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**Datasheet for the decision
of 22 January 2021**

Case Number: T 2677/18 - 3.5.07

Application Number: 07836525.1

Publication Number: 2050026

IPC: G06F17/30

Language of the proceedings: EN

Title of invention:

User interface for a file system

Applicant:

Apple Inc.

Headword:

Interactive preview/APPLE

Relevant legal provisions:

EPC Art. 123(2)

RPBA Art. 12(4)

RPBA 2020 Art. 13(1), 13(2)

Keyword:

Amendments - added subject-matter - main request and first to fourth auxiliary requests (yes)

Amendment after summons - exceptional circumstances justified with cogent reasons - fifth to seventh auxiliary requests (no)



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Case Number: T 2677/18 - 3.5.07

D E C I S I O N
of Technical Board of Appeal 3.5.07
of 22 January 2021

Appellant: Apple Inc.
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Decision under appeal: **Decision of the Examining Division of the
European Patent Office posted on 3 May 2018
refusing European patent application
No. 07836525.1 pursuant to Article 97(2) EPC**

Composition of the Board:

Chair R. de Man
Members: C. Barel-Faucheux
C. Almberg

Summary of Facts and Submissions

- I. The applicant (appellant) appealed against the decision of the examining division refusing European patent application No. 07836525.1, which was published as international application WO 2008/019113.

- II. The examining division decided that the subject-matter of claim 1 of the main request and of the first and second auxiliary requests lacked inventive step over the following document:

D1: US 2004/0230599 A1, published on 18 November 2004.

- III. In its statement of grounds of appeal, the appellant maintained the main request and first and second auxiliary requests considered in the contested decision and filed a third and a fourth auxiliary request.

- IV. On 16 July 2020, the board issued a summons to oral proceedings. In a communication accompanying the summons, the board expressed the preliminary view that the main request did not comply with Articles 84 and 123(2) EPC and that the subject-matter of claim 1 lacked inventive step over document D1. The same objections applied to the first auxiliary request. The subject-matter of claim 1 of the second auxiliary request infringed Article 123(2) EPC. The board questioned whether the third and fourth auxiliary requests should be admitted into the appeal proceedings under Article 12(4) RPBA 2007 and noted that those requests appeared not to overcome the objections raised against the higher-ranking requests.

- V. With a letter dated 21 December 2020, the appellant commented on the board's communication and filed a fifth, a sixth and a seventh auxiliary request.
- VI. In a letter dated 21 January 2021, the appellant informed the board that it would not be attending the oral proceedings.
- VII. Oral proceedings were held on 22 January 2021 as a fully distributed videoconference.
- VIII. Claim 1 of the main request reads as follows:

"A computer readable medium storing executable program instructions which when executed by a data processing system cause the data processing system to perform a method comprising:

receiving a first call, through a first application programming interface (API) (3011), to obtain a preview of content of a file, the first call being made by a first application program and being received by a preview generator daemon (3003), wherein the first application program displays an initial preview of the file in a first view which is one of a list view or icon view and wherein the initial preview is not configured to be interactive within the first view;

generating, by the preview generator daemon, a second call to a file system program to obtain an identifier of a file type of the file, the preview generator daemon receiving the identifier of the file type from the file system program in response to the second call;

generating, by the preview generator daemon, a request to obtain a first plug-in from a set of plug-ins using the identifier of the file type, the first

plug-in being configured to process a file type of the file to produce content in a format which can be displayed by the first application program; and loading, by the preview generator daemon, the first plug-in to process the file to generate the preview of the content of the file, wherein the content produced through the first plug-in is configured to be interactive in response to detection that the corresponding initial preview is selected."

- IX. Claim 1 of the first auxiliary request differs from claim 1 of the main request in that "to obtain a preview of content of a file" and "to generate the preview of the content of the file" have been replaced with "to obtain an interactive preview of content of a file" and "to generate the interactive preview of the content of the file".
- X. Claim 1 of the second auxiliary request differs from claim 1 of the first auxiliary request in that the following text has been added at the end of the claim:
- " , wherein detection is a detection of a command, wherein the command is one of zoom or resize or scroll or playback or page through the content of the file."
- XI. Claim 1 of the third auxiliary request differs from claim 1 of the first auxiliary request in that "wherein the initial preview is not configured to be interactive within the first view" has been replaced with "wherein the initial preview is configured to be non-interactive within the first view in response to user inputs".
- XII. Claim 1 of the fourth auxiliary request differs from claim 1 of the first auxiliary request in that:

- "wherein the initial preview is not configured to be interactive within the first view" has been replaced with "wherein the initial preview is configured to be non-interactive within the first view", and
- "generating, by the preview generator daemon, a request to obtain a first plug-in" has been replaced with "generating, by the preview generator daemon, a third call through a second API to obtain a first plug-in".

