Internal distribution code:

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

Datasheet for the decision of 19 March 2025

Case Number: T 0833/23 - 3.5.05

Application Number: 18213108.6

Publication Number: 3483711

IPC: G06F3/048, G06F3/0488

Language of the proceedings: EN

Title of invention:
Information processing apparatus, information processing method and program

Applicant:
DRNC Holdings, Inc.

Headword:
Contact-state quantity/DRNC

Relevant legal provisions:
EPC Art. 123(2)
RPBA 2020 Art. 12(4), 12(5), 13(2)

Keywords:

Added subject-matter - main request (yes)
Admittance of claim requests filed after Art. 15(1) RPBA communication - 1st auxiliary request (no): no "exceptional circumstances"
Admittance of claim requests filed on appeal - 2nd and 3rd auxiliary requests (no): not substantiated

Europäisches Patentamt
European Patent Office
Office européen des brevets

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 0833/23 - 3.5.05

D E C I S I O N
of Technical Board of Appeal 3.5.05
of 19 March 2025

Appellant: (Applicant)	DRNC Holdings, Inc. 200 Bellevue Parkway, Suite 300 Wilmington, DE 19809 (US)
Representative:	AWA Sweden AB Östra Storgatan 7 553 21 Jönköping (SE)
Decision under appeal:	**Decision of the Examining Division of the European Patent Office posted on 21 November 2022 refusing European patent application No. 18213108.6 pursuant to Article 97(2) EPC.**

Composition of the Board:

Chair	K. Bengi-Akyürek
Members:	E. Konak
	R. Romandini

Summary of Facts and Submissions

I. The appeal is against the examining division's decision to refuse the present European application. The examining division decided that auxiliary request 2 then on file did not comply with Article 123(2) EPC, while the then main request and auxiliary request 1 were not admitted into the examination proceedings (Rule 137(3) EPC).

II. Oral proceedings were held before the board on 19 March 2025.

The appellant's final requests were that the decision under appeal be set aside and that a patent be granted on the basis of a **main request** filed with the statement of grounds of appeal, which corresponds to "auxiliary request 2" on which the contested decision is based, or on the basis of **auxiliary requests 1 to 3**, wherein auxiliary request 1 was filed by letter dated 13 February 2025, and auxiliary requests 2 and 3 were filed with the statement of grounds of appeal.

At the end of the oral proceedings, the board's decision was announced.

III. Claim 1 of the **main request** reads as follows:

"An apparatus (100) for displaying video content, the apparatus is characterized in comprising:

a display control unit (111) configured to generate and display a slider (101a) representing a first range of time in a timeline of the video content,

a storage unit (120) configured to provide a start edge value (101c) and an end edge value (101f) of the timeline on the slider, the start edge value being a minimum value of the first range and the end edge value being a maximum value of the first range, and

a touch screen (103) on which the display control unit is configured to display the slider, the touch screen comprising a contact surface (102), and

a contact state quantity acquisition unit that is configured to acquire a contact state quantity indicating a contact state of the touch screen with an operating body (210) wherein the contact state acquisition unit comprises a contact time measuring unit (113) that is configured to measure a contact time indicating a time in which the operating body is in contact with a contact position of the contact surface up to a present time and to acquire the contact time as the contact state quantity,

wherein the display control unit is configured to, when the touch screen (103) receives position information caused by the operating body and indicating the contact position on the slider, decide a specified value corresponding to the contact position on the slider, and cause the touch screen to display a thumb (101b) on the slider to indicate the contact position and display a specified value near the thumb representing the time on the timeline of the contact position, wherein the thumb and the specified value are displayed to indicate a position which corresponds to the contact position in the video content on the slider, and

wherein, when the contact time measured by the contact time measuring unit of the contact by the operating body on the touch screen at the contact position exceeds a threshold, the display control unit is configured to decide an interval of a new specifiable range of the timeline on the slider, specify the new specifiable range based on the interval using the specified value as a reference, update the start edge value and the end edge value stored in the storage unit to new values representing the minimum and maximum values of the new specifiable range, and cause the new specifiable range to be displayed on the slider on the touch screen, wherein the time represented by the new specifiable range of the timeline is less than the first range of the timeline."

Dependent claim 5 of the **main request** reads as follows:

"The apparatus of any of the preceding claims, wherein the contact state quantity acquisition unit is configured to identify an orthogonal movement from the contact position on the slider and display the slider with the new specifiable range based on said orthogonal movement, the orthogonal movement being in a direction orthogonal to the direction of the slider."

Dependent claim 6 of the **main request** reads as follows:

"The apparatus of claim 5, wherein the new specifiable range is based on a distance of the orthogonal movement."

IV. Claim 1 of **auxiliary request 1** differs from claim 1 of the main request as follows (with the additions underlined and the deletions ~~struck through~~):

"An apparatus (100) for displaying video content, the apparatus is characterized in comprising:

a control unit (110) comprising a processing unit (112) and a display control unit (111) configured to generate and display a slider (101a) representing a first range of time in a timeline of the video content, wherein the processing unit is configured to process the reproduction of the video content,

[...]

the control unit (110) comprising a contact state quantity acquisition unit that is configured to acquire a contact state quantity indicating a contact state of the touch screen with an operating body (210) wherein the contact state acquisition unit ~~comprises~~ is a contact time measuring unit (113) that is configured to measure a contact time indicating a time in which the operating body is in contact with ~~a~~ the same contact position of the contact surface up to a present time and to acquire the contact time as the contact state quantity,

wherein the display control unit is configured to, when the touch screen (103) ~~receives~~ acquires position information [...]".

V. Claim 1 of **auxiliary request 2** differs from claim 1 of auxiliary request 1 as follows (with the additions underlined):

"[...]

a storage unit (120) configured to provide a threshold, a start edge value (101c) and an end edge value (101f) of the timeline on the slider [...]

wherein, when the contact time measured by the contact time measuring unit of the contact by the operating body on the touch screen at the contact position exceeds ~~a~~ the threshold [...]".

VI. Claim 1 of **auxiliary request 3** differs from claim 1 of auxiliary request 2 as follows (with the additions underlined):

"[...]

a storage unit (120) configured to provide a threshold, a constant, a start edge value (101c) and an end edge value (101f) of the timeline on the slider [...]

wherein, when the contact time measured by the contact time measuring unit of the contact by the operating body on the touch screen at the contact position exceeds the threshold, the display control unit is configured to decide an interval of a new specifiable range of the timeline on the slider, wherein the interval is decided based on the constant, specify the new specifiable range based on the interval using the specified value as a reference [...]".

VII. Dependent claims 5 and 6 of the main request were deleted in the present auxiliary requests.

Reasons for the Decision

1. Main request - Added subject-matter (Article 123(2) EPC)

1.1 **Claim 1** of the main request contains the following features (with the board's labelling):

(a) An apparatus for displaying video content, the apparatus is characterised in comprising:
(b) a display control unit configured to generate and display a slider representing a first range of time in a timeline of the video content,
(c) a storage unit configured to provide a start edge value and an end edge value of the timeline on the slider, the start edge value being a minimum value of the first range and the end edge value being a maximum value of the first range,
(d) a touch screen on which the display control unit is configured to display the slider, the touch screen comprising a contact surface,
(e) a contact state quantity acquisition unit that is configured to acquire a contact state quantity indicating a contact state of the touch screen with an operating body
(f) wherein the contact state acquisition unit comprises a contact time measuring unit that is configured to measure a contact time indicating a time in which the operating body is in contact with a contact position of the contact surface up to a present time and to acquire the contact time as the contact state quantity,
(g) wherein the display control unit is configured to, when the touch screen receives position information caused by the operating body and indicating the

contact position on the slider, decide a specified value corresponding to the contact position on the slider, and cause the touch screen to display a thumb on the slider to indicate the contact position and display a specified value near the thumb representing the time on the timeline of the contact position, wherein the thumb and the specified value are displayed to indicate a position which corresponds to the contact position in the video content on the slider,

