaying television programmes. Therefore, the expression "corresponding to television devices" would normally be understood as "capable of receiving and displaying television programmes".

However, the capability of a device to receive and display television programmes does not have any decisive role in the design of websites in the patent application in hand. Paragraph [0003] of the application as filed mentions some features that distinguish television devices from non-television devices, such as screen dimensions, distance of the screen from the user or user input technology. Paragraph [0018] indicates that, in some embodiments, the television screen is 26 inches or larger. Paragraph [0024] further specifies that "*[v]isual characteristics of the media and program content displayed on the television screen 112 (e.g., the size and detail of particular user interfaces and/or interface objects) reflect a number of display parameters of the television screen 112, including display resolution, video resolution/pixel density, and size of the television screen 112*". However, characteristics such as screen dimension, distance of the screen from the user or user input technology are not relevant for determining whether a system is "capable of receiving and displaying television programmes" and, therefore, whether it is of a type corresponding to a television.

It follows that, in the context of the patent application in hand, the expression "corresponding to television devices" is not intended to refer to devices capable of receiving and displaying television programmes. Thus, the application gives a meaning to that expression that departs from its normal meaning. This special meaning is not clear from the claim alone (see point 2.2 above).

2.4 Claim 1 also comprises a step of "*rendering the first user interface element as a vertical user interface*

element in a first display region of the display screen".

Paragraph [0044] of the description as filed specifies that *"the term 'user interface element' refers to a **user interface object**, or a set of user interface objects, displayed on a display screen of a device"* (emphasis added by the board). According to paragraph [0043] (third sentence) and Figures 3A to 3D (see in particular the items with reference signs 306-x and 316-x), a user interface object is a single user-selectable item. It follows that the expression *"first user interface element"* in claim 1 encompasses a single selectable item. Thus, the expression *"rendering the first user interface element as a vertical user interface element in a first display region of the display screen"* encompasses the alternative of rendering a single selectable element *"as a vertical user interface element in a first display region of the display screen"*. It is not clear what it means for a **single** item to be rendered *"as a vertical user interface element"*. Therefore, this alternative and, hence, the claim as a whole are not clear.

2.5 The reasons given under points 2.3 and 2.4 above correspond in substance to those given by the board under points 4.4 and 4.5 of its communication dated 2 November 2021 for its preliminary opinion that claim 1 of the main request was not clear. They were not repudiated by the appellant (see point VI. above). Thus, the board sees no reason to depart from its preliminary opinion.

2.6 In view of the above, the board concludes that the main request does not meet the requirements of Article 84 EPC.

3. *First and second auxiliary requests, admittance
(Article 12(4) RPBA 2007)*

3.1 The first and second auxiliary requests were not presented by the appellant in the first-instance proceedings.

3.2 The differences between claim 1 of the first and second auxiliary requests and claim 1 of the main request are identified under points IX. and X. above.

3.3 According to Article 12(4) RPBA 2007, the board has the power to hold inadmissible requests which could have been presented in the first-instance proceedings (as to the applicability of Article 12(4) RPBA 2007, see Article 25(2) RPBA 2020).

Since, in fact, almost every claim request could have been presented before the department of first instance, the question in that context is whether the situation was such that the filing of this request should already have taken place at that stage (see Case Law, V.A.4.11.1 and V.A.4.11.4 b)).

3.4 The board considers that the filing of the first and second auxiliary requests should already have taken place during the first-instance proceedings, for the following reasons.

3.4.1 No claim presented during the first-instance proceedings included features relating to layouts of a user interface element. However, an objection of lack of inventive step in view of the disclosure of document D1 combined with the common general knowledge of the person skilled in the art had been raised in the

opinion accompanying the European search report and in two communications of the examining division dated 6 April 2016 and 19 January 2017, the latter being annexed to the summons to oral proceedings.

- 3.4.2 The board cannot identify any element in the decision that could have taken the appellant by surprise. The decision merely addresses the arguments submitted by the appellant in reply to the examining division's latest communication annexed to the summons.
- 3.4.3 In view of the two previous points, the board finds that, if the appellant was of the opinion that features relating to layouts of a user interface element could form the basis of a request overcoming the inventive-step objection repeatedly raised by the examining division, it should have filed a claim including them during the first-instance proceedings, at the latest during the oral proceedings held before the examining division. The appellant chose not to attend those oral proceedings (see the minutes of the oral proceedings).
- 3.5 In view of point 3.4, the board considers that it has the power under Article 12(4) RPBA 2007 to hold the first and second auxiliary requests inadmissible.

This was not repudiated by the appellant (see point VI. above).

- 3.6 Under point 7.4 of its communication dated 2 November 2021, the board indicated that it saw no reason to exercise its power in the appellant's favour. Since the appellant did not provide any such reason (see point VI. above), the board, exercising its power under Article 12(4) RPBA 2007, holds the first and second auxiliary requests inadmissible.

4. *Conclusion*

Since the main request is not allowable and the first and second auxiliary requests are not admitted, the appeal must be dismissed.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chair:



K. Boelicke

G. Decker

Decision electronically authenticated