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**Datasheet for the decision
of 11 November 2022**

Case Number: T 1604/20 - 3.5.05

Application Number: 16167913.9

Publication Number: 3070586

IPC: G06F3/048

Language of the proceedings: EN

Title of invention:

MOBILE TERMINAL AND USER INTERFACE OF MOBILE TERMINAL

Applicant:

LG Electronics, Inc.

Headword:

Mobile terminal/LG ELECTRONICS

Relevant legal provisions:

EPC Art. 76, 111(1)

RPBA 2020 Art. 11, 12(2)

Keyword:

Divisional application - main request - subject-matter extends beyond content of earlier application (yes) - new auxiliary request - subject-matter extends beyond content of earlier application (no) - after amendment
Admissibility - late filed new auxiliary request (yes)
Remittal - special reasons for remittal - remittal to the department of first instance (yes)



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Case Number: T 1604/20 - 3.5.05

D E C I S I O N
of Technical Board of Appeal 3.5.05
of 11 November 2022

Appellant: LG Electronics, Inc.
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Decision under appeal: **Decision of the Examining Division of the
European Patent Office posted on 16 March 2020
refusing European patent application No.
16167913.9 pursuant to Article 97(2) EPC.**

Composition of the Board:

Chairwoman A. Ritzka
Members: C. Barel-Faucheux
E. Mille

Summary of Facts and Submissions

- I. The appellant (applicant) filed an appeal against the examining division's decision to refuse European patent application No. 16167913.9, which was filed as a divisional application of earlier application No. 09157978.9. The decision was taken during the oral proceedings, which were held in the absence of the duly summoned appellant, and is based on a main request submitted by letter dated 20 September 2018 and an auxiliary request submitted with the letter of 28 October 2019.

- II. The examining division decided that claim 1 of the main request and claim 1 of the auxiliary request were not allowable because they contravened the requirements of Article 76 EPC. In an *obiter dictum*, the examining division stated that claim 1 of the main request and claim 1 of the auxiliary request were not clear, contrary to the requirements of Article 84 EPC.

- III. With the statement of grounds of appeal, the appellant requested that the decision under appeal be set aside and a patent be granted on the basis of either the main request or the auxiliary request.

- IV. In its communication regarding oral proceedings, the board assessed whether claim 1 of the main request complied with Article 76 EPC. It first interpreted the expression "drag input" and then stated that claims 1 and 5 of both the main request and the auxiliary request did not appear to meet the requirements of Article 76 EPC. The board informed the appellant that, should the Article 76 EPC objection be overcome, the board was minded to remit the case to the examining

division for further prosecution (Article 111(1), last subclause, EPC and Article 11 RPBA 2020).

- V. With a letter dated 12 September 2022, filed in preparation for the oral proceedings, the appellant filed a second auxiliary request and submitted further arguments in favour of the allowability of all the requests.
- VI. Oral proceedings before the board were held on 11 November 2022. At the end of the oral proceedings, the chair announced the board's decision. During the oral proceedings, the appellant filed a new first auxiliary request and then a new auxiliary request. The appellant subsequently informed the board that it was withdrawing the first auxiliary request, the new first auxiliary request and the second auxiliary request.
- VII. The appellant's final requests were that the decision under appeal be set aside and that a patent be granted on the basis of the set of claims of either the main request or the new auxiliary request filed by the appellant during the oral proceedings before the board. In the alternative, the appellant requested that the case be remitted to the examining division for further prosecution on the basis of description page 2 filed with the appellant's letter dated 20 September 2018, description page 3 filed with the appellant's letter dated 16 March 2017, description pages 1 and 4 to 34 as originally filed and Figures 1 to 14 of drawing sheets 1/18 to 18/18 as originally filed.
- VIII. Claim 1 of the main request reads (as per the itemisation proposed by the appellant in the statement of grounds):
"(1.) A mobile terminal comprising:

(1.1) a wireless communication unit (110) to provide wireless communication;
(1.2) a display unit (151);
(1.3) a user input unit (130); and
(1.4) a controller (180) coupled with the wireless communication unit (110), the user input unit (130) and the display unit (151), the controller configured to:
(1.4.1) display at least part of first information on the display unit (151),
(1.4.2) receive, via the user input unit (130), a drag input, and
(1.4.3) execute one of a scroll function and a refresh function for the first information in response to the drag input,
(1.4.4) wherein the scroll function is executed based on the drag input,
(1.4.5) wherein the refresh function is executed based on the drag input when the first information cannot be scrolled any further in the direction of the drag input,
(1.4.6) wherein the refresh function includes receiving second information via the wireless communication unit (110) and displaying the second information on the display unit (151)."

Independent claim 5 is directed to a corresponding method for using a mobile terminal.

IX. Claim 1 of the new auxiliary request reads:
"A mobile terminal comprising:
a wireless communication unit (110) to provide wireless communication;
a display unit (151);
a user input unit (130); and

a controller (180) coupled with the wireless communication unit (110), the user input unit (130) and the display unit (151), the controller configured to:

- display at least part of information on the display unit (151),
- receive, via the user input unit (130), a signal for setting a region on the display unit (151) by applying a touch operation,
- receive, via the user input unit (130), a drag input to move the set region,
- execute a scroll function to the displayed information, when the set region contacts with a boundary of the display unit (151), and
- execute a refresh function for the information in response to the drag input, when the information cannot be scrolled any further in the direction of the drag input, wherein the refresh function includes re-receiving the information via the wireless communication unit (110) and displaying the re-received information on the display unit (151)".

Independent claim 5 is directed to a corresponding method for using a mobile terminal.

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

Reasons for the Decision

The application

1. The application relates to a mobile terminal and to a corresponding method for executing various functions of the mobile terminal by designating or setting a portion of a display (paragraph [0001] as originally filed).

Main request - interpretation of the term "drag input"

2. In the board's view, the term "drag input" in claim 1 of the main request needs interpretation.
- 2.1 Referring to paragraph [0087] of the application as originally filed, the appellant argued that the drag input was effected by a user touching the user input unit at a specific point and dragging their finger from the touched point in a desired "dragging" direction. The act of the user touching the user input unit at the start point of the drag was tantamount to designating/setting a portion of the screen (letter dated 20 September 2018, page 3).
- 2.2 In the following assessment of the compliance of claim 1 with Article 76 EPC, the board will interpret the expression "drag input" as defined by the appellant (see point 2.1 above), i.e. a touch on the user input unit at a specific point and a dragging of the user's finger from the touched point in a desired "dragging" direction.

Main request - Article 76 EPC

3. First, the board notes that pages 1 to 34 of the description of the parent application are identical to the corresponding pages of the description of this divisional application as originally filed. This was also confirmed by the appellant (statement of grounds, last paragraph of page 3).
4. The appellant argued that the examining division had failed to establish why the skilled person would not unambiguously derive the subject-matter of claim 1 from

the entire disclosure of the application at issue since the examining division had concentrated on the disclosure of paragraphs [0083] and [0095] to [0099], relating to Figure 9 of the parent application (as originally filed; see statement of grounds, section B.II, 1., a), on pages 3 to 4). The appellant then referred to several paragraphs of the entire disclosure of the application.

5. The board notes the following:

5.1 Figure 1 and paragraphs [0030], [0037] and [0087] of the parent (and divisional) application as originally filed disclose **features (1.), (1.1), (1.2), (1.3), (1.4) and (1.4.1)**, with the "first information" corresponding to (displayed) "various information or contents" mentioned in paragraph [0087]. Paragraphs [0039] and [0042] additionally disclose that the user input unit 130 may include a (static pressure/ capacitance) touch pad.

5.2 Paragraphs [0087] to [0089] in conjunction with Figure 6, and paragraphs [0090] to [0092] in conjunction with Figure 7 describe the following:

- A user may specify or "set" a region on the display unit 151 through a (first) touch input.

- The controller 180 selects a function to be applied to the information displayed at the set region by using the set region and an "output mode"; if the output mode is a mode for reading a document, the function that is pre-selected, or selected, for example, through a (second) touch input, can be a "magnification function" (or one of a "transmission function" or a "storage function") and the magnified form of the

information displayed on the set region is output to a portion of the display unit 151.

- 5.2.1 In this respect, the appellant argued that "[s]pecifically, having the goal of the present invention in mind (i.e., simplifying the process for executing a function), the skilled person unambiguously derives that the additional function (second function of each function pair) is a pre-set function, in order to relieve the user from the burden of selecting the function from a corresponding function menu" (statement of grounds, page 7, first paragraph).

The board notes, however, that in Figure 7(b) in conjunction with paragraph [0091] a (first) function is selected through a function menu listing a "magnification function", a "transmission function" and a "storage function" as applicable functions.

- 5.3 The appellant argued that magnifying a region of the displayed information was only one function out of the several possible function pairs and that each of these function pairs could be performed independently of the others. It also argued that the magnification function was not a precondition for functions to be performed by the mobile terminal (statement of grounds, section B.II, 1., d), on page 7).

- 5.4 In its letter of reply to the board's communication, the appellant further argued that paragraph [0098] was completely silent about any magnification. This description passage referred to "one region" that was moved. Moreover, with respect to paragraph [0082], the refreshing function was described with respect to the "one region" and not the magnified form. While the first sentence of this passage mentioned a scroll

function in view of "a change in the magnified region", the second sentence of this passage (immediately thereafter) mentioned that the controller 180 could also scroll the information displayed on the screen in the direction in which one region of the screen was moved.

Thus, it was disclosed that scrolling was performed if the one region was moved, irrespective of whether or not this one region was magnified. As this language matched that of paragraph [0098], the application at issue as originally filed disclosed that the refreshing of information was triggered by a "drag input (moving of the one region)" (letter of reply dated 12 September 2022, section I, "Magnifying", on pages 4 and 5).

5.4.1 During the oral proceedings the appellant argued that the setting of a region started the method of claim 1 of the main request but the magnification of this region was only an option. The further embodiments had to be considered in the context of this knowledge, i.e. that the magnification of the region was only an option. The figures were only examples.

5.4.2 The board has been convinced by this argument.

5.5 Paragraphs [0093] and [0094] disclose that if a magnification function is applied to the information displayed on the set region of the display unit 151, the controller 180 may apply at least one "additional function" related to an additional signal received through a user input unit (for example a (third) touch input).

5.5.1 The "additional function" may be a function of changing the position of one region where the magnified form is

output: when a user touches the magnified form and drags it in an arbitrary direction on the display unit 151, the region where the magnified form is output may be moved in the arbitrary direction (paragraph [0094] and Figures 8(a) and 8(b); paragraph [0095] and Figures 9A(a) and 9A(b)).

5.5.2 The "additional function" may also be a function of scrolling the information displayed on the display unit 151: if the user keeps dragging even after the position of the magnified-form displayed region is moved up to the boundary of the display unit 151, the information output to the display unit 151 may be scrolled in the arbitrary direction (paragraph [0095] and Figure 9A(c)).

5.5.3 Therefore, the board concurs with the appellant (which referred in particular to paragraphs [0076], [0077], [0079] and [0080]) that the "invention" in hand is described with regard to a mobile terminal configured to:

- (i) select a function to be applied to displayed information by using a set region or portion of the display unit and an output mode
- (ii) apply the selected function
- (iii) apply an additional (pre-set) function related to an additional signal received by a user input unit

The appellant concluded that the "invention" in hand was directed to a mobile terminal that made it possible to execute a plurality of pairs of functions, namely the selected function and the additional function, via "simple and intuitional manipulation of a touch screen" (the appellant referred in particular to paragraphs [0080] to [0087], Figures 6 to 14 and claims 1 to 4 of the parent application as originally filed;

see statement of grounds, section B.II, 1., b), on pages 4 to 6). According to the appellant, claims 1 and 5 of the application at issue were directed to the specific function pair of "scrolling displayed information -> perform refresh function" (statement of grounds, section B.II, 1., c) on page 6).