(h) wherein, when the contact time measured by the contact time measuring unit of the contact by the operating body on the touch screen at the contact position exceeds a threshold, the display control unit is configured to decide an interval of a new specifiable range of the timeline on the slider, specify the new specifiable range based on the interval using the specified value as a reference, update the start edge value and the end edge value stored in the storage unit to new values representing the minimum and maximum values of the new specifiable range, and cause the new specifiable range to be displayed on the slider on the touch screen, wherein the time represented by the new specifiable range of the timeline is less than the first range of the timeline.

1.2 The examining division raised several added-matter objections against, *inter alia*, **claims 1, 5 and 6** of the main request. These objections were based on the premises that the subject-matter for which protection is sought by the claims of the main request was based on the "first embodiment" described in the application as filed (i.e. page 7, line 26 to page 20, line 6 of the description and Figs. 1 to 9 as filed). The examining division considered the omission of some

features of the "first embodiment" in the claim wording as unallowable intermediate generalisations. It further considered some discrepancies between this "first embodiment" and the claim wording and the combination with features from other "embodiments" as added subject-matter.

The appellant did not dispute that different "embodiments" of the application as filed were combined in the claims of the main request. Instead, the appellant argued that it was clear from the application as a whole that different embodiments could indeed be combined. However, the appellant did not elaborate how the skilled person would directly and unambiguously derive from the application as filed, for example, using a combination of the "contact time" of the "first embodiment" (i.e. claim 1) and of the "orthogonal direction change" of the "fourth embodiment" (i.e. dependent claims 5 and 6) as the "contact state quantity". It referred vaguely to "the section of the fourth embodiment on page 25" as filed. In this passage, however, the board cannot see any such combination suggested for the "contact state quantity". The appellant then relied on the "Summary" section on page 28 of the description as filed. The board cannot recognise any such combination suggested for the "contact state quantity". Page 28, lines 15 to 17 summarises the four alternatives for "contact state quantity" given in the first to fourth embodiments separately. Then, at lines 23 to 26, there is a general statement which reads

> "*It should be understood by those skilled in the art that various modifications, combinations, sub-combinations and alterations may occur depending on design requirements and other factors*

insofar as they are within the scope of the appended claims or the equivalents thereof."

Yet, this statement is of no help for identifying which particular "combinations" are directly and unambiguously derivable from the application as filed, which is what matters for the assessment of compliance with Article 123(2) EPC. Therefore, the board concurs with the contested decision that claim 1, in which the "contact state quantity" corresponds to the "contact time" (**feature (f)**) should be regarded as based on the "first embodiment" and that features of this embodiment cannot be combined with features from *other* embodiments, unless the claimed particular combination of features is directly and unambiguously derivable from the application as filed.

1.3 In the contested decision, the examining division raised an objection against the wording "the contact state acquisition unit ***comprises*** a contact time measuring unit" used in **feature (f)**.

The board agrees with the examining division that this wording involves added subject-matter since the "contact state acquisition unit" **is** indeed the "contact time measuring unit" in the "first embodiment". The appellant argued that the "contact state acquisition unit" may comprise *other* units taken from *other* embodiments. However, the appellant's underlying assumption — that the embodiments can be freely combined — is unconvincing for the reasons explained above. Consequently, this line of argument fails at the outset.

1.4 The examining division objected that the use of the word "*receives*" in **feature (g)** (i.e. "when the touch

screen *receives* position information caused by the operating body") instead of the word "*acquires*" involved added subject-matter. The appellant essentially argued that "to acquire" and "to receive" had the same meaning.

