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**Datasheet for the decision  
of 8 September 2021**

**Case Number:** T 0769/19 - 3.5.05

**Application Number:** 05745168.4

**Publication Number:** 1769324

**IPC:** G06F3/033

**Language of the proceedings:** EN

**Title of invention:**

NAVIGATION OF AN N-DIMENSIONAL HIERARCHICAL STRUCTURE USING A  
2-DIMENSIONAL CONTROLLER

**Applicant:**

BlackBerry Limited

**Headword:**

NAVIGATION USING A 2-DIMENSIONAL CONTROLLER / BlackBerry

**Relevant legal provisions:**

EPC Art. 123(2), 84, 56

**Keyword:**

Amendments - auxiliary request - added subject-matter (no)  
Claims - clarity - auxiliary request (yes)  
Inventive step - auxiliary request - non-obvious modification



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Case Number: T 0769/19 - 3.5.05

**D E C I S I O N**  
**of Technical Board of Appeal 3.5.05**  
**of 8 September 2021**

**Appellant:** BlackBerry Limited  
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Waterloo, ON N2K 0A7 (CA)

**Representative:** MERH-IP Matias Erny Reichl Hoffmann  
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**Decision under appeal:** **Decision of the Examining Division of the  
European Patent Office posted on 26 September  
2018 refusing European patent application No.  
05745168.4 pursuant to Article 97(2) EPC.**

**Composition of the Board:**

**Chair** A. Ritzka  
**Members:** N. H. Uhlmann  
F. Blumer

## **Summary of Facts and Submissions**

- I. The appellant appealed against the examining division's decision refusing European patent application No. 05745168.4, which was filed on 11 May 2005.
- II. The examining division decided that the subject-matter of the claims of the main request and auxiliary requests 1 to 4 did not involve an inventive step.
- III. The examining division made reference, *inter alia*, to the following documents:
- D1 US 6 266 098
  - D2 WO 98/37694
  - D5 US 2003/001907
  - D6 US 2003/028885
  - D7 "Mechanism of displaying a menu which minimizes the eye movement", IBM TECHNICAL DISCLOSURE BULLETIN, International Business Machines Corp. (THORNWOOD), US, vol. 36, no. 8, 1 August 1993, pages 25-28
  - D8 US 2003/086012
  - D9 EP 0 088 565
  - D10 WO 02/063483
  - D11 US 2004/070629
- IV. In its statement setting out the grounds of appeal the appellant maintained the main request and auxiliary requests 1 to 4 underlying the contested decision and submitted arguments.
- V. The board summoned the appellant to oral proceedings.
- VI. In a communication pursuant to Article 15(1) RPBA 2020, the board set out its provisional view of the case.

- VII. With a letter dated 5 August 2021, the appellant submitted further auxiliary requests 5 to 10 and comments on the board's provisional view.
- VIII. During the oral proceedings before the board, the appellant submitted a new auxiliary request 9 and withdrew the main request and the auxiliary requests 1 to 8 and 10.
- IX. The appellant's final request was that the decision under appeal be set aside and that a patent be granted on the basis of the new auxiliary request 9 dated 8 September 2021 (claims 1 to 12) as filed by email during the oral proceedings before the board.
- X. Claim 1 of the new auxiliary request 9 reads as follows:

"A method for navigating a multi-hierarchical menu system on a display (100) of an electronic device using a two-dimensional four-directional pointing device (110) enabling a user to operate the pointing device (110) in four directions within two dimensions, the method comprising:

determining (205,215) whether the pointing device (110) has not been operated to execute a primary function of the electronic device for a predetermined time-out period;

if it is determined that the pointing device (110) has not been operated to execute the primary function of the electronic device for the predetermined time-out period, detecting (218) an operation of said pointing device (110) by the user in one of the two dimensions of the pointing device (110), including detecting the direction of the operation;

