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**Datasheet for the decision  
of 26 October 2022**

**Case Number:** T 1534/21 - 3.5.05

**Application Number:** 13184227.0

**Publication Number:** 2698699

**IPC:** G06F3/0485, G06F3/0488

**Language of the proceedings:** EN

**Title of invention:**

Touch-screen image scrolling system and method

**Patent Proprietor:**

Koninklijke Philips N.V.

**Opponents:**

Microsoft Corporation (opposition withdrawn in 2020)  
Molnia, David

**Headword:**

Time decay II/PHILIPS

**Relevant legal provisions:**

EPC Art. 100(c), 76(1), 123(2)  
RPBA 2020 Art. 11

**Keyword:**

Grounds for opposition - subject-matter extends beyond content  
of earlier application (no) - added subject-matter (no)  
Remittal - special reasons for remittal - (yes)

**Decisions cited:**

T 2092/18, T 1240/21



**Beschwerdekammern**

**Boards of Appeal**

**Chambres de recours**

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**Case Number:** T 1534/21 - 3.5.05

**D E C I S I O N**  
**of Technical Board of Appeal 3.5.05**  
**of 26 October 2022**

**Appellant:**

(Patent Proprietor)

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**Respondent:**

(Opponent 1 -  
opposition withdrawn in  
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(Opponent 2)

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**Decision under appeal:**

**Decision of the Opposition Division of the  
European Patent Office posted on 19 May 2021  
revoking European patent No. 2698699 pursuant to  
Article 101(3) (b) EPC.**

**Composition of the Board:**

**Chair**                   A. Ritzka  
**Members:**               E. Konak  
                              K. Kerber-Zubrzycka

## **Summary of Facts and Submissions**

- I. The patent proprietor (hereinafter "the appellant") appealed the decision of the opposition division to revoke the patent in suit (hereinafter "the patent").
- II. The opposition division had decided that the subject-matter of a main request and of auxiliary requests 1, 1a, I, Ia, Ib, Ic, 2, 2a, 2b, 2c, 3, 3a, 3b, 3c, 4, 4a, 4b, 4c, II, IIa, IIb, IIc, 5, 5a, 5b, 5c, 6, 6a, 6b, 6c, 7, 7a, 7b, 7c, III, IIIa, IIIb, IIIc, 8, 8a, 8b, 8c, 9, 9a, 9b, 9c, 10, 10a, 10b and 10c extended beyond the content of the application as originally filed (Articles 100(c) and 123(2) EPC) and beyond the content of the earlier application as filed (Articles 100(c) and 76(1) EPC).
- III. With its statement setting out the grounds of appeal, the appellant maintained the requests underlying the contested decision and filed new auxiliary requests I', 2', 3', 4', 7', 10a' and 10c'. It requested that the decision be set aside and that the patent be maintained based on one of these requests, in the order main request then auxiliary requests 1, 1a, I, I', Ia, Ib, Ic, 2, 2', 2a, 2b, 2c, 3, 3', 3a, 3b, 3c, 4, 4', 4a, 4b, 4c, II, IIa, IIb, IIc, 5, 5a, 5b, 5c, 6, 6a, 6b, 6c, 7, 7', 7a, 7b, 7c, III, IIIa, IIIb, IIIc, 8, 8a, 8b, 8c, 9, 9a, 9b, 9c, 10, 10a, 10a', 10b, 10c and 10c'. As an auxiliary measure, it requested oral proceedings. It further requested that the case not be remitted to the opposition division.
- IV. The respondent (opponent 2) requested that the appeal be dismissed and oral proceedings as an auxiliary measure. It further requested that the case be remitted

to the opposition division for further prosecution if any of the appellant's requests were found to overcome the objection under Article 100(c) EPC.

V. The board summoned the parties to oral proceedings. In a communication pursuant to Article 15(1) RPBA, the board gave its preliminary view that the main request did not comply with the provisions of Article 76(1) EPC and that auxiliary requests I', 2', 3', 4', 7', 10a' and 10c' were not admissible. It noted that the objections under Article 76(1) EPC might be overcome by one of the admissible auxiliary requests and that the case would then have to be remitted to the opposition division for further prosecution.

