

Internal distribution code:

- (A) [-] Publication in OJ
- (B) [-] To Chairmen and Members
- (C) [-] To Chairmen
- (D) [X] No distribution

**Datasheet for the decision
of 10 June 2025**

Case Number: T 0120/23 - 3.4.03

Application Number: 16759660.0

Publication Number: 3265880

IPC: G04B19/00, G04B37/00, G04C17/00

Language of the proceedings: EN

Title of invention:
A HYBRID SMART WATCH WITH MULTIPLE SOURCES OF TIME, MULTIPLE
POWER SOURCES, AND MULTIPLE TIME INDICATOR MECHANISMS

Applicant:
Abramov, Andrey

Headword:

Relevant legal provisions:
EPC Art. 123(2)

Keyword:
Amendments - added subject-matter (no)

Decisions cited:

Catchword:



Beschwerdekammern
Boards of Appeal
Chambres de recours

Boards of Appeal of the
European Patent Office
Richard-Reitzner-Allee 8
85540 Haar
GERMANY
Tel. +49 (0)89 2399-0

Case Number: T 0120/23 - 3.4.03

D E C I S I O N
of Technical Board of Appeal 3.4.03
of 10 June 2025

Appellant: Abramov, Andrey
(Applicant) 744 Bounty Drive, Apt 4403
Foster City, California 94404 (US)

Representative: Lewis Silkin LLP
Arbor
255 Blackfriars Road
London SE1 9AX (GB)

Decision under appeal: Decision of the Examining Division of the
European Patent Office posted on 26 September
2022 refusing European patent application No.
16759660.0 pursuant to Article 97(2) EPC.

Composition of the Board:

Chairman T. Häusser
Members: M. Papastefanou
T. Bokor

Summary of Facts and Submissions

- I. The appeal is against the decision of the examining division refusing European patent application No. 16 759 660 (published as WO 2016/141393 A1) on the ground that claim 1 of the main (and sole) request then on file contained added subject-matter, contrary to the requirements of Article 123(2) EPC.
- II. The appellant (applicant) requested that the decision under appeal be set aside and that a patent be granted on the basis of the main request or the auxiliary request, both filed with the statement of grounds of appeal.
- III. The main request corresponds to the request underlying the impugned decision.

It consists of the following application documents:

- claims 1 to 13 as filed with the statement of the ground of appeal;
- description:
 - pages 1 to 3, 3A, 6 to 8, 11, 13, 15 and 17 to 18 filed with letter dated 18 March 2025;
 - pages 4, 5, 9, 10, 12, 14, 16 as filed with entry into the regional phase before the EPO;
- drawings, sheets 1/11 to 11/11 as filed with the entry into the regional phase before the EPO

- IV. Claim 1 of the main request is worded as follows:

*A hybrid smart watch (630) comprising:
a watch casing provided with a wrist strap (640)
and an enclosure (520) enclosing a digital*

subsystem (810) and an analog subsystem (820),
wherein the digital subsystem comprises:

a controller (811) for performing
calculations and data processing under the
guidance of an operating system (OS) or
application software,
a storage unit (814) for storing various
data, and the application software to be
executed by the controller,
a digital display (817) for showing
information in textual and graphic form,
an energy storage unit (813) for supplying
elements of the digital subsystem with
electric power; and
an internal clock (812),

wherein the analog subsystem comprises at least:

a watch movement (821), an energy storage
(823) for powering the watch movement, a
time indicator (822), and an analog dial;
wherein said hybrid smartwatch is
configured for allowing one between the
digital subsystem and the analog subsystem
to continue functioning and displaying
information to the user while the other ran
out of its allotted stored power,

characterised in that the hybrid smart watch
further comprises:

an aperture (580) having:

a closed state in which the digital display
is closed by said aperture so as not to be
visible and it is switched off,
and an open state in which the digital
display is visible and it is switched on,
wherein in the closed state of the digital
display the analog dial continues to show
the progress of time; and a crown (550,

620) located on the watch casing and shaped such that when the hand wearing the hybrid smart watch is bent backward, it pushes the crown to select between the closed and the open state without the need to engage the another hand of the user or some other trigger mechanism.

Claims 2 to 13 depend on claim 1.

V. The auxiliary request is not relevant for the decision.

VI. Reference is made to the following documents, cited in the decision under appeal:

D1: US 2016/109861,
D2: US 2015/301506,
D3: EP 2 851 756 A2,
D4: EP 2 913 723 A1,
D10: CN 105 159 046 A,
D11: EP 3 091 421 A2.

VII. Since the board grants the appellant's main request, the holding of oral proceedings is not necessary.

Reasons for the Decision

1. The claimed invention

1.1 The claimed invention relates to a smart watch, which comprises both a digital and an analog system for displaying the time (see for example Figures 3 and 4 of the application). Both systems are powered by a battery, as usual in digital watches.

1.2 In order to spare power, the display of the digital system can be selectively switched off. This is achieved by providing an aperture which can cover the digital display when closed (see Figure 5). Hence, when the user closes the aperture, the digital display is covered and switched off. In this way it does not have to be active all the time, thereby saving energy.