displaying (220), upon detecting the operation before displaying the menu, a 1st level of said multi-hierarchical menu system having a plurality of icons (120A, 120B, 120C) in proximity to a pointer (130) on a portion of the display (100), thereby enabling the user to affect the position and orientation of the menu over a background image, in that said icons (120A, 120B, 120C) are displayed over the background image parallel to the detected direction of the movement of said pointing device;

scrolling (230) said icons relative to said pointer (130) in said dimension of the detected direction of the operation responsive to operating said pointing device in said dimension of the detected direction of the operation when said dimension of the detected direction is the same dimension as the one in which the icons are displayed; and

selecting (240) one of said icons in closest proximity to said pointer (130) responsive to operating said pointing device (110) in the other dimension than the dimension of the detected direction of the operation."

### **Reasons for the Decision**

1. The present application relates to a method for navigating a hierarchical menu system using a four-directional pointing device. A level of the menu comprising icons is displayed when the pointing device is operated. The icons are displayed parallel to the movement direction of the pointing device. Scrolling and selecting functions are provided, based on operating the pointing device in different directions.
2. Document D1 discloses a system for displaying a menu and selecting functions from the menu. A right key is

used for activating a vertical sub-menu and for selecting a function. Up and down keys are used for scrolling up and down.

3. Amendments

The claims have been amended in accordance with the disclosure in paragraph 12 of the description. Therefore, the requirements of Article 123(2) EPC are met.

4. Clarity

The dependent claim to which an objection was raised in the communication pursuant to Article 15(1) RPBA 2020 has been deleted.

The board holds that the claims of the new auxiliary request 9 meet the requirements of Article 84 EPC.

5. Patentability

5.1 Document D1 forms a suitable starting point for the problem-solution analysis.

5.2 According to the decision under appeal (section 2.2), document D1 does not disclose, *inter alia*, that icons are disposed parallel to the direction of the detected initial operation of said pointing device.

The board agrees.

5.3 This distinguishing feature leads to the effect referred to in paragraph 12 of the description of the application in suit:

"This advantageously enables the user to affect the position and orientation of the menu over the background display, to ensure for example that a select area of the display (showing an area of interest in a map for example) remains uncluttered by the menu."

In the board's view, this is a technical effect.

- 5.4 The objective technical problem to be solved can be formulated as that of "enabling the user to ensure that an area of interest remains uncluttered when a menu is opened".
- 5.5 The board notes that none of the documents on file discloses the claimed solution, i.e. that the icons are displayed parallel to the detected direction of the movement. In particular, documents D9 and D10 do not disclose that the orientation of the menu is based on the direction of controller movement. D9 sets out techniques for menu design in a system comprising a tablet and does not disclose any directional controller. D10 discloses horizontal and vertical menus but does not teach that the orientation of a menu is based on the movement direction.
- 5.6 The examining division argued (section 2.3 of the impugned decision) that "it was known to the person skilled in the art to allow the user of a GUI to determine the orientation of a user menu - either vertically or horizontally". The board agrees that it was known to determine the orientation by way of pre-set user preferences - in general D9 and D10 disclose such techniques; however, claim 1 sets out that the orientation is based on the detected direction of the movement leading to displaying the 1st level of the menu.
- 5.7 The distinguishing feature does not form part of the skilled person's general knowledge.
- 5.8 In summary, the board considers that the subject-matter of claim 1, and of the corresponding independent claim 7, involves an inventive step (Article 56 EPC) having regard to the prior art on file.

6. Conclusion

The new auxiliary request 9 meets the requirements of the EPC.

**Order**

**For these reasons it is decided that:**

The decision under appeal is set aside.

The case is remitted to the examining division with the order to grant a patent on the basis of the new auxiliary request 9 dated 8 September 2021 (claims 1 to 12), filed by email during oral proceedings before the board, and the description and drawings to be adapted.

The Registrar:

The Chair:



A. Chavinier Tomsic

A. Ritzka

Decision electronically authenticated