Datasheet for the decision
of 26 April 2018

Case Number: T 1989/12 - 3.5.01
Application Number: 01130078.7
Publication Number: 1217532
IPC: G06F15/02

Language of the proceedings: EN

Title of invention:
System and method for optimizing user notifications for small computer devices

Applicant:
Microsoft Technology Licensing, LLC

Headword:
Calendar-based profile switching / MICROSOFT

Relevant legal provisions:
EPC R. 99(2)
RPBA Art. 12(2)
EPC Art. 56
Keyword:
Admissibility (main request) (no - unsubstantiated grounds)
Statement of grounds of appeal - reference to submission before the first instance
Inventive step (auxiliary request) - calendar-based profile switching (no - obvious)

Decisions cited:
T 0641/00
Case Number: T 1989/12 - 3.5.01

DECISION
of Technical Board of Appeal 3.5.01
of 26 April 2018

Appellant: Microsoft Technology Licensing, LLC
(Applicant)
One Microsoft Way
Redmond, WA 98052 (US)

Representative: CMS Cameron McKenna Nabarro
Olswang LLP
Cannon Place
78 Cannon Street
London EC4N 6AF (GB)

Decision under appeal: Decision of the Examining Division of the
European Patent Office posted on 18 April 2012
refusing European patent application No.
01130078.7 pursuant to Article 97(2) EPC.

Composition of the Board:
Chairman W. Chandler
Members: A. Wahrenberg
C. Schmidt
Summary of Facts and Submissions

I. This is an appeal against the decision of the examining division to refuse the European patent application No. 01130078.7 according to the state of the file for the reasons as set out in the communication dated 29 February 2012.

II. In that communication, the examining division objected that the subject-matter of claims 1, 5 and 8, of the main request filed with letter dated 22 March 2010 extended beyond the content of the application as filed, lacked clarity, and did not involve an inventive step in view of D3 (Nokia 9110 Communicator User's Manual). The subject-matter of the independent claims of the "Auxiliary request" filed on 22 March 2010 was found to be unclear, and to lack an inventive step in view of the combination of D3 and D1 (WO 99/21101 A).

III. The appellant requested that the decision of the examining division be set aside and, as a main request, that a patent be granted on the basis of the "Auxiliary request" filed on 22 March 2010, or, in the alternative, that a patent be granted on the basis of the auxiliary request filed with the statement setting out the grounds of appeal dated 28 August 2012.

IV. For the main request, the grounds of appeal referred to the arguments made in a letter to the examining division dated 22 March 2010.

V. Claim 1 of the auxiliary request reads as follows:

*A method of notifying a user of a notification event occurring in a small computer device comprising a*
calendar-type application program storing calendar-related events, the small computer device having a memory, the method comprising:

storing (410) a plurality of profiles of notification events in the memory of the small computer device, wherein the notification events are associated with at least one notification type and wherein each of the plurality of profiles is configured to provide different notification types for different notification events;

associating each profile with a unique notification mode;

receiving (806) a selection signal to select one notification mode; and

applying (808) the selected notification mode to the small computer device and wherein the device remains in the selected mode until another mode is selected and wherein the user is notified of events according to the selected notification mode;

wherein if the user has selected an automated profile switching, the method further comprises:

upon occurrence of a calendar-related event, determining (902) whether a notification mode has been set for the calendar-related event;

if no notification mode has been set, remaining (908) in the current notification mode;

if a notification mode has been set, automatically applying (904) the selected notification mode;

upon ending of the calendar-related event, automatically switching back (906) to the current notification mode;

wherein if the user has not selected the automated profile switching, the method further comprises:

receiving (802) an indication to select a notification mode;

displaying (804) a notification mode menu;
wherein the received selection signal relates to a selection from the displayed notification mode menu; and

remaining (808) in the selected mode until another indication to select a different notification mode is received (802).

VI. The appellant's arguments concerning the auxiliary request can be summarised as follows:

The combination of D1 and D3 did not lead to the claimed invention, because D1 taught to first determine whether a meeting had begun and second whether the meeting mode had been set. Conversely, in the claimed invention, it was first determined whether the automatic profile switching was set, and only then would the calendar-related events be checked. This saved one operation step.

D1 taught to do nothing when the meeting mode was not set. By contrast the invention provided the user with the option to manually set the notification profile. In other words, D1 had two modes (meeting mode on or off) whereas the claimed invention had three: the notification that was being applied during a calendar event, the notification mode that was being applied before or after the calendar event, and the notification mode that was being applied independently of the calendar-related event when the automatic profile switching was not set.

VII. In a communication accompanying a summons to oral proceedings, the Board set out its provisional view that the main request was inadmissible and the auxiliary request unallowable for lack of inventive step in the light of D3 and D1.
VIII. The appellant did not reply to the Board's communication. Instead, it informed the Board that nobody would attend the oral proceedings. The Board nevertheless held oral proceedings in the appellant's absence.

Reasons for the Decision

1. Background

Mobile phones and other small computer devices provide notifications of events, such as incoming telephone calls, text messages and emails. The notifications may be presented to the user in different ways, for example by means of a sound, a blinking LED light, or a vibration.

Depending on the situation, the user may prefer one type of notification to another. For example, during a meeting, the user may not want his phone to ring. Then, a blinking LED light might be a more appropriate form of notification.

The application describes that, in the prior art, the user could control the notifications by putting the phone on silent mode. However, the silent mode is inflexible in that it applies to all types of notifications and events. Thus, if the user is expecting an important telephone call during a meeting, it is not possible to receive a sound notification for that important call when the phone is on silent.
The invention addresses this problem by providing a plurality of notification profiles, for example "normal" and "meeting". In each profile, a notification type is defined for each event. Thus, in the "meeting" profile, telephone calls may be notified using sound whereas other, less important events may be notified by a blinking LED.

The notification profile can be set manually by the user. The phone may also switch profiles automatically based on a calendar-related event. For example, if there is a meeting in the user's calendar between 1pm and 2pm, the phone will go into "meeting" mode at 1pm, and switch back to "normal" at 2pm (see paragraph [0049] of the published application).

2. **Admissibility of the main request**

2.1 The statement setting out the grounds of appeal shall indicate the reasons why the decision under appeal shall be set aside (Rule 99(2) EPC and Article 12(2) RPBA). It is generally not sufficient to simply refer to submissions made before the department that issued the decision (see Case Law of the Boards of Appeal, 8th ed., IV.E.2.6.4 a)).

2.2 For the main request, the statement setting out the grounds of appeal does not explicitly deal with the objections set out in the communication of 29 February 2012. It merely refers to a letter dated 22 March 2010, which was submitted to the examining division. Apart from the question of the validity of such a reference in appeal proceedings, this letter cannot normally contain the reasons necessary to overcome objections raised two years later. Indeed, it does not address the
subsequently raised ground of lack of clarity.

For these reasons, the Board holds the main request inadmissible.

3. Auxiliary request, inventive step

3.1 The examining division assessed inventive step starting from D3 and the Board agrees that this is a reasonable starting point. D3 discloses a mobile phone having a plurality of notification profiles (for example "General", "Silent", and "Meeting" - see pages 53 and 54, as well as the table on page 142). The user can select a profile from the settings menu (pages 146 and 147).

3.2 It is common ground that the method of claim 1 of the auxiliary request differs from D3 by the automated profile switching:

"if the user has selected an automated profile switching, the method further comprises:
upon occurrence of a calendar-related event, determining whether a notification mode has been set for the calendar-related event;
if no notification mode has been set, remaining in the current notification mode;
if a notification mode has been set, automatically applying the selected notification mode;
upon ending of the calendar-related event, automatically switching back to the current notification mode".

3.3 Thus, the invention involves settings at two levels. Firstly, there is a "global" setting that enables
automated profile switching. If automated profile switching has not been enabled, the user has to select the notification mode manually. Secondly, there is a setting, for each calendar event, that specifies the notification mode to be applied, automatically, for that calendar event. If no such notification mode has been set, then automated profile switching does not work, and the phone remains in the mode that was previously set.

3.4 The next step in the assessment of inventive step is to formulate the objective technical problem solved by the invention. This is often a crucial issue, because the problem defines what is given to the skilled person. A broadly formulated problem leaves a lot for the skilled person to solve. A narrowly formulated problem, on the other hand, puts the skilled person closer to the invention. The limit is the point just before elements of the solution enter into the problem (impermissible hindsight).

In all cases, non-technical features cannot contribute to inventive step. Therefore, they may legitimately appear in the formulation of the problem to be solved without constituting such hindsight (T 641/00 - Two identities/COMVIK).

3.5 The examining division formulated the problem as "how to couple the notification modes with the calendar". Since this involves elements of the solution, namely the recognition that the notification mode should be coupled with calendar functionality, this can only be allowable if the concept is not technical.

3.6 The Board agrees that it is not. Moreover, the Board goes further than the examining division and considers
also the settings themselves to be non-technical. Those settings do nothing more than provide the user with options. The global setting allows the user to switch the automatic profile switching on or off. The local setting allows the user to specify a notification profile for each event. The Board sees none of this as technical. Therefore, all of it is part of the problem to be solved in the form of a requirement specification given to the skilled person. This is a narrow problem. The only thing that is left for the skilled person to do is to implement the requirements on the mobile device. In the Board's view, this would have been obvious.

3.7 Even considering the broader problem of "automating the profile switching", the Board arrives at the conclusion that the subject-matter of claim 1 lacks an inventive step.

3.8 Document D1 discloses the automatic switching of operational modes in a portable intelligent communications device when the user is in a meeting. In the Board's view, D1 teaches (see page 10, lines 1 to 11; page 12, line 17 to page 13, line 15; figure 6) the following steps of claim 1:

- upon occurrence of a calendar-related event, determining whether a notification mode has been set for the calendar-related event;

- if no notification mode has been set, remaining in the current notification mode;

- if a notification mode has been set, automatically applying the selected notification mode;
upon ending of the calendar-related event, automatically switching back to the current notification mode.

3.9 D1 discloses the second-level setting, which allows the user or the system to specify a notification mode for each calendar event. D1 does not disclose the first level-setting, which activates (or deactivates) automatic profile switching altogether. Therefore, the Board agrees with the appellant that the combination of D3 and D1 does not result in the complete invention.

3.10 However, the Board disagrees with the appellant that the teachings in D1 would have deterred the skilled person from including a global switch between manual and automatic profile switching. In the Board's view, the skilled person who finds a solution to a problem in the prior art would consider whether to adopt the solution as a mandatory feature or as an option. Furthermore, providing the user with options is always a consideration when developing end-user devices, such as mobile phones.

3.11 The appellant argued that the first-level setting saved checking steps. The Board considers that to be a mere consequence of providing the user with the option to activate automatic profile switching. It is evident that if automatic profile switching is off, the corresponding steps need not be carried out.

3.12 For these reasons, the Board judges that the subject-matter of claim 1 would have been obvious in view of the teachings of D3 and D1.

3.13 In conclusion, the subject-matter of claim 1 does not involve an inventive step (Article 56 EPC).
Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar: T. Buschek

The Chairman: W. Chandler

Decision electronically authenticated