XIII. Claim 1 of the fifth auxiliary request differs from claim 1 of the first auxiliary request in that "in response to detection that the corresponding initial preview is selected" has been replaced with "in response to an indication of a user input that the corresponding initial preview is selected".

XIV. Claim 1 of the sixth auxiliary request differs from claim 1 of the first auxiliary request in that:

- "and the initial preview is stored with the file" has been inserted after "wherein the initial preview is not configured to be interactive within the first view"; and
- "in response to detection that the corresponding initial preview is selected" has been replaced with "in response to an indication of user input that the corresponding initial preview is selected".

XV. Claim 1 of the seventh auxiliary request differs from claim 1 of the third auxiliary request in that:

- "and the initial preview is stored with the file" has been inserted after "wherein the initial preview is configured to be non-interactive within the first view in response to user inputs";
- "to process the file to generate the interactive preview" has been replaced with "to process the file to dynamically generate the interactive preview"; and
- "in response to detection that the corresponding initial preview is selected" has been replaced with "in response to user inputs when the corresponding initial preview is selected".

XVI. The appellant's arguments, where relevant to the decision, are discussed in detail below.

Reasons for the Decision

1. The appeal complies with the provisions referred to in Rule 101 EPC and is therefore admissible.
2. The application relates to providing interactive previews of files. An example of such a preview is depicted in Figure 26B, reproduced below, which shows preview 2515A of document "HD DVR5444A" having controls 2521 and 2523 that allow the user to page through the document being previewed (see paragraphs [00119] and [00121] of the published application).

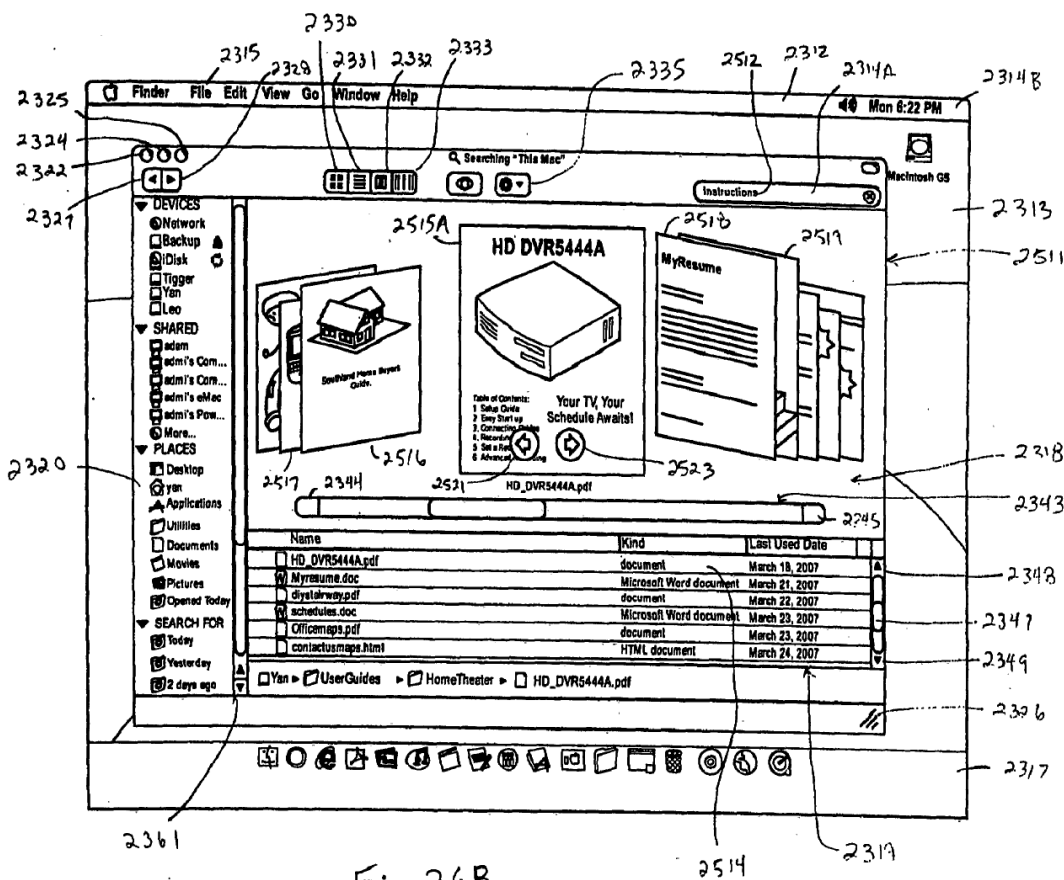


Fig. 26B

Main request

3. Added subject-matter - Article 123(2) EPC

3.1 The last paragraph of claim 1 reads as follows:

"loading, by the preview generator daemon, the first plug-in to process the file to generate the preview of the content of the file, wherein the content produced through the first plug-in is configured to be interactive in response to detection that the corresponding initial preview is selected."

Since the first plug-in is loaded "to process the file to generate the preview of the content of the file",

the skilled reader of the claim understands that "the content produced through the first plug-in" refers to "the preview of the content of the file".

Hence, claim 1 specifies that the preview produced through the first plug-in "is configured to be interactive in response to detection that the corresponding initial preview is selected". In other words, the generated preview responds interactively to a user selection of the corresponding initial preview.

This understanding of "is configured to be interactive" is confirmed by original dependent claim 2, which specifies that the initial preview "is not configured to be interactive in response to user inputs" whereas the content produced through the first plug-in is "configured to interactively display content of the file in response to user inputs". It is further confirmed by original dependent claim 9, which specifies that "the displayed content of the file generated through the first plug-in is interactive in response to user inputs to one of zoom or resize or scroll or playback or page though [sic] the content of the file".

In Figure 26B, the interactive preview 2515A of document "HD DVR5554A" is interactively responsive to user inputs to the page-through controls 2521 and 2523, in line with original claim 9. However, claim 1 specifies that the generated preview is interactively responsive to a user selection of the initial preview of document "HD DVR5554A" (which is not shown in Figure 26B).

3.2 In response to the board's preliminary opinion that the above-mentioned feature lacked a basis in the

application as filed, the appellant explained that the application described examples "where selection of initial previews causes content produced through the first plug-in to be interactive".

The board agrees that the skilled person would understand from the application as filed (see in particular paragraph [00121]) that Figure 26B can result from the selection by the user of the initial preview of document "HD DVR5444A" in Figure 24B:

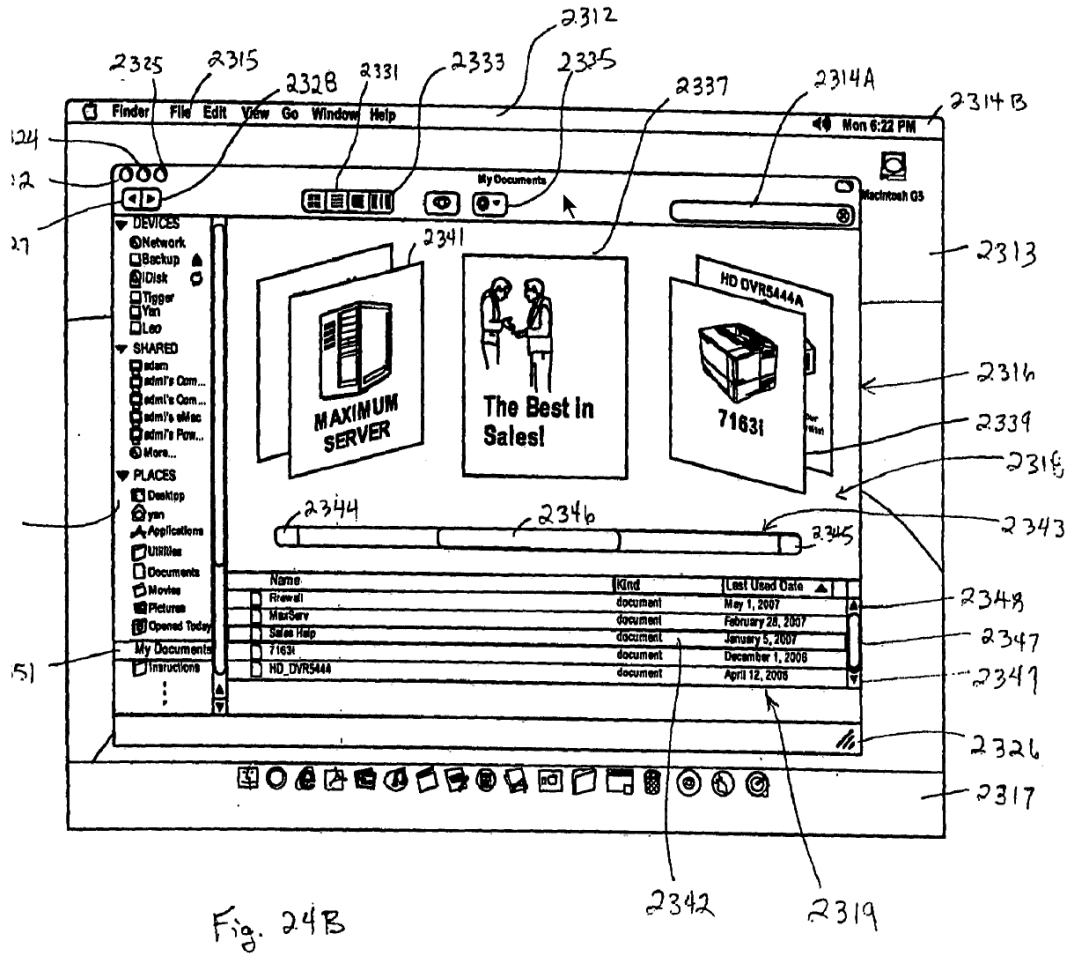


Fig. 24B

However, a user selection of the initial preview of a file causing the display of an interactive preview of the file is not the same as the generated preview being

interactively responsive to a user selection of the initial preview, which is what is stated in claim 1.

- 3.3 Since the board is not aware of any other passage in the application as filed which could provide a basis for the last paragraph of claim 1, it arrives at the conclusion that the subject-matter of claim 1 extends beyond the content of the application as filed, contrary to Article 123(2) EPC.

First auxiliary request

4. *Added subject-matter - Article 123(2) EPC*

4.1 Claim 1 of the first auxiliary request clarifies that the preview obtained by the "first call" and generated by the plug-in is an "interactive" preview.

4.2 Since this clarifying amendment does not change the board's interpretation of the claim, the first auxiliary request also offends against Article 123(2) EPC.

Second auxiliary request

5. *Added subject-matter - Article 123(2) EPC*

5.1 Claim 1 of the second auxiliary request adds the feature "wherein detection is a detection of a command, wherein the command is one of zoom or resize or scroll or playback or page through the content of the file".

Claim 1 therefore specifies that the interactive preview is interactive "in response to detection that the corresponding initial preview is selected, wherein detection is a detection of a command, wherein the

command is one of zoom or resize or scroll or playback or page through the content of the file" (see point 3.1 above).

5.2 Although paragraph [00121] of the published application discloses that "the interactive preview is interactive in response to user commands in that it can respond to a user command to page through or scroll through or browse or resize or zoom the document represented by the interactive preview or playback the content" and original dependent claim 9 likewise discloses that the interactive preview ("the displayed content of the file generated through the first plug-in") is interactive in response to "user inputs to one of zoom or resize or scroll or playback or page though [sic] the content of the file", these passages do not disclose that the detection is, at the same time, a "detection that the corresponding initial preview is selected".

5.3 In its letter of 21 December 2020, the appellant also relied on paragraph [00118], which mentioned a user interface object that, when selected, might cause "zooming of the object from one size to another size" and a user command to "zoom or page or scroll through the document in or selected from the cover flow view area" and referred to Figures 26C to 26F, 26I, and 27A to 27N.

Paragraph [00118] explains that "a user's command to zoom or page through or scroll through a document shown in or selected from the cover flow view area" may be input "through the user's selection of a user interface object or a direct manipulation or a variety of other techniques described herein" and gives the example of the user selecting the controls 2521 and 2523 in Figure 26B to page through the document being

previewed. A further example is the selection of one of the scroll controls 2531, 2532 and 2533 shown in Figure 26F. Hence, paragraph [00118] discloses the detection of scroll and page-through commands, but as a result of the selection of a user-interface control and thus not as a result of the selection of an initial preview.

The zoom functionality mentioned in paragraph [00118] is explained in more detail in paragraph [00123] with reference to Figures 27A to 27N. Zooming is initiated by interacting with the thumbnail 2603 in Figure 27A or thumbnail 2610A in Figure 27N. As hovering the cursor over thumbnail 2603 may cause the display of a play button 2609 (as shown in Figure 27B), and the thumbnail 2610A includes a stop button 2612, both thumbnails are interactive previews, presumably corresponding to a previously selected initial preview. Thus, the detection of a zoom command is again not a detection of the selection of an initial preview.

- 5.4 Hence, the subject-matter of claim 1 of the second auxiliary request still extends beyond the content of the application as filed, contrary to Article 123(2) EPC.

Third and fourth auxiliary requests

6. *Admittance into the appeal proceedings - Article 12(4) RPBA 2007*

- 6.1 In its communication, the board questioned whether the third and fourth auxiliary requests, filed with the statement of grounds of appeal, could not have been filed in the first-instance proceedings and whether they should be admitted into the appeal proceedings. In

response, the appellant did not give any arguments in support of admittance of these requests.

6.2 Nonetheless, since neither request presents the board with any difficulties, it exercises its discretion under Article 12(4) RPBA 2007 (as applicable under Article 25(2) RPBA 2020) in the appellant's favour and admits both requests into the appeal proceedings.

7. *Added subject-matter - Article 123(2) EPC*

Since the amendments made in the third and fourth auxiliary requests with respect to the first auxiliary request do not affect the Article 123(2) EPC objection raised against claim 1 of the first auxiliary request, the third and fourth auxiliary requests do not meet the requirements of Article 123(2) EPC, either.

Fifth, sixth and seventh auxiliary requests

8. *Admittance into the appeal proceedings - Article 13(1) and (2) RPBA 2020*

8.1 The revised Rules of Procedure of the Boards of Appeal (RPBA 2020) entered into force on 1 January 2020 (Article 24(1) RPBA 2020). With a few exceptions (cf. Article 25(2) and (3) RPBA 2020), the RPBA 2020 apply to any appeal that was pending on, or was filed after, this date (Article 25(1) RPBA 2020).

8.2 The fifth, sixth and seventh auxiliary requests were filed with the letter dated 21 December 2020 and thus after the notification of the board's summons to oral proceedings, which, in turn, was after the entry into force of the RPBA 2020. As a consequence, the exception of Article 25(3) RPBA 2020 does not apply and the

matter of admittance of these requests is to be assessed under Article 13(1) and (2) RPBA 2020.

- 8.3 In its letter dated 21 December 2020, the appellant indicated an intention "to clarify the subject matter of the claims in light of the Communication of the Board of Appeal" but did not give any reasons why the fifth, sixth and seventh auxiliary requests should be admitted at this stage of the appeal proceedings (Article 13(1), third paragraph, RPBA 2020), let alone any cogent reasons justifying exceptional circumstances (Article 13(2) RPBA 2020).
- 8.4 Further, the amendments to claim 1 made in the fifth auxiliary request merely clarify the board's interpretation of the claim's last paragraph as explained in point 3.1 above and thus, *prima facie*, cannot overcome the added subject-matter objection (Article 13(1), fourth paragraph, RPBA 2020).
- 8.5 Further still, the addition of the feature "the initial preview is stored with the file" in claim 1 of the sixth and seventh auxiliary requests is not evidently aimed at overcoming one of the objections raised for the first time in the board's communication, but rather appears to be intended to address the inventive-step objection with respect to document D1 already raised in the contested decision (Article 13(1), fourth paragraph, RPBA 2020).
- 8.6 The fifth, sixth and seventh auxiliary requests are thus not admitted into the appeal proceedings under Article 13(1) and (2) RPBA 2020.

9. *Conclusion*

Since none of the requests admitted into the appeal proceedings is allowable, the appeal is to be dismissed.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chair:



S. Lichtenvort

R. de Man

Decision electronically authenticated