VI. Oral proceedings were held before the board.

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

"A touch-screen image scrolling system, comprising:

an electronic image display screen (40);

a microprocessor (42) coupled to said display screen (40) to display scrollable data thereon and to receive interactive signals there from;

timer means (43) associated with said microprocessor (42) to provide timing capacity therefore;

a source of scrollable data capable of being displayed on said display screen (40);

finger touch program instructions associated with said microprocessor (42) for sensing the speed and direction of a finger touch contact with said display screen (40); characterized in that

said finger touch program instructions associated with said microprocessor (42) are also designed for sensing the time duration of a finger touch contact with said display screen (40); and in that

said touch-screen image scrolling system further comprises scrolling motion program instructions associated with said microprocessor (42) responsive to said duration of said finger touch contact for,

- i) when during a period having a duration which is less than a first predetermined minimum time and greater than a second predetermined minimum time motion of said finger touch contact along the surface of said display screen (40) is sensed, moving said data on said display screen (40) in correspondence with the motion of said finger touch contact, and
- ii) following a subsequent separation of said finger touch contact from said display screen (40), converting the sensed speed and direction of motion of said finger touch contact into corresponding initial scrolling motion of said data,

wherein said scrolling motion program instructions further comprise instructions to move a touch-selected item relative to a stationary data display in correspondence with movement of said finger touch, in response to motion following a stationary finger touch having a duration greater than said first predetermined minimum time."

Claim 1 of auxiliary requests 1 and 1a differs from claim 1 of the main request as follows (with the additions underlined):

"[...]

- i) when during a period having a duration which is less than a first predetermined minimum time and greater than a second predetermined minimum time motion of said finger touch contact along the surface of said display screen (40) is sensed, moving said data on said display screen (40) in

correspondence with the motion of said finger touch contact, wherein the entire display in effect "sticks to the finger" so that the entire display can be moved up or down or back and forth, as the case may be, with the finger, and  
[...]"

Claim 1 of auxiliary request I differs from claim 1 of the main request as follows (with the additions underlined):

"[...]

time decay program instructions associated with said microprocessor (42) for reducing the rate of scrolling displacement of said data on said display screen (40) at a given rate until motion is terminated;

stopping motion program instructions associated with said microprocessor (42) for terminating scrolling displacement of the image on said screen upon first occurrence of any signal in the group of signals comprising:

(a) a substantially stationary finger touch on the screen enduring for a period longer than a preset minimum time, and

(b) an end-of-scroll signal received from said scroll format data source,

wherein said scrolling motion program instructions further comprise instructions to move a touch-selected item relative to a stationary data display in correspondence with movement of said finger touch, in response to motion following a stationary finger touch having a duration greater than said first predetermined minimum time."

The wording of the claims of lower-ranking requests is not relevant for the decision.



## Reasons for the Decision

1. Main request and auxiliary requests 1 and 1a

1.1 The features of claim 1 of the main request were numbered as follows in the contested decision:

1 A touch-screen image scrolling system, comprising:

1.1 an electronic image display screen (40);

1.2 a microprocessor (42) coupled to said display screen (40) to display scrollable data thereon and to receive interactive signals there from [sic];

1.3 timer means (43) associated with said microprocessor (42) to provide timing capacity therefore [sic];

1.4 a source of scrollable data capable of being displayed on said display screen (40);

1.5 finger touch program instructions associated with said microprocessor (42) for sensing the speed and direction of a finger touch contact with said display screen (40); characterized in that

1.6 said finger touch program instructions associated with said microprocessor (42) are also designed for sensing the time duration of a finger touch contact with said display screen (40); and in that said touch-screen image scrolling system further comprises

1.7 scrolling motion program instructions associated with said microprocessor (42) responsive to said duration of said finger touch contact for,

1.8 i) when during a period having a duration which is less than a first predetermined minimum time and greater than a second predetermined minimum time motion of said finger touch contact along the surface of said

display screen (40) is sensed, moving said data on said display screen (40) in correspondence with the motion of said finger touch contact, and

1.9 ii) following a subsequent separation of said finger touch contact from said display screen (40), converting the sensed speed and direction of motion of said finger touch contact into corresponding initial scrolling motion of said data,

1.10 wherein said scrolling motion program instructions further comprise instructions to move a touch-selected item relative to a stationary data display in correspondence with movement of said finger touch, in response to motion following a stationary finger touch having a duration greater than said first predetermined minimum time.

1.2 The opposition division's objections under Article 123(2) EPC and Article 76(1) EPC against feature 1.8 of claim 1 cannot be upheld for the following reasons:

1.2.1 The opposition division objected that there were more than two first and second predetermined minimum times and two contradictory teachings in this regard in the application as filed. However, the board agrees with the appellant that although the use of terminology in the application as filed is inconsistent (which would be a clarity issue and thus not a ground for opposition), it is directly and unambiguously derivable from the application as filed that two time thresholds are used for the various gestures described in the application. Given two different time thresholds, as a matter of mathematical fact, one is lower than the other. Careless wording or mixing up the terms used for these time thresholds cannot reasonably lead the skilled person to believe otherwise.

From the disputed passages of the description, it is clear from the use of the definite article on page 4, line 16 that "the first predetermined minimum time" is the same time threshold as "a predetermined minimum time" mentioned in the first sentence of that paragraph (page 4, lines 11-12). A second time threshold which is lower than this first time threshold is introduced as "a second minimum time" on page 4, line 26. Page 4, line 30 refers to these two time thresholds ("the first predetermined time and the second") being used for the "sticks to the finger" embodiment relevant for feature 1.8 of claim 1. Later, on pages 7-8, using inconsistent terminology, "Embodiment 1" and "Embodiment 2" refer to the lower time threshold as "a first given preset minimum time" and to the higher one as "a second given preset minimum time".

Regarding another disputed passage on page 6, line 2, it is clear from the context of this paragraph, in particular page 5, lines 31-32 that essentially the functions of step 100 are repeated. Therefore, "a predetermined minimum time" in this passage is the same time threshold as "a predetermined minimum time" on page 4, lines 11-12.

1.2.2 The opposition division further objected that "said data" in the wording "moving said data on said display screen" in feature 1.8 may pertain to any piece of data and not necessarily to the entire display, as disclosed on page 5, second paragraph of the earlier application. However, it is clear from the context of feature 1.8 that "said data" refers to the displayed "scrollable data" mentioned in features 1.2 and 1.4 and not to any piece of data. Since it is the display screen which displays this scrollable data, it is clear from the

context that this would not be any different from moving the entire display.

1.3 Nevertheless, claim 1 of the main request does not meet the requirements of Article 76(1) EPC for other reasons. As argued by the respondent, the earlier application does not disclose that the scrolling motion initiated by the separation of the finger in feature 1.9 can continue forever. Instead, all embodiments in the earlier application require the speed of scrolling to be gradually reduced. Therefore, the generalisation in feature 1.9 of claim 1 of the main request extends beyond the content of the earlier application as filed (Article 76(1) EPC).

1.4 Claim 1 of auxiliary requests 1 and 1a has the same generalisation in feature 1.9. Therefore, auxiliary requests 1 and 1a do not meet the requirements of Article 76(1) EPC either.

1.5 The respondent agreed with the interpretation given in the contested decision at the outset of the appeal proceedings. However, at the oral proceedings, it submitted that it respected decision T 1240/21 taken by the same board at the oral proceedings on the previous day. In view of T 1240/21, the appellant also refrained from arguing against the outstanding objection under Article 76(1) EPC. Therefore, both parties agreed that no discussion of the main request and auxiliary requests 1 and 1a was necessary.

2. Remittal to the opposition division

2.1 The amendment to claim 1 of auxiliary request I overcomes the above objection under Article 76(1) EPC. The respondent submitted at the oral proceedings that

it had no objections regarding added matter to this request. Therefore, the board concludes that auxiliary request I meets the requirements of Articles 76(1) and 123(2) EPC.

- 2.2 Under Article 11 RPBA, the board may remit a case to the department whose decision was appealed for further prosecution if there are special reasons for doing so.

The appellant requested that the board not remit the case to the opposition division. Referring to the explanatory remarks concerning the proposed amendments to the RPBA (see OJ 2020, Supplementary Publication 2, page 54), it argued that the aim of amended Article 11 RPBA was to reduce the likelihood of a "ping-pong" effect between the boards and the departments of first instance. If all issues can be decided without an undue burden, a board should not normally remit the case. In the case at hand, the opposition division had already communicated its preliminary opinion regarding novelty and inventive step in the annex to the summons to oral proceedings. The appellant had replied in detail to all novelty and inventive-step objections in its statement setting out the grounds of appeal. Therefore, the board could decide on novelty and inventive step without undue burden. Taking further into account that the patent in suit was soon to expire, a remittal would lead to further delays.

The respondent requested remittal of the case to the opposition division in order to assess novelty and/or inventive step. It pointed out that both parties submitted extensive arguments in reply to the preliminary opinion of the opposition division, which had been issued before the appellant filed auxiliary request I. It would place an undue burden on

the board to have to examine new auxiliary requests *de novo*. The primary object of the appeal proceedings was to review the decision under appeal in a judicial manner (Article 12(2) RPBA). The partial assessment of the attacks in the contested decision in hand represented special reasons within the meaning of Article 11 RPBA, as in the case in T 2092/18 (point 4 of the reasons).

- 2.3 The board agrees with the respondent that the overarching principle is literally enshrined in the wording of Article 12(2) RPBA ("the primary object of the appeal proceedings to review the decision under appeal in a judicial manner"). In the case at hand, the contested decision is only based on issues of added subject-matter (Articles 76(1) and 123(2) EPC) and does not deal with the issues of novelty and inventive step (Article 54 and 56 EPC) for any of the requests that were considered. Therefore, special reasons within the meaning of Article 11 RPBA are immediately apparent. The date of expiry of the patent in suit cannot outweigh these reasons.
- 2.4 Under these circumstances, the board remits the case to the opposition division for further prosecution on the basis of auxiliary request I.

## 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