

I. Summary of Facts and Submissions

1 European patent application No. 18 195 407.4 having the title "UNLOCKING A DEVICE BY PERFORMING GESTURES" 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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2 The European search opinion cited the documents

D1 "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]

D2 EP 1 462 920 A2 (MICROSOFT CORP [US]) 29 September 2004
(2004-09-29)

D3 David A Carr ET AL: "Using Interaction Object Graphs to Specify Graphical Widgets",
CR-TR-3344, 30 September 1994 (1994-09-30), XP055527045,
Retrieved from the Internet:
URL:<http://www.cs.umd.edu/hcil/trs/94-09/94-09.pdf>
[retrieved on 2018-11-26]

D4 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,

and raised objections under **Articles 76, 84 and 56 EPC** against **claims 1, 6 and 7**.

- 3 In the response received on **29-07-2019** the applicant requested further examination on an amended set of **claims 1-8** and provided arguments in support of the patentability of these claims. As an auxiliary measure, he requested oral proceedings.
- 4 In a communication under Article 94(3) EPC issued by the examining division on **26-09-2019**, objections under **Articles 76 and 56 EPC** were raised against **claims 1, 7 and 8**.
- 5 In the response received on **27-01-2020** the applicant requested further examination on an amended set of **claims 1-9** and provided arguments in support of the patentability of these claims.
- 6 On **18-03-2020** the examining division issued a summons to attend oral proceedings on **17-09-2020**. In the annex to the summons, objections under **Articles 76 and 56 EPC** were raised against **claims 1, 7 and 1, 8 and 9 respectively**.
- 7 In the response received on **19-06-2020** the applicant requested a postponement of the oral proceedings due to already scheduled oral proceedings on **17-09-2020**.
- 8 In response thereto, the examining division issued on **21-07-2020** new summons to attend oral proceedings on **21-09-2020**, referring same objections of the summons of 18-03-2020.
- 9 The applicant has not provided any further submissions or arguments prior to the oral proceedings.
- 10 On **21-09-2020**, oral proceedings were held.
- 11 The decision announced at the end of the oral proceedings is based on the following request:

Description, Pages

1-54 as originally filed

Claims, Numbers

1-9 filed in electronic form on 27-01-2020

Drawings, Sheets

1/15-15/15 as originally filed

- 12 Independent **claim 1** reads as follows:
A method of controlling an electronic device with a touch-sensitive display, comprising:
while the electronic device is in a first user-interface state, detecting a predefined gesture on the touch-sensitive display at a location remote from an unlock image and remote from a visual cue distinct from the unlock image;
continuously modifying the unlock image on the touch-sensitive display in accordance with the predefined gesture and the visual cue;
in response to detecting that the predefined gesture ends after moving to at least a predetermined location:
ceasing to display the unlock image; and
transitioning the electronic device from the first user-interface state to a second user-interface state; and
in response to detecting that the predefined gesture ends before moving to the predetermined location:
maintaining the electronic device in the first user-interface state.
- 13 The other claims under consideration are attached to this decision. As to the other application documents, reference is made to the file.

II. Reasons for the Decision

- 14 The present application has been filed as a divisional application of the earlier application EP10194359.5. Under the provisions of Article 76(1) EPC, a divisional application may be filed only in respect of subject-matter which does not extend beyond the content of the earlier application as filed.
- 15 Independent **claim 1** of the present application defines the following method step: "while the electronic device is in a first user-interface state, detecting a predefined gesture on the touch-sensitive display at a location remote from an unlock image and remote from a visual cue distinct from the unlock image".

According to the applicant, a basis for this feature is provided in description paragraph 78 of the earlier application (see the letter of 27-01-2020). The examining division considers paragraph 78 to be the only passage pertinent with respect to the feature of "detecting ... at a location remote from an unlock image and remote from a visual cue distinct from the unlock image". The relevant sentence of paragraph 78 reads: "In some embodiments, the user may

unlock the device 400 by making contact anywhere on the touch screen 408 and moving the point of contact horizontally as if he or she were following the channel 404." and has to be read in conjunction with paragraphs 71ff and figures 4 and 5.

Paragraph 78 describes a desired behaviour of the device, namely that a user can unlock the device by making contact anywhere on the touch screen and moving the point of contact horizontally as if he or she were following the channel. The passage does not explicitly teach how this behaviour is to be achieved. The person skilled in the art would understand that some sort of gesture detection is required. The statement "as if he or she were following the channel 404" also teaches the person skilled in the art that a gesture remote from the channel is detected. However, in order to achieve the desired behaviour outlined in paragraph 78, there is no implicit need to link the detection to the location of the unlock image. In fact, one may achieve the behaviour of paragraph 78 by only checking whether the gesture is performed outside the channel, without ever taking into account the location of the unlock image. Therefore, it is not directly and unambiguously derivable from the parent application that a detection remote from the unlock image is performed.

- 16 Independent **claim 1** also defines "continuously modifying the unlock image on the touch-sensