Internal distribution code:

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

Datasheet for the decision of 20 April 2021

Case Number: T 2916/18 - 3.5.05

Application Number: 09170697.8

Publication Number: 2194452

IPC: G06F3/048

Language of the proceedings: EN

Title of invention:
Portable electronic device with interface reconfiguration mode

Applicant:
Apple Inc.

Headword:
GUI reconfiguration mode/APPLE

Relevant legal provisions:
EPC Art. 56

Keyword:
Inventive step - (yes)

Decisions cited:

Catchword:

Europäisches Patentamt
European Patent Office
Office européen des brevets

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 2916/18 - 3.5.05

D E C I S I O N
of Technical Board of Appeal 3.5.05
of 20 April 2021

Appellant: (Applicant)	Apple Inc. One Apple Park Way Cupertino CA 95014 (US)
Representative:	Black, Diego 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 10 July 2018 refusing European patent application No. 09170697.8 pursuant to Article 97(2) EPC.**

Composition of the Board:

Chair	A. Ritzka
Members:	P. Cretaine
	E. Mille

Summary of Facts and Submissions

I. This appeal is against the decision of the examining division posted on 10 July 2018 refusing European patent application No. 09170697.8. A main request and first and third auxiliary requests were refused for not fulfilling the requirements of Article 123(2) EPC. The main request and the first, third and fourth auxiliary requests were also refused for lack of inventive step (Article 56 EPC) in view of the disclosure of:

D1: Anonymous: "Nokia 7710", 1 March 2005, retrieved from the Internet on 24 February 2017: URL: https:// www.nokia.com/en_int/phones/sites/default/files/ user-guides/Nokia_7710_UG_en.pdf,

and the common general knowledge, as illustrated in particular by:

D2: Anonymous: "Macintosh Human Interface Guidelines (chapter 1)", 1 January 1995, pages i to iii and 3 to 14, retrieved from the Internet on 24 February 2017: URL: http:/interface.free.fr/ Archives/Apple_HIGuidelines.pdf.

A second auxiliary request was not admitted into the proceedings.

II. With the statement setting out the grounds of appeal submitted on 9 November 2018, the appellant filed a main request and first to fourth auxiliary requests and requested that the decision under appeal be set aside and that a patent be granted on the basis of the main request or one of the first to fourth auxiliary

requests. Oral proceedings were requested as an auxiliary measure.

III. A summons to oral proceedings was issued on 17 December 2020. In a communication pursuant to Article 15(1) RPBA, sent on 25 January 2021, the board gave its preliminary opinion that the main request did not meet the requirements of Article 56 EPC in view of the disclosure of D1 and the common general knowledge as illustrated by D2. The board further expressed the opinion that the subject-matter of independent claims 1 and 8 of the first auxiliary request involved an inventive step, having regard to the cited prior art.

IV. With a letter of response dated 3 March 2021, the appellant withdrew the main request. The appellant also withdrew the request for oral proceedings, provided that the first auxiliary request was allowed.

V. In its communication dated 8 March 2021, the board notified the appellant that the oral proceedings had been cancelled.

VI. The appellant requested that the decision under appeal be set aside and that a patent be granted on the basis of one of the first to fourth auxiliary requests submitted with its letter dated 9 November 2018.

VII. Claim 1 of the first auxiliary request reads as follows:

"A portable electronic device, comprising:
a touch-sensitive display;
one or more processors;
memory; and

one or more programs, wherein the one or more programs are stored in the memory and configured to be executed by the one or more processors, the programs including:
instructions for displaying a first plurality of application icons in a first region on the touch-sensitive display in a normal mode of operation, wherein in the normal mode of operation a tapping gesture on a first application icon at a first position on the touch-sensitive display activates a corresponding application;
instructions for detecting a first predefined user action comprising a first finger contact on the first application icon at the first position held for more than a predefined time period;
instructions for, in response to detecting the first finger contact on the first application icon at the first position held for more than the predefined time period, initiating a predefined user interface reconfiguration mode, distinct from the normal mode of operation, that allows a user to reposition one or more displayed application icons;
instructions for generating, when the interface reconfiguration mode has been initiated, an indication to the user that the interface reconfiguration mode has been initiated and that the positions of one or more application icons in the first plurality of application icons may be reconfigured by the user, wherein the indication includes providing an animated effect to one or more of the first plurality of application icons;
instructions for detecting movement of the first finger contact from the first position on the touch-sensitive display to a second position on the touch-sensitive display while in the interface reconfiguration mode;
instructions for, in response to detecting movement of the first finger contact from the first position on the touch-sensitive display to the second position on the

touch-sensitive display while in the interface reconfiguration mode, moving the first application icon to the second position on the touch-sensitive display;
instructions for, while in the interface reconfiguration mode, detecting a second finger contact with the touch-sensitive display at a third position corresponding to a second application icon;
instructions for detecting movement of the second finger contact to a fourth position on the touch-sensitive display;
instructions for, in response to detecting movement of the second finger contact from the third position on the touch-sensitive display to the fourth position on the touch-sensitive display while in the interface reconfiguration mode, moving the second application icon to the fourth position on the touch-sensitive display;
instructions for detecting a second predefined user action, separate from the first predefined user action, after moving the first application icon to the second position on the touch-sensitive display and the second application icon to the fourth position on the touch-sensitive display; and
instructions for, in response to detecting the second predefined user action: fixing positions of the first application icon at the second position and the second application icon at the fourth position, and terminating the user interface reconfiguration mode."

The first auxiliary request comprises further independent claims directed to a corresponding method (claim 8) and a corresponding computer program (claim 15).

Given the outcome of the appeal, there is no need to detail the claims of the the second to fourth auxiliary requests.

Reasons for the Decision

1. Article 123(2) EPC

The first auxiliary request is based on the claims that formed the first auxiliary request at the time of the decision under appeal.

1.1 In its decision, the examining division objected in points 3.2 and 8.1 that the feature "interface reconfiguration mode" used in claim 1 was an inadmissible generalisation of the feature "user interface reconfiguration mode" used in the application documents as originally filed. The appellant amended the independent claims by defining the interface reconfiguration mode, in its first occurrence in the claim, as a user interface reconfiguration mode. The board is satisfied that this amendment overcomes the objection raised in the impugned decision.

1.2 The examining division further objected in points 3.3 to 3.9 and 8.1 that the characterisation of first and second user actions as being specifically "separate" was not mentioned in the application documents as originally filed.
The board considers that, since the term "separate" was not used in the application documents as originally filed, it should be interpreted based on the description and the common understanding of the skilled person.

First, the explicit recitation of a first and a second predetermined user action in paragraphs [0032] and [0033] provides the skilled person with a clear and unambiguous basis for characterising the user actions as distinct.

Secondly, the description mentions in paragraph [0032], as exemplary first user actions, selecting a physical button on the portable device, making a predefined gesture on the touch screen display surface, or selecting a soft button. In claims 1 and 8, the first user action is specified as being a finger contact on an application icon in the form of a press-and-hold gesture on this application icon, which has to be distinguished from a short tapping gesture on an application icon, which launches the application. The first user action initiates a user interface reconfiguration mode, and the user is informed of this change in mode (see paragraph [0026]). In the user interface reconfiguration mode, the contacted icon may be dragged to a new position on the display without releasing the finger contact with the icon (see paragraph [0032]). Moreover, a second icon can be repositioned in this manner while the reconfiguration mode is active (see paragraphs [0028] and [0066], point 12). A user then performs a second predefined user action to exit the user interface reconfiguration mode (see paragraph [0033]). Although the second user action is not specified in any more detail in claims 1 and 8, paragraph [033] mentions, as examples of a second user action, selecting or deselecting a physical button on the portable device, making another predefined gesture on the touch screen display surface, and selecting or deselecting a soft button. It is thus clear to the skilled person that the first and second user actions are distinct actions which the portable device can

detect and distinguish. In particular, the board agrees with the appellant that a predefined gesture on a touch screen should be construed as a self-contained, choreographed action of a finger or stylus on the screen with a definite start and end point. However, contrary to what the appellant argued with respect to the withdrawn main request, the board holds that a press-and-drag action on an icon also comprises two distinct gestures which the touch screen is able to distinguish, and which can be considered separate user actions. In the present case, the first user action is defined in claims 1 and 8 as a finger contact held for a predetermined time. The second user action may be, according to the description, either the selection of a button (physical or soft) or another gesture. The skilled person would thus clearly realise that in both cases, the selection of a button or another, distinct gesture, the first and second user actions are not only different but can also be detected separately by the portable device.

The insertion of the term "separate" to qualify the second user action with respect to the first user action is thus supported by the application documents as originally filed.

1.3 For these reasons, the board holds that the first auxiliary request meets the requirements of Article 123(2) EPC.

2. Article 56 EPC

2.1 Prior art

D1 discloses instructions for the use of a smartphone. Application icons are displayed on a touch screen (see

Figure 11). A double tap on an application icon opens the corresponding application (see page 19, right-hand column). The user is able to change the position of an icon on the touch screen by using a tap-hold-and-drag action (see page 31, right-hand column). A reconfiguration mode in respect of an application icon can be considered to have been initiated in D1 after a press-and-hold action on the application icon of about one second.

