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**Datasheet for the decision
of 11 December 2023**

Case Number: T 0263/22 - 3.5.05

Application Number: 11829882.7

Publication Number: 2622455

IPC: G06F3/14, G06F1/16

Language of the proceedings: EN

Title of invention:

METHOD AND APPARATUS FOR MOVING DISPLAY DURING A DEVICE FLIP

Applicant:

Z124

Headword:

Moving a window to another display during a device flip/Z124

Relevant legal provisions:

EPC Art. 54, 56, 84, 123(2), 133(2)

RPBA 2020 Art. 12(4)

Keyword:

Inventive step - (no)

Amendment to case - amendment admitted (yes)

Oral proceedings - non-attendance of sole party - no absolute right to having oral proceedings held in absence

Decisions cited:

T 0671/12, T 0663/10

Catchword:

If the appellant in an ex-parte proceedings indicates that he will not be attending oral proceedings, the board is not obliged to hold oral proceedings in the absence of the party, i.e. with the board being the only participant.

If the appellant is legally required to be represented by a professional representative, an indication that the representative will not be attending equates to the appellant not participating in the oral proceedings.



Beschwerdekkammern

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Case Number: T 0263/22 - 3.5.05

D E C I S I O N
of Technical Board of Appeal 3.5.05
of 11 December 2023

Appellant: Z124
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Decision under appeal: **Decision of the Examining Division of the European Patent Office posted on 30 September 2021 refusing European patent application No. 11829882.7 pursuant to Article 97(2) EPC.**

Composition of the Board:

Chairman N. H. Uhlmann
Members: P. Tabery
K. Kerber-Zubrzycka

Summary of Facts and Submissions

- I. The appeal is directed against the examining division's decision to refuse the European patent application.
- II. The examining division decided that the application did not meet the requirements of Article 56 EPC (main request and auxiliary requests 1, 3, 4, 6, 7, 9, 11 and 12) or the requirements of Article 123(2) EPC (auxiliary requests 2, 5, 8 and 10), or the requirements of Article 84 EPC (auxiliary requests 2 and 3).
- III. The documents referred to by the examining division included:

D1 WO 2010/028394 A1

- IV. In its statement setting out the grounds of appeal, the appellant requested that the decision of the examining division be set aside and that a patent be granted on the basis of the claims of the main request or on the basis of the claims of one of auxiliary requests 1 to 15 as filed with the statement setting out the ground of appeal (copies of all requests were enclosed with the statement setting out the grounds of appeal). Oral proceedings were requested as an auxiliary measure.
- V. The board issued a summons to oral proceedings and set out its preliminary opinion on the case (Article 15(1) RPBA 2020).
- VI. In a reply dated 22 November 2023, the appellant's representative indicated that he would not be attending the oral proceedings.
- VII. The board subsequently cancelled the oral proceedings.
- VIII. **Claim 1** of the **main request** reads as follows:

"A method for controlling displaying of a window (704, 708, 712) on a multiple screen device (100), comprising:

presenting a first window (704, 708, 712) by a primary screen (104, 108) of the multiple screen device (100), while the multiple screen device (100) is in an open state;

receiving user input closing the multiple screen device (100), thereby placing the multiple screen device (100) in a closed state;

determining that an input or instruction to enter a secondary closed mode has been received, the secondary closed mode being different from a normal closed mode; and

entering the secondary closed mode, wherein the first window (704, 708, 712) is presented by a secondary screen (108, 104) of the multiple screen device (100), and the primary screen (104, 108) discontinues the presentation of the first window (704, 708, 712)."

Claim 1 of auxiliary request 1 differs from claim 1 of the main request in that it further specifies the following:

"in which normal closed mode the primary screen (104, 108) is active, and a secondary screen (108, 104) is inactive".

Claim 1 of auxiliary request 2 differs from claim 1 of auxiliary request 1 in that it is explicitly specified that the device is operated in the normal closed mode if no input to enter the secondary closed mode is received.

Claim 1 of auxiliary request 3 differs from claim 1 of the main request in that the features of dependent claims 2 to 4 have been added thereto:

"in response to entering the secondary closed mode, displaying an instruction on the primary screen (104, 108) to turn the multiple screen device (100) over so that the secondary screen (108, 104) is in view of the user, and discontinuing displaying the instruction after a predetermined period of time."

Claim 1 of auxiliary request 4 differs from claim 1 of auxiliary request 1 in that the same features as those added to auxiliary request 3 have been added thereto.