1.3 The invention lies in how the aperture is opened and closed. This is achieved by the user pushing the crown of the watch by bending the hand wearing the watch upwards (see Figure 6).

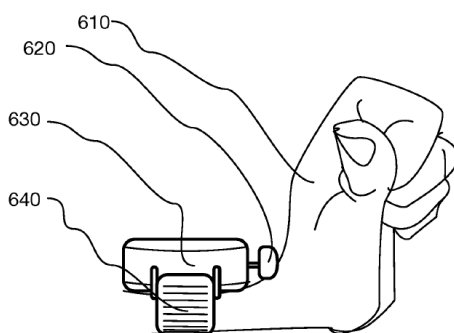


Figure 6

2. Main request

2.1 The examining division had issued a communication under Rule 71(3) EPC ("intention to grant"; dated 13 April 2022) on the basis of the auxiliary request filed by the appellant (then applicant) with the letter dated 17 December 2021. The examining division introduced some amendments in the claims and the description of that auxiliary request, among others, by adding in claim 1 the specification that the enclosure of the watch was round: "[a] hybrid smart watch comprising: a watch casing provided with a wrist strap (640) and a round enclosure (520) ..." (underlining by the board).

The applicant did not accept this amendment, rejected the text proposed for grant and filed a new main request replacing all the requests then on file with the letter dated 1 August 2022. In claim 1 of that new main request the term "round" was not included. Other than that, the claims of that request corresponded to the claims as amended by the examining division in its intention to grant. The current main request corresponds to that main request.

2.2 The examining division argued essentially that the only embodiment of the claimed hybrid smart watch comprising the features of claim 1 relating to the aperture which can be opened and closed by pressing the crown by moving the hand wearing the watch backwards, was described in paragraphs [0061] and [0068], as well as Figures 5 and 6 of the originally filed application (taken to correspond to the A1 publication of the application). The watch described in that embodiment had a round enclosure and there was no indication that it could have an enclosure of a different shape. Moreover, as it could be seen in Figure 5, the aperture functioned as a shutter, which could only function with a round enclosure.

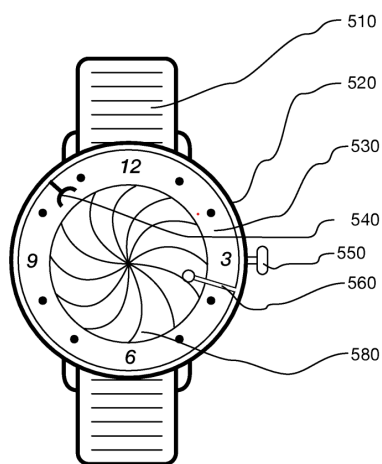


Figure 5

A definition of the watch with an enclosure without the specification that this enclosure was round constituted thus an unallowable intermediate generalisation which violated the requirements of Article 123(2) EPC (see points 17 to 19 of the decision under appeal).

- 2.3 The appellant argued mainly that the term "round" could be omitted/removed from the claim. As argued on pages 2 and 3 of the statement of grounds of appeal, the appellant referred to the so-called "essentiality test" or "three-point test" (Guidelines for Examination, H-V 3.1, same reference in the 2022 and the current version of the Guidelines) and argued why the removal/omission of this feature from the claim did not constitute added subject-matter. It is to be noted that the chapter of the Guidelines referred to by the examining division and the appellant, i.e. H-V 3.2.1, relates to intermediate generalisations and not to the removal of features from claims.
- 2.3.1 The board notes, however, that in the present case there is no removal or omission of any feature from original claim 1. The originally filed claims did not contain any feature relating to the round enclosure or the enclosure of the watch in general. Therefore, the "essentiality test" is not relevant in this case.
- 2.3.2 The amendment under discussion relates rather to the addition to claim 1 of some but not all of the features of a specific embodiment. Such an amendment would fall under the so-called "intermediate generalisations".
- 2.3.3 In any case, the categorisation of the amendment is not decisive. As the appellant also mentioned, the important question is whether the amendment meets the so-called "gold standard", i.e. whether the skilled

person would derive the amended claimed subject-matter, directly and unambiguously, from the content of the application as originally filed.

2.3.4 The relevant question is thus whether the skilled person would derive directly and unambiguously from the originally filed application an embodiment of the hybrid smart watch with an enclosure, which is not necessarily round, comprising an aperture that can be opened and closed by pressing the crown, the crown being so shaped that it can be pressed by the hand wearing the smart watch when it is bent backwards.

2.4 In the board's opinion, this question is to be answered in the affirmative.

2.4.1 The skilled person reading claim 1 of the main request would understand that there are several features of the claimed watch which are not specified in paragraphs [0061] and [0068] but in other parts of the description. Paragraphs [0061] and [0068] describe only the aperture and its operation by pressing the crown. Hence, it cannot be reasonably said that the claimed embodiment corresponds to the embodiment described in paragraphs [0061] and [0068]. On the contrary, the claimed embodiment contains features which are described in the general part of the description without any relation or reference to a particular shape of the enclosure of the watch. Moreover, other enclosure shapes are explicitly envisaged in the application as Figure 1 shows.

2.4.2 The board also agrees with the appellant that the application does not indicate that the aperture functions as a shutter, contrary to what the examining division stated in the impugned decision. Indeed, the

description does not contain any details about the aperture, other than that it can be operated by pressing the crown. The examining division seems to have derived that the aperture operates as a shutter from Figure 5, but such a limitation is not included in the description or in the claims.

Even if it were accepted that the aperture functioned as a shutter according to Figure 5, it is not necessary to have a round watch enclosure for the aperture to operate as a shutter, as there is no relation between the shape of the aperture and the shape of the enclosure. For example, the skilled person would understand that the aperture can still be circular (round) in a watch with a rectangular enclosure.

2.4.3 The board notes further that the original claims defined the features relating to the aperture and its opening and closing by pressing the crown, without any definition of an enclosure at all (see claims 1 and 3 in the application as published). Although the board agrees with the examining division that the current claim 1 is more limited than original claim 1, it takes the view that the original claims indicate to the skilled person that the hybrid smart watch can comprise the features relating to the aperture and its operation by pressing the crown without having necessarily a round enclosure.

2.5 The board thus concludes that the subject-matter of claim 1 of the main request does not extend beyond the content of the application as filed so that the requirements of Article 123(2) EPC are met.

The decision under appeal is therefore to be set aside.

2.6 The examining division had considered that the claims and the application as a whole (as proposed for grant in the communication under Rule 71(3) EPC, i.e. with the term "round" included in claim 1) met the other requirements of the EPC, in particular that the subject-matter of claim 1 was new and inventive over the prior art documents available. The board considers that the removal of the term "round" does not change this assessment. For the sake of completeness however, it reviews the findings of the examining division in that aspect.

2.6.1 Regarding novelty, the board is satisfied that none of the cited documents of the prior art D1, D2, D3, D4, D10, and D11, discloses a crown located at the watch casing and shaped such that when the hand wearing the hybrid smart watch is bent backwards it pushes the crown to select between the opened and closed states without the need to engage the other hand of the user or some other trigger mechanism.

Claim 1 is therefore new within the meaning of Article 54(1) EPC.

2.6.2 The board also agrees with the examining division's selection of D10 as the starting point for the assessment of inventive step.

D10 discloses a hybrid smart watch similar to the one claimed (see Figure 6). The claimed hybrid smart watch differs from the one in D10 by the features in the characterising part of claim 1, i.e. that it comprises *an aperture (580) having:*

a closed state in which the digital display is closed by said aperture so as not to be visible and it is switched off,

and an open state in which the digital display is visible and it is switched on, wherein in the closed state of the digital display the analog dial continues to show the progress of time; and a crown (550, 620) located on the watch casing and shaped such that when the hand wearing the hybrid smart watch is bent backward, it pushes the crown to select between the closed and the open state without the need to engage the another hand of the user or some other trigger mechanism.

- 2.6.3 As the technical effect of this difference, the board sees the possibility to control the aperture state of the watch, and with it the power consumption of the watch, with the hand wearing the watch. This results in increased usability of the watch. The skilled person would thus be faced with the problem of how to obtain such a technical effect starting from D10.
- 2.6.4 D10 discloses a hybrid watch wherein the digital screen can be activated or deactivated by pushing the crown. In a deactivated state, the hands of the analog system are visible. The watch of D10 has no crown corresponding to the crown of the claimed watch, i.e. that it can be operated by the hand wearing the watch. The skilled person would not find any incentive in D10 to modify the crown of the described watch and arrive at the invention in an obvious manner.

The remaining prior art documents D1 to D4 would not be of help, either, since none of them discloses a crown corresponding to the one of the claimed hybrid smart watch. D11 is prior art under Article 54(3) EPC and cannot be used in an inventive step assessment.

- 2.6.5 The conclusion is, thus, that the subject matter of claim 1 of the main request involves an inventive step.
- 2.7 The description corresponds to the description with the examining division's amendments which was proposed for grant and was also found by the examining division to meet the requirements of the EPC.
- 2.8 The board concludes that the application according to the main request and the invention to which it relates meet the requirements of the EPC and a European patent is to be granted according to Article 97(1) EPC.

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.
2. The case is remitted to the examining division with the order to grant a patent in the following version:
 - **claims:** No. 1 to 13 filed as main request with the statement of the grounds of appeal;
 - **description:**
 - pages 1 to 3, 3A, 6 to 8, 11, 13, 15, 17 and 18 filed with letter dated 18 March 2025;
 - pages 4, 5, 9, 10, 12, 14, 16 as filed with entry into the regional phase before the EPO;
 - **drawings:** sheets 1/11 to 11/11 as filed with the entry into the regional phase before the EPO.

The Registrar:

The Chairman:



L. Stridde

T. Häusser

Decision electronically authenticated