D2 relates to guidelines for interfaces. It discloses on pages 12 and 13 the feature of short-term "spring-loaded" modes, in which the user must constantly do something to maintain the mode, as opposed to "long-term" or persistent modes.

In the impugned decision, D1 was considered the closest prior art.

2.2 D1 does not disclose the possibility of repositioning a second icon while the portable device is in the reconfiguration mode initiated by a press-and-hold action on the first icon. D1 is silent on the question of what happens if a finger contact is detected on a second icon while the portable device is in the reconfiguration mode in respect of the first icon. Even if it were considered that in that case the second icon could be repositioned by performing a long press-and-drag action on it, the reconfiguration mode initiated in this way would be a reconfiguration mode only in respect of the second icon. Moreover, there would be two user actions in response to which the reconfiguration modes would be terminated and the first and second icon positions fixed. By contrast, according to claim 1 a single first user action initiates a single reconfiguration mode for two icons, and a single

second user action terminates the reconfiguration modes and fixes the positions of the two icons. Furthermore, in claim 1, the reconfiguration mode is maintained even if the finger contact on an icon is released, whereas in D1 the reconfiguration mode in respect of an icon is terminated when the finger is lifted from the icon.

Therefore, at least the following features of claim 1 are not disclosed in D1:
- instructions for, while in the interface reconfiguration mode, detecting a second finger contact with the touch-sensitive display at a third position corresponding to a second application icon;
- instructions for detecting movement of the second finger contact to a fourth position on the touch-sensitive display;
- instructions for, in response to detecting movement of the second finger contact from the third position on the touch-sensitive display to the fourth position on the touch-sensitive display while in the interface reconfiguration mode, moving the second application icon to the fourth position on the touch-sensitive display;
- instructions for detecting a second predefined user action, separate from the first predefined user action, after moving the first application icon to the second position on the touch-sensitive display and the second application icon to the fourth position on the touch-sensitive display; and
- instructions for, in response to detecting the second predefined user action: fixing positions of the first application icon at the second position and the second application icon at the fourth position, and terminating the user interface reconfiguration mode.

The technical effect of these distinguishing features is that a second icon can be repositioned during the reconfiguration mode in respect of the first icon, and that the reconfiguration is maintained until a second user action, not related to the finger contact on the first icon, is performed. Fewer actions are therefore required to reconfigure two icons.

The objective technical problem can thus be formulated as how to provide an improved reconfiguration scheme for a graphical user interface displaying application icons.

There was nothing in D1 to prompt the skilled person to modify the instruction, disclosed in page 31, right-hand column, to change the order of icons.

In the decision under appeal, the inventive step objection based on D1 relied on D2 as an illustration of the common general knowledge. D2 discloses using long-term modes, i.e. persistent modes, as opposed to short-term "spring-loaded" modes such as the mode described in D1, to allow the user to change multiple settings of a user interface in a single mode session. However, the modes described in D2 do not allow for the physical relocation of icons, so the skilled person is unlikely to look at D2 when considering the objective technical problem established above; but even if the skilled person were looking at D2, the incorporation of the persistent mode of D2 into the system of D1 would require substantial modifications to the functionality of D1. In particular, automatic termination of its reconfiguration mode and fixing of the icon position at the moment when the stylus is lifted off the touch screen would have to be suppressed. The board agrees with the appellant that these modifications could not

be carried out by the skilled person without the use of inventive skill. Moreover, the appellant plausibly argued that the device of claim 1 enables the activation of a persistent reconfiguration mode in which the user is able to reposition both icons via a simple drag-and-drop operation, with no risk of inadvertently opening the corresponding applications or interrupting the reconfiguration mode.

For these reasons, the board holds that the subject-matter of claim 1 involves an inventive step (Article 56 EPC), having regard to the disclosures of D1 and D2.

Independent claims 8 and 15 contain the same features as claim 1, expressed in terms of a method claim and a claim for a computer program respectively. Thus, claims 8 and 15 also meet the requirements of Article 56 EPC. Claims 2 to 7 and 9 to 14 are dependent claims which, as such, also meet the requirements of Article 56 EPC.

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.

2. The case is remitted to the first instance with the order to grant a patent based on the claims of the first auxiliary request filed on 9 November 2018 and with the description and drawings adapted.

The Registrar: The Chair:

K. Götz-Wein A. Ritzka

Decision electronically authenticated