5.6 First Article 76 EPC objection

5.6.1 The board considers that paragraph [0095] and Figure 9A as originally filed disclose **feature (1.4.2)**, **part of feature (1.4.3)** (executing a "scroll function" for the first information in response to the drag input) and **feature (1.4.4)** (the scroll function is executed based on the drag input) in a specific implementation.

However, the expressions "in response to the drag input" and "based on the drag input" are so broad that they encompass triggering actions for executing the "scroll function" which do not have a basis in the parent application as originally filed. This amendment constitutes an unallowable intermediate generalisation of the disclosure of the earlier application as originally filed.

5.6.2 In its letter of reply to the board's communication, the appellant stated that paragraphs [0090] and [0091] of the originally filed application were directed to Figure 7(b). The appellant cited these paragraphs to support its argument that the display of a list of functions was triggered when the user set a portion or region on the display unit. This "setting a portion or region" (through a "touch input") was a different trigger from the "drag input". The appellant equated a "moving input" with a "drag input".

The appellant further argued that the list of functions was determined specifically for the set region and the output mode.

It also argued that the application at issue unambiguously disclosed that the "scroll function" was triggered by a drag input (referring to paragraphs [0095] and [0082] of the application as originally filed).

The appellant concluded that the description did not allow "a drag input" to be interpreted as a synonym for "set a region".

According to the appellant, since the independent claims of the main request relied solely on disclosure related to "a drag input" triggering a scroll function or a refresh function, the claimed subject-matter did not go beyond the disclosure as originally filed (letter of reply dated 12 September 2022, section I, "Function menu and scrolling" on pages 2 and 3).

- 5.6.3 The board notes that paragraph [0082] of the application as originally filed reads: "[...] The controller 180 may also scroll the information displayed on the screen in the direction that one region of the screen is moved."

The board is of the opinion that this is a second sentence focused on the scrolling direction (i.e. scrolling in the direction in which one region of the screen is moved), but only once the scrolling is triggered.

The following third sentence of paragraph [0082] reads: "When the one region of the screen contacts with a

boundary of the screen, the controller 180 may scroll the information displayed on the screen."

In the board's opinion, this third sentence discloses that the condition or trigger for scrolling is that the one region contacts with a boundary of the screen.

Lastly, the sentence at the end of paragraph [0082] reads: "If the information displayed on the screen cannot be scrolled any further in the direction that the one region of the screen is moved, the controller 180 may perform at least one of a refreshing function or a page transition function."

The board is of the opinion that the second and third sentences are not in the order in which the different steps occur, i.e. triggering the scrolling and then giving an explanation about the scrolling direction. On the contrary, since the scrolling direction is linked to the movement of the region (which occurred beforehand), the author of the text started by explaining the scrolling direction in conjunction with the movement of the region. Yet the board is of the view that the scrolling starts thereafter, i.e. **when the one region of the screen contacts with a boundary of the screen.**

This is confirmed by paragraph [0095] and Figure 9A and by paragraph [0096] and Figure 9B. Figures 9A(b) and 9A(c) also clearly illustrate the scrolling when the region of the screen contacts with a boundary of the screen ("Those are about the hydroxic ene bio-chemical" and "Hydroxic ene bio-chemical hybrid vehi oil price") (underlining by the board).

5.7 Second Article 76 EPC objection

5.7.1 The board considers that paragraph [0098] and Figure 9D as originally filed disclose **the remaining part of feature (1.4.3)** (executing a "refresh function" for the first information in response to the drag input) and **feature (1.4.5)**.

5.7.2 However, paragraph [0083] as originally filed describes that "the refreshing function refers to re-receiving information currently displayed on the screen from a network or the memory 160 and displaying the re-received information on the screen of the display unit 151".

It might be argued that this paragraph discloses feature (1.4.6), in the specific case, where the "second information" corresponds to the information that is "re-received". However, this limitation is not stipulated in claim 1.

5.7.3 In its letter of reply to the board's communication, the appellant argued that the skilled person construed the term "refresh" to mean re-receiving or reloading of information. Particularly, claim 1 distinguished between first information that was displayed and scrolled, and second information that was displayed after the refresh. The information could be received "from a network" (the appellant referred to paragraph [0083] of the originally filed application), which the skilled person construed as a source of information that could vary over time. The skilled person was thus aware that the first and second information could be the same (identical), if it had not changed between the time the first information was received for display and the time the second information was (re-) received, or

could otherwise be substantially the same information including some updates (letter of reply dated 12 September 2022, section I, "Refresh", on page 4).

- 5.7.4 However, claim 1 encompasses cases where the second information is not the information that is re-received, for example the "page transition" function (i.e. "receiving information about a different page, not the page displayed on the screen of the display unit 151" in paragraph [0083]). And these cases do not have a basis in the application as originally filed.
- 5.7.5 During the oral proceedings before the board, the appellant relied on its written submission concerning this objection and did not provide any further arguments.
- 5.8 Therefore, claim 1 of the main request does not appear to meet the requirements of Article 76 EPC. The same considerations apply to claim 5, *mutatis mutandis*.

New auxiliary request

6. The new auxiliary request was filed during the oral proceedings before the board.

New auxiliary request - Article 123(2) EPC

7. The appellant indicated paragraphs [0080], [0082] and [0083] as a basis for the amendments. The board stated during the oral proceedings that it was satisfied that claim 1 of the new auxiliary request did not extend beyond the content of the application as originally filed (Article 123(2) EPC).

New auxiliary request - Admissibility

8. During the oral proceedings before the board, the chair informed the appellant that the board was of the opinion that the new auxiliary request should be admitted into the appeal proceedings. The exceptional circumstances as per Article 13(2) RPBA 2020 were that the board's objections had been clarified, that one of the board's objections had not been maintained during the oral proceedings, and that independent claims 1 and 5 of the new auxiliary request overcame all the objections under Article 76 EPC raised against claim 1 of the main request (see point 9. below). Moreover, the case is an ex parte case.

New auxiliary request - Article 76 EPC

9. Independent claims 1 (and 5) of the new auxiliary request overcomes all the objections under Article 76 EPC raised against claim 1 of the main request, for the following reasons:
 - 9.1 It has been specified that the scroll function is executed on the displayed information when the set region contacts with a boundary of the display unit. This amendment overcomes the "First Article 76 EPC objection" (see point 5.6 above, in particular point 5.6.3).
 - 9.2 The "second information" has been replaced with the "re-received information". This amendment overcomes the "Second Article 76 EPC objection" (see point 5.7 above, in particular point 5.7.2).
 - 9.3 The setting of a region by a touch operation and the moving of the set region has been introduced. This

corresponds to the board's interpretation in point 2.2 above. Since claim 1 now stipulates a set region, the specification mentioned in point 9.1 above is clear.

Remittal

10. Under Article 11, first sentence, RPBA 2020, a case should be remitted for further prosecution only in exceptional cases, when special reasons apply. The department of first instance refused the application for non-compliance with the provision of Article 76 EPC and did not decide on novelty and inventive step. Consequently, the decision under appeal does not refer to novelty and inventive step. Since the primary object of the appeal proceedings is to review the decision under appeal in a judicial manner (Article 12(2) RPBA 2020) the board considers that in this case special reasons present themselves for remitting the case to the examining division for further prosecution on the basis of the new auxiliary request (Article 111(1), last subclause, EPC and Article 11 RPBA 2020).

Therefore, since the Article 76 EPC objection has been overcome, the board remits the case to the examining division for further prosecution.

Order

For these reasons it is decided that:

The decision under appeal is set aside and the case remitted to the examining division for further prosecution.

The Registrar:

The Chairwoman:



C.Vodz

A. Ritzka

Decision electronically authenticated