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**Datasheet for the decision
of 17 November 2021**

Case Number: T 0142/19 - 3.5.05

Application Number: 10811494.3

Publication Number: 2472366

IPC: G06F3/01, G06F3/041

Language of the proceedings: EN

Title of invention:

TACTILE SENSATION IMPARTING DEVICE AND CONTROL METHOD OF
TACTILE SENSATION IMPARTING DEVICE

Patent Proprietor:

Kyocera Corporation

Opponent:

Preh GmbH

Headword:

Uniform tactile feedback on a touch screen/PREH

Relevant legal provisions:

EPC Art. 123(2)

Keyword:

Amendments - allowable (yes)



Beschwerdekammern

Boards of Appeal

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Case Number: T 0142/19 - 3.5.05

D E C I S I O N
of Technical Board of Appeal 3.5.05
of 17 November 2021

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Decision under appeal: **Decision of the Opposition Division of the
European Patent Office posted on 9 November 2018
revoking European patent No. 2472366 pursuant to
Article 101(3) (b) EPC.**

Composition of the Board:

Chair A. Ritzka
Members: P. Cretaine
F. Blumer

Summary of Facts and Submissions

- I. This appeal is against the opposition division's decision, issued on 9 November 2018, to revoke European patent No. 2 472 366. The patent was revoked on the ground that the subject-matter of claim 1 of the patent as granted (main request) did not meet the requirements of Article 123(2) EPC. A first and a second auxiliary request were also not allowed for lack of compliance with Article 123(2) EPC.
- II. The patentee's notice of appeal was received on 4 January 2019 and the appeal fee was paid on the same day. The statement setting out the grounds of appeal was received on 31 January 2019. The appellant (patentee) requested that the opposition division's decision be set aside and that the patent be maintained on the basis of the claims of a main request filed with the statement setting out the grounds of appeal, or on the basis of the first auxiliary request, filed as an auxiliary request on 25 May 2018, on which the decision was based. In the alternative, oral proceedings were requested.
- III. A summons to oral proceedings was issued on 29 April 2021.
- IV. By letter of 8 October 2021, the respondent (opponent) announced that it would not attend the scheduled oral proceedings.
- V. In a communication sent on 15 October 2021, the board stated that only the requirements of Article 123(2) EPC should be discussed during the oral proceedings since the issues of novelty and inventive step had not been

discussed during the oral proceedings before the opposition division and were not addressed at all in the impugned decision. The board also expressed its preliminary opinion on the case.

- VI. Oral proceedings were held on 17 November 2021 in the form of a videoconference and in the absence of the respondent. The appellant requested that the decision under appeal be set aside and that the patent be maintained on the basis of the main request filed with the grounds of appeal or on the basis of the first auxiliary request, filed as an auxiliary request during opposition proceedings by letter dated 25 May 2018. The respondent did not file any requests.

At the end of the oral proceedings, the board's decision was announced.

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

"A tactile sensation providing apparatus comprising:
a load detection unit (12) configured to detect a pressure load generated when an object presses by a certain pressure a touch face (11a) of a touch sensor (11) configured to detect a touch input, wherein the detected pressure load differs, for the certain pressure, depending on a pushed position of the object on the touch face (11a);
a tactile sensation providing unit (13) configured to provide a tactile sensation to the object pressing the touch face (11a) of the touch sensor (11), without supporting the touch sensor (11); and
a control unit (16) configured to control the tactile sensation providing unit (13) according to the pushed position on the touch face (11a), so as to cause the tactile sensation providing unit (13) to provide the

tactile sensation to the object when the object, applying the certain pressure at which the tactile sensation is to be provided, presses any position on the touch face (11a) for providing the tactile sensation."

The main request comprises a further independent claim directed to a corresponding method (claim 8).

Due to the outcome of the appeal, there is no need to give details of the first auxiliary request.

Reasons for the Decision

1. Main request - admissibility

Independent claims 1 and 8 have been amended with respect to independent claims 1 and 8 as granted, respectively, solely by replacing the wording "without supporting the touch sensor (11) in the vicinity of the center of the touch face (11a)" with the wording "without supporting the touch sensor (11)".