Claim 1 of auxiliary request 5 differs from claim 1 of auxiliary request 2 in that the same features as those added to auxiliary request 3 have been added thereto.

Claim 1 of auxiliary request 6 differs from claim 1 of the main request in that the features of dependent claims 8 and 9 have been added thereto:

"after entering the secondary closed mode, receiving user input placing the multiple screen device (100) in the open state, and discontinuing the secondary closed mode, wherein the first window (704, 708, 712) continues to be displayed by the secondary screen (108, 104)."

Claim 1 of auxiliary request 7 differs from claim 1 of auxiliary request 1 in that the same features as those added to auxiliary request 6 have been added thereto.

Claim 1 of auxiliary request 8 differs from claim 1 of auxiliary request 2 in that the same features as those added to auxiliary request 6 have been added thereto.

Claim 1 of auxiliary request 9 differs from claim 1 of the main request in that the same features as those added to auxiliary requests 3 and 6 have been added thereto.

Claim 1 of auxiliary requests 10 and 11 differs from claim 1 of auxiliary requests 1 and 2, respectively, in

that the same features as those added to auxiliary requests 3 and 6 have been added thereto as well.

IX. **Auxiliary requests 12 to 15** correspond to auxiliary requests 2, 5, 8 and 11, respectively, although the method claims, i.e. claims 1 to 9 of auxiliary requests 2, 5, 8 and 11, have been deleted.

Claim 1 of auxiliary request 12 (which is identical to claim 10 of auxiliary request 2) reads as follows:

"A device (100), comprising:

at least first and second screen (104, 108);

a hinge interconnecting the first and second screens (104, 108);

memory (208, 508);

a processor (204, 504) in communication with the at least first and second screens (104, 108) and the memory (208, 508);

application programming stored in the memory (208, 508) and executed by the processor (204, 504), wherein the application programming is operable to:

maintain at least a first and second sets of windows (704, 708, 712), wherein the first and second sets of windows (704, 708, 712) are stored in the memory (208, 508), wherein the first set of windows (704, 708, 712) is associated with at least a first window (704, 708, 712) and is associated with the first screen (104, 108), and wherein the second set of windows (704, 708, 712) is associated with at least a second window (704, 708, 712) and is associated with the second screen (108, 104);

present the first window (704, 708, 712) in the first screen (104, 108) while the device (100) is in an initial, open state;

receive a first user input, wherein the first user input includes the user placing the device (100) in a closed state;

determine whether an input or instruction to enter a secondary closed mode has been received, ; [sic] and based on the determination,

operate the device (100) in a normal closed mode in which the primary screen (104, 108) is active, and a secondary screen (108, 104) is inactive, or enter the secondary closed mode, wherein the second screen (108, 104) presents the first window (704, 708, 712) and the first screen (104, 108) discontinues the presentation of the first window (704, 708, 712)."

Claim 1 of auxiliary request 13 differs from claim 1 of auxiliary request 12 in that the same features as those added to auxiliary request 3 have been added thereto.

Claim 1 of auxiliary request 14 differs from claim 1 of auxiliary request 12 in that the same features as those added to auxiliary request 6 have been added thereto.

Claim 1 of auxiliary request 15 differs from claim 1 of auxiliary request 12 in that the same features as those added to auxiliary requests 3 and 6 have been added thereto.

Reasons for the Decision

1. The present application concerns a foldable device which allows the display of a window to be moved to another screen in case of a flip or a closing of the device.

2. Main request

2.1 Novelty (Article 54(1) EPC)

2.1.1 In the decision under appeal, the examining division held that the subject-matter of claim 1 differed from the disclosure of document **D1** in the step of:

"determining that an input or instruction to enter a secondary closed mode has been received, the secondary closed mode being different from a normal closed mode".

2.1.2 The appellant argued that a further difference lay in "*the window being first displayed on a primary screen and then on a secondary screen*".

2.1.3 The board notes that the examining division considered that document **D1** allowed the application window to be moved from any screen where the active application was running onto the active screen (cf. **D1**, step 4308 of Fig. 43). This was even acknowledged - as such - by the appellant in its statement of grounds of appeal. However, the appellant did not explain why this disclosure would not comprise "*the window being first displayed on a primary screen and then on a secondary screen*", as reasoned by the examining division. The board thus considers that the appellant did not fully plead its case in this aspect. The board therefore holds that the contested feature is disclosed in document **D1** for the reasons provided by the examining division.