The board disagrees. Acquiring something means getting or obtaining it *actively*, whereas receiving something means being given or presented with something in a rather *passive* manner. Therefore, the board agrees with the examining division that the "first embodiment" provides basis for the touch screen *acquiring* the position information but not for the touch screen *receiving* it in a passive manner from another entity.

1.5 The examining division further objected that the omission of the fact that the measurement of the "contact time" in **feature (f)** should be for a contact "*with the same contact position*" involved added subject-matter.

The appellant referred, in this regard, to page 26, lines 10 to 13 relating to the "fourth embodiment", which however cannot be combined with the "first embodiment". The appellant also argued that the skilled person would recognise that the contact position "may or may not be referred to as the same display contact position".

The board is not convinced, since the skilled person would know that a "contact position" may change as a finger is moved on a touch screen.

1.6 As elaborated above (see point 1.2 above), the board finally agrees with the contested decision that **dependent claims 5 and 6** of the main request, which

combine the "orthogonal direction change" of the "fourth embodiment" with the "contact time" of the "first embodiment" likewise involve added subject-matter.

1.7 Therefore, the main request is not allowable under Article 123(2) EPC.

2. Admittance of auxiliary request 1

2.1 **Auxiliary request 1** was filed after notification of the board's communication under Article 15(1) RPBA.

2.2 According to Article 13(2) RPBA, any amendment to a party's appeal case made after notification of a communication under Article 15(1) RPBA shall, in principle, not be taken into account unless there are exceptional circumstances, which have been justified with cogent reasons by the party concerned.

2.3 The appellant argued that, although not explicitly mentioned in the minutes of the first-instance oral proceedings, the examining division regarded only two of the objections under Article 123(2) EPC as "major issues". It was "orally agreed" that the remaining "minor issues" could be overcome by amendment. Yet, even if these issues were overcome, the examining division saw no solution for overcoming the inventive-step objection raised in Reasons 5 of the contested decision. Since the board did not agree in its preliminary opinion with the "major issues" under Article 123(2) EPC, auxiliary request 1, which the appellant believed to address all outstanding "minor issues" under Article 123(2) EPC, should be *prima facie* allowable and hence be admitted.

2.4 However, it is not an "exceptional circumstance" that a board agrees with some of the objections raised in a contested decision and disagrees with the rest. The contested decision was based solely on Article 123(2) EPC, with the objections under Article 56 EPC raised merely as an *obiter dictum*. It is thus also not "exceptional" that the board reviews the objections under Article 123(2) EPC. It goes without saying that appeal proceedings are not based and cannot be expected to be based on "oral agreements" between the appellant and the examining division.

2.5 Therefore, the board did not admit auxiliary request 1 into the appeal proceedings (Article 13(2) RPBA).

3. Admittance of auxiliary requests 2 and 3

3.1 The contested decision is not based on **auxiliary requests 2 and 3** filed with the statement setting out the grounds of appeal, contrary to Article 12(2) RPBA. These requests are thus "amendments" within the meaning of Article 12(4) RPBA. Hence, their admittance is at the board's discretion.

3.2 The statement of grounds of appeal was silent as to the reasons for submitting these "amendments" only in the appeal proceedings. Thus, the filing of auxiliary requests 2 and 3 was neither substantiated under Article 12(3) RPBA ("The statement of grounds of appeal [...] shall contain a party's complete appeal case") nor under Article 12(4), third sentence, RPBA ("The party shall [...] provide reasons for submitting it in the appeal proceedings").

3.3 At the oral proceedings before the board, the appellant argued that auxiliary requests 2 and 3 should be

admitted for the same reasons as for auxiliary request 1.

However, as those reasons did not justify the admittance of auxiliary request 1, they likewise cannot justify the admittance of auxiliary requests 2 and 3.

3.4 Consequently, **auxiliary requests 2 and 3** were not admitted into the appeal proceedings (Article 12(4) and 12(5) RPBA).

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar: The Chair:

B. Brückner K. Bengi-Akyürek

Decision electronically authenticated