This amendment seems to be a reasonable attempt to overcome the reasons for the decision under appeal.

The board agrees with the appellant that this amendment limits the scope of claim 1. In fact, due to the above-mentioned wording, claim 1 as granted encompassed devices comprising a tactile sensation providing unit which either did not support the touch sensor at all or supported it only outside the vicinity of the touch sensor. The present claim 1 encompasses only devices comprising a tactile sensation providing unit, which

does not support the touch sensor in any case. The same considerations apply to independent method claim 8. Therefore, the amended claims do not infringe Article 123(3) EPC, and therefore are not *prima facie* unallowable.

For these reasons, the board has decided to admit the main request into the appeal proceedings under Article 12(4) RPBA 2007.

2. Main request - Article 123(2) EPC

The decision under appeal stated that the feature whereby the tactile sensation providing unit was not supporting the touch sensor in the vicinity of the center of the touch face, as found in claim 1 as granted, extended beyond the content of the application as originally filed. In the present claim 1, the tactile sensation providing unit is now defined as not supporting the touch sensor at all, and not only not supporting it in the vicinity of the center of the touch face.

In all the described embodiments, the tactile sensation providing unit is comprised of piezoelectric elements (see reference sign 32 in Figure 2; reference sign 17 in Figure 5; Figures 9 to 13) that are located close to each of two opposed sides of the touch sensor (see paragraph [0055]) or close to one or a plurality of sides (see paragraph [0065]). Support members for the touch sensor are mentioned in paragraphs [0041], [0042] and [0044] to [0046]. At no point does the description mention any supporting functionality of the piezoelectric elements with respect to the touch sensor. In all the embodiments, the piezoelectric elements 17 or 32, which implement the tactile

sensation providing unit 13, are attached to the rear face of the touch sensor 11. There is no other structure or part of the tactile sensation providing apparatus which is in contact with the piezoelectric elements. This means that the touch sensor 11 holds the piezoelectric elements, but the piezoelectric elements cannot support the touch sensor. The only elements disclosed as supporting the touch sensor are the support members, or insulators, 22.

It could be argued that the application as originally filed does not explicitly mention that the tactile sensation providing unit, i.e. the group of piezoelectric elements 17, does not support the touch sensor; however, the support of the touch sensor is addressed solely in paragraphs [0041], [0042] and [0044] to [0046] of the description in combination with Figures 9 to 13. Paragraphs [0041] and [0046] describe that these support members are made of elastic members. These support members may be positioned at each of the four corners of the touch sensor (see paragraph [0041] and Figures 9 to 11) or at each of the four corners and at a center of a left periphery and at a center of a right periphery (see paragraph [0046] and Figures 12 and 13). The other elements made of elastic members are the elements provided with reference sign 22 in Figures 2(a), 2(b), 5(a) and 5(b), which, although positioned under the touch sensor, are not defined as support members of the touch sensor but only as insulators; see paragraph [0052]. Moreover, paragraph [0064] states that the piezoelectric element 17 is mounted on the touch sensor 11 as illustrated in Figure 5, which clearly shows that the piezoelectric element cannot support the touch sensor.

The appellant also plausibly argued that the skilled person would immediately understand from the plan views of the device shown in Figures 2(b) and 5(b) that the piezoelectric elements (reference signs 32 in Figure 2(b) and reference signs 17 in Figure 5(b)), i.e. the tactile sensation providing unit, are not in contact with the support members (reference signs 22 in Figures 2(b) and 5(b)) and, as a consequence, cannot be considered to cooperate with the support members in supporting the touch sensor (reference signs 11 in Figures 2 and 5).

For these reasons, the board holds that the feature whereby the tactile sensation providing unit does not support the touch sensor is supported by the application documents as originally filed. Therefore, the main request complies with Article 123(2) EPC.

3. The issues of novelty and inventive step were not discussed during the oral proceedings before the department of first instance and have not been addressed in the impugned decision. Therefore, the board considers it appropriate to remit the case to the department of first instance for further prosecution, under the provisions of Article 11 RPBA 2020.

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.
2. The case is remitted to the opposition division for further prosecution.

The Registrar:

The Chair:



K. Götz-Wein

A. Ritzka

Decision electronically authenticated