I. Summary of Facts and Submissions

1 European patent application No. 18 195 408.2 having the title "UNLOCKING A DEVICE BY PERFORMING GESTURES ON AN UNLOCK IMAGE" was filed on 30-11-2006.It claims priority of US 32254905 filed on 23-12-2005.It is a divisional application in the sense of Article 76 EPC of the earlier European patent application No. 10 194 359.5.. The applicant is
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US.

2 Prior to issuing the European search opinion, a communication under Rule 63 EPC has been sent, requesting a basis for the claims under Article 76(1) EPC.

3 The European search opinion cited the documents

D1	US 6 442 251 B1 (MAES STEPHANE [US] ET AL) 27 August 2002 (2002-08-27)
D2	"N1 Quick Start Guide", , 29 July 2004 (2004-07-29), XP055249230, Retrieved from the Internet: URL:http://www.instructionsmanuals.com/download/ telefonos_movil/Neonode-N1-en.pdf [retrieved on 2016-02-11]
D3	PLAISANT C ET AL: "TOUCHSCREEN TOGGLE DESIGN", STRIKING A BALANCE. MONTEREY, MAY 3 - 7, 1992; [PROCEEDINGS OF THE CONFERENCE ON HUMAN FACTORS IN COMPUTING SYSTEMS], READING, ADDISON WESLEY, US, vol. -, 3 May 1992 (1992-05-03), page 667/668, XP000426849,
D4	WO 2004/001560 A1 (NOKIA CORP [FI]; RYTIVAARA MARKKU [FI] ET AL.) 31 December 2003 (2003-12-31)

and raised objections under **Articles 76, 84 and 52(1)/54 EPC** against **claims 1-13**.

4 In the response received on **04-03-2020** the applicant requested further examination on an amended set of **claims 1-13** and provided arguments in support of the patentability of these claims. As an auxiliary measure, oral proceedings were requested.

5   In a communication under Article 94(3) EPC issued by the examining division on **21-12-2020**, objections under **Articles 76, 84 and 52(1)/56 EPC** were raised against **claim 1**.

6   In the response received on **04-06-2021** the applicant requested further examination on an amended set of **claims 1-15** and provided arguments in support of the patentability of these claims.

7   In a minuted phone conversation held on **26-01-2022**, with minutes issued on **31-01-2022**, objections under Article 76(1) EPC were raised.

8   In the response received on **27-04-2022** the applicant requested further examination and provided arguments in support of the patentability of the claims.

9   On **06-02-2023** the examining division issued a summons to attend oral proceedings on **29-06-2023**. In the annex to the summons, objections under **Articles 76(1) and 84 EPC** were raised against **claims 1-9**.

10   In a minuted phone conversation held on **04-04-2023**, with minutes issued on **06-04-2023**, doubts regarding a proposed claim wording and Article 76(1) EPC were raised by the examining division.

11   In the response received on **26-05-2023** the applicant requested further examination on an amended set of **claims 1-14** and provided arguments in support of the patentability of these claims.

12   In a minuted phone conversation held on **08-06-2023**, with minutes issued on **09-06-2023**, objections under Article 76(1) EPC were raised.

13   In a response to the phone conversation and the summons the applicant, withdrew his request for oral proceedings with a communication received on **26-06-2023**.

14   On **28-06-2023** the oral proceedings were cancelled.

15   The decision is based on the following request:

Description, Pages

1, 4-54   as originally filed

2, 3   filed in electronic form on   04-03-2020

Claims, Numbers

1-14   filed in electronic form on   26-05-2023

Drawings, Sheets

1/15-15/15   as originally filed

II. Reasons for the decision

16   Basis in the Earlier Application (Article 76(1) EPC)

16.1   Under the provisions of Article 76(1) EPC, a European divisional application may be filed only in respect of subject-matter which does not extend beyond the content of the earlier application as filed. The present application has been filed as a divisional application of the earlier application EP10194359.

When assessing the requirement of "does not extend beyond the content of the earlier application as filed" exactly the same principles are to be applied as would be for Article 123(2) EPC (see EPO Case Law Book 2023, II-F.2.1).

16.2   In summary, **claim 1** defines a method in which an application interface is shown after transitioning from locked to unlocked state when an incoming call is detected, the unlocking operation being performed by a gesture on a touch-sensitive display.

16.3   In their letter of 26-05-2023, the applicant indicated figs. 7A-7D and paragraphs [0091]-[0093] of the earlier application as a basis of current **claim 1**.

16.4   The examining division holds that figs. 7A-7D and paragraphs [0091]-[0093] indeed relate to unlocking a device in relation to an incoming call. However, claim 1 **generalizes** the concepts of these passages in an **unallowable** way.