Moreover, the board is of the opinion that document **D1** also discloses the features that the examining division identified as distinguishing features. In particular, the board considers that the term "*normal closed mode*"

allows for a broad interpretation, such that it also comprises the "travel clock configuration" mentioned in Fig. 43 (Fig. 43 was cited in the decision under appeal). The "travel clock configuration" is depicted in Fig. 4 of document **D1** and described in more detail in paragraph [00087] as having an angle "420" which is "greater than 0 degrees". The board holds that having an angle of approximately 0 degrees corresponds to elements 102 and 104 in Fig. 4 being closed, and thus to a closed state that may be obtained during normal operation of the device.

2.1.4 Consequently, the board holds that document **D1** discloses the features of **claim 1** as follows (the references in parentheses relate to D1):

A method for controlling displaying of a window ("application window", see [00182]) on a multiple screen device (100, see Fig. 1), comprising:

presenting a first window by a primary screen of the multiple screen device, while the multiple screen device is in an open state

("display one application window on one or more screens" during "fully extended configuration", see [00182] and references 4318-4320 in Fig. 43);

receiving user input

("sensor input 4302", Fig. 43)

closing the multiple screen device, thereby placing the multiple screen device in a closed state;

("fully folded configuration", see Fig. 27; steps 4306-4308 in [00179] and Fig. 43)

determining that an input or instruction to enter a secondary closed mode has been received,

(step 4304, see [00178] and Fig. 43)

the secondary closed mode being different from a normal closed mode;

(the "travel clock configuration" anticipates the normal closed mode, see Fig. 4; steps 4314-4316 in [00181] and Fig. 43)

and

entering the secondary closed mode, wherein the first window is presented by a secondary screen of the multiple screen device, and the primary screen discontinues the presentation of the first window ("the application window of the application in a single-screen mode is displayed on the active screen and the other screens are powered down, see step 4308 in [00179] and Fig. 43)

2.1.5 Therefore, the subject-matter of claim 1 is not novel over the disclosure of document **D1**.

2.2 Hence, the **main request** is not allowable.

3. Auxiliary request 1

3.1 Auxiliary request 1 is identical to auxiliary request 1 considered in the decision under appeal.

3.2 The board holds that the feature added to claim 1 of this request is also known from document **D1** (see paragraph [00181] thereof: "the back screen is powered down"). Thus, the subject-matter of claim 1 of this request is not novel over the disclosure of document **D1** either.

3.3 In view of the above, **auxiliary request 1** is not allowable either.

4. Auxiliary request 2

4.1 Admissibility

4.1.1 Auxiliary request 2 is based on auxiliary request 2 considered in the decision under appeal.

4.1.2 Compared to the set of claims considered in the decision under appeal, independent claim 2 has been deleted. Since this constitutes a straightforward amendment, bringing the set of claims closer to that which has already been discussed in the context of the higher-ranking requests, the board has to decided to admit this request into the proceedings (Article 12(4) RPBA).

4.2 Clarity and added subject-matter (Articles 84 and 123(2) EPC)

4.2.1 In the decision under appeal, the examining division held that claim 1 of this request did not fulfil the requirements of Articles 84 and 123(2) EPC. In particular, claim 1 contained a contradiction and was not supported by paragraph [0214] of the description.

4.2.2 The appellant argued that claim 1 was clear, since it related to subsequent steps. Furthermore, the appellant made reference to paragraph [0209] as support for the amendment.

4.2.3 The board holds that the arguments of the appellant are convincing and thus the respective objections raised in the decision under appeal are not pertinent.

4.3 Novelty (Article 54(1) EPC)

4.3.1 The appellant argued that the subject-matter of claim 1 of this request was not rendered obvious by the cited prior art.

4.3.2 The board considers that, taking into account its interpretation of the disclosure of document **D1** (see section 2.1.3 above), the subject-matter of claim 1 is not novel over the passages of document **D1** cited with respect to claim 1 of the main request and auxiliary request 1. Notably, the properties of the two closed modes that have been introduced into claim 1 have already been considered in the context of the main request (see section 2.1.4 above).

4.4 Hence, **auxiliary request 2** is not allowable either.

5. Auxiliary request 3

5.1 Auxiliary request 3 is identical to auxiliary request 3 considered in the decision under appeal.

5.2 Clarity (Article 84 EPC)

5.2.1 In the decision under appeal, the examining division held that the added features attempted to describe the subject-matter in terms of the results to be achieved.

5.2.2 The appellant submitted that "*displaying an instruction on the primary screen*" was a proper method step and, thus, could not per se be considered a result to be achieved.

5.2.3 The board holds that the argument of the appellant is convincing and thus the respective objection raised in the decision under appeal is not pertinent.

5.3 Inventive step (Article 56 EPC)

5.3.1 In the decision under appeal, the examining division argued that the added features related to a mere display of information. Notably, it was not ensured that this information was visible to the user as there was no determination that the message was displayed on a screen visible to the user. Therefore, it did not cause a technical effect and did not contribute to an inventive activity (Article 56 EPC).

5.3.2 The appellant submitted that the added feature caused the technical effect that the user was made aware of the fact that the secondary closed mode had been entered and that the user was guided in terms of how to use the device in the secondary closed mode. Discontinuing this instruction after a predetermined period of time had the effect that the primary screen could be deactivated after the predetermined period of time, e.g. for saving the battery.

5.3.3 The board considers that the first technical effect submitted by the appellant ("*user is guided*") is not credibly achieved. In particular, the claim does not define a continued guided interaction with the user.

Rather, a message is shown which the user may or may not follow, depending on their subjective preferences. In the absence of a credible technical effect, the respective features may not contribute to an inventive activity.

As to the other technical effect described by the appellant, the board holds that the skilled person is well aware of the fact that turning off a screen is energy-saving. Therefore, depending on the circumstances the skilled person would have implemented this feature without having to employ any inventive skill.

5.3.4 As a consequence, the board holds that the subject-matter of claim 1 is not inventive.

5.4 Thus, **auxiliary request 3** is not allowable either.

6. Auxiliary requests 4 and 5

6.1 Auxiliary request 4 is identical to auxiliary request 4 considered in the decision under appeal. Auxiliary request 5 is based on auxiliary request 5 considered in the decision under appeal, but with the same amendments as those described with respect to auxiliary request 2. Therefore, the board has decided to admit auxiliary request 5 into the proceedings for the same reasons as those set out with respect to auxiliary request 2.

6.2 Since auxiliary requests 4 and 5 had corresponding amendments, the examining division held that they failed to comply with the requirements of Articles 56

and 123(2) EPC for the same reasons as those set out with respect to auxiliary requests 1, 2, and 3.

The appellant referred to the reasoning provided in favour of auxiliary requests 1, 2, and 3.

The board holds that the subject-matter of claim 1 of auxiliary requests 4 and 5 is not inventive for the same reasons as those set out with respect to claim 1 of auxiliary request 3.

6.3 Therefore, **auxiliary requests 4 and 5** are not allowable either.

7. Auxiliary request 6

7.1 Auxiliary request 6 is identical to auxiliary request 6 considered in the decision under appeal.

7.2 In the decision under appeal, the examining division held that the added features concerned a trivial implementation option, citing Figures 32 and 33 as well as paragraphs [0151] and [0152] of document **D1**.

The appellant argued that the examining division had analysed the added features in isolation and stressed that they enhanced the versatility of the device as they gave the user more options. In particular, quickly closing and opening the device would be easier than performing a drag-and-drop gesture over two screens.

The board is not convinced by the appellant's arguments. Since the same information is displayed before and after the closing and opening of the device, the added features merely relate to the presentation of information. This is not regarded as an invention, however (Article 52(2) (d) EPC), and thus cannot

contribute towards an inventive step. Hence, the subject-matter of claim 1 of this request does not involve an inventive step.

7.3 Consequently, **auxiliary request 6** is not allowable either.

8. Auxiliary requests 7 and 8

8.1 Auxiliary request 7 is identical to auxiliary request 7 considered in the decision under appeal. Auxiliary request 8 is based on auxiliary request 8 considered in the decision under appeal, but with the same amendments as those set out with respect to auxiliary request 2. Therefore, the board has decided to admit auxiliary request 8 into the proceedings for the same reasons as those set out with respect to auxiliary request 2.

8.2 Since these requests had corresponding amendments, the examining division held that they failed to comply with the requirements of Articles 56 and 123(2) EPC for the same reasons as those set out with respect to auxiliary requests 1, 2, and 6.

The appellant referred to the reasoning provided in favour of auxiliary requests 1, 2, and 6.

The board holds that the subject-matter of claim 1 of auxiliary requests 7 and 8 is not inventive for the same reasons as those set out with respect to claim 1 of auxiliary request 6.

8.3 Therefore, **auxiliary requests 7 and 8** are not allowable either.

9. Auxiliary requests 9 to 11

9.1 Auxiliary requests 9 and 10 are identical to auxiliary requests 9 and 10 considered in the decision under appeal. Auxiliary request 11 is based on auxiliary request 11 considered in the decision under appeal, but with the same amendments as those set out with respect to auxiliary request 2. Therefore, the board has decided to admit auxiliary request 11 into the proceedings for the same reasons as those set out with respect to auxiliary request 2.

9.2 The examining division held that auxiliary requests 9 and 11 were not compliant with Article 56 EPC and that auxiliary request 10 was not compliant with Article 123(2) EPC, in view of their correspondence to the main request and auxiliary requests 1 to 8.

Since auxiliary requests 9 to 11 combined the features of auxiliary requests 3 to 5 and 6 to 8, the appellant referred to the reasoning provided in favour of these requests and further argued that these two feature combinations had the synergistic effect of providing more reliable user guidance.

The board is not convinced by the appellant's arguments. Notably, since the features added to auxiliary request 6 do not cause a technical effect, there cannot be a synergistic technical effect caused by the combination of these features with the features added to auxiliary request 3. Therefore, the board holds that the subject-matter of claim 1 of auxiliary requests 9 to 11 is not inventive for the same reasons as those set out with respect to claim 1 of auxiliary requests 3 and 6.

9.3 Therefore, **auxiliary requests 9 to 11** are not allowable either.

10. Auxiliary requests 12 to 15

10.1 Auxiliary request 12 is identical to auxiliary request 12 considered in the decision under appeal. Auxiliary requests 13 to 15 are based on auxiliary requests 5, 8 and 11, which the board admitted into the proceedings. Since auxiliary requests 13 to 15 differ from auxiliary requests 5, 8 and 11 only in that some claims have been deleted, which in the present case constitutes a straightforward amendment, the board has decided to admit auxiliary requests 13 to 15 into the proceedings as well.

10.2 In the decision under appeal, the examining division indicated with regard to auxiliary request 12 that claim 1 specified, in addition to those features corresponding to the features of claim 1 of the main request, that "*the multiscreen device operates either in a normal closed mode in which the primary screen is active and a secondary screen is inactive or a secondary closed mode, wherein the second screen presents the first window and the first screen discontinues the presentation of the first window.*" The additional feature constituted an additional distinguishing feature over the disclosure of document **D1**. However, the examining division found that the two modes specified in this additional distinguishing feature merely amounted to an arbitrary choice. Therefore, claim 1 of auxiliary request 12 was held not to be inventive.

The appellant emphasised the fact that document **D1** did not disclose the claimed device because the device

according to document **D1** was only capable of entering one single mode when closed.

The board holds that according to its understanding of document **D1**, two "closed" modes are disclosed therein (see section 2.1.3 above). Therefore, the appellant's argument has failed to convince the board.

Consequently, the subject-matter of claim 1 of auxiliary request 12 is not novel over the disclosure of document **D1** (see the passages already cited with respect to the main request). Likewise, the subject-matter of claim 1 of auxiliary requests 13 to 15 is not inventive over the disclosure of document **D1** for the same reasons as those set out with respect to claim 1 of auxiliary requests 5, 8 and 11, respectively.

10.3 Therefore, **auxiliary requests 12 to 15** are not allowable either.

11. Procedural aspects

The board acknowledges that the appellant merely indicated that its representative would not be attending the oral proceedings; it did not withdraw its request for such oral proceedings. Since the appellant does not have its principal place of business in a contracting state, it is required to be represented by a professional representative pursuant to Article 133(2) EPC. In this case, the indication that the representative would not be attending equated to the appellant not participating in the oral proceedings. In line with established case law, the board considers that if the sole party does not intend to participate in the oral proceedings, the board is not obliged to hold such oral proceedings in the absence of that party, i.e. with the board being the

only participant (see CLBA, 10th edition, July 2022, III.C.4.3.2, with reference to T 671/12 and T 663/10). By stating that it would not be attending the oral proceedings, the appellant unequivocally expressed that it did not wish to present its arguments orally in the requested oral proceedings. As a consequence, the decision can be handed down in writing without oral proceedings being held (*ibid*). In view of these considerations, on 23 November 2023 the board decided to cancel the oral proceedings. The appellant was notified accordingly on the same day.

12. The appeal is not allowable because none of the requests on file meets the requirements of the EPC.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

B. Brückner

The Chairman:

N. H. Uhlmann



Decision electronically authenticated