In accordance with Guidelines H-V.3.2.1, extracting a specific feature in isolation from an originally disclosed combination of features and using it to delimit claimed subject-matter may be allowed only **if there is no structural and functional relationship between the features**.

16.5   The embodiment of paragraphs [0091]-[0093] comprises a number of features which are functionally linked to each other, but are not part of claim 1. This concerns the following aspects:

1.) accept/reject buttons: In the embodiment an "accept" and a "reject" button are gradually shown. After unlocking, the user may interact with the buttons to accept or reject the incoming call. No such buttons are defined in claim 1. An "information (706) about the event" could for example be a button to request more information about the caller.

2.) According to the description the accept/reject buttons are <u>gradually shown with the unlocking action</u>. This gradual display of the buttons is linked to the unlocking process and the completion of the gesture. However, no such gradual display of the buttons is defined in claim 1.

3.) According to the description, after unlocking, specifically the buttons are shown and become usable. This is different from the claim wording. For example, "displaying an application interface associated with a phone application" could be a photo of the caller.

4.) The event in the description <u>is</u> an incoming call, it is not merely "comprising" such event. The claim wording leaves the option of having additional events. No events beyond an incoming call are disclosed.

16.6   In summary, aspects 1-4.) identified above demonstrate that claim 1 defines a generalization of the idea expressed in the description passage that omits features which are functionally linked to the unlocking process. Thus, the subject-matter of claim 1 extends beyond the subject-matter of the earlier application.

17   Applicant's arguments

17.1   In pages 1-3 of the letter of 26.05.2023, the applicant indicates the basis for the claim. The applicant does not provide any discussion as to why the generalization defined in the claim is directly and unambiguously derivable from the earlier application. In fact, the passages cited by the applicant in part even explicitly describe features not defined in the claim (e.g. "(the set of virtual buttons 708 "Decline" and "Accept" which according to paragraph [0092] "allow the user to decline or accept the incoming call", thus clearly being associated with a phone application").

17.2   The applicant maps the features as follows:

17.2.1 Claim feature: "detecting occurrence of an event at the device when the device is in a locked state, the event associated with an application on the device, wherein the event comprises an incoming phone call".

Basis provided by the applicant: Paragraph [0091] ("In Figure 7A, the device 700 is locked and has received an incoming call").

Reason for incompliance with Article 76(1): See point 4.) above.

17.2.2 Claim feature: "in response to detecting occurrence of the event, displaying on the touch-sensitive display a user interface that includes information (706) about the event and a graphical, interactive user-interface object (702) for accessing functionality associated with the event"

Basis provided by the applicant: Paragraph [0091] ("The device 700 is displaying a prompt 706 to the user, informing the user of the incoming call, on the touch screen 714. The device is also displaying the unlock image 702 and channel 704 so that the user can unlock the device 700 in order to accept or decline the incoming call").

Reason for incompliance with Article 76(1): See points 1-4.) above.

17.2.3 Claim feature: "detecting a gesture on the graphical, interactive user-interface object of the user interface on the touch-sensitive display that satisfies a predefined condition."

Basis provided by the applicant: Paragraph [0092] ("the user is in the process of dragging the unlock image 702 along the channel 704 in the direction of movement 712") in combination with paragraph [0044] ("the unlock action is a predefined gesture performed on the touch screen... the predefined gesture may include a contact of the touch screen on the left edge (to initialize the gesture), a horizontal movement of the point of contact to the opposite edge while maintaining continuous contact with the touch screen, and a breaking of the contact at the opposite edge (to complete the gesture).")

Reason for incompliance with Article 76(1): See point 2.) above.

17.3   Claim feature: "in response to detecting the gesture that satisfies the predefined condition, transitioning the device from the locked state to an unlocked state and displaying an application interface (708) for the application associated with the event, wherein the application interface is associated with a phone application"

Basis provided by the applicant: Paragraph [0093] ("the user completes the unlock action by dragging the unlock image to the right end of the channel 704 and releasing the unlock image 702. The device 700 transitions to the unlock state... the virtual buttons 708 are at their final optical intensity levels, as illustrated by their solid outlines. At this point the user may interact with the virtual buttons 708 and accept or decline the incoming call").

Reason for incompliance with Article 76(1): See point 3.) above.

17.4   Hence, the passages provided by the applicant do not directly and unambiguously disclose the subject-matter of **claim 1**.

III. Decision

18   The application is refused under Article 97(2) EPC due to incompliance with Article 76(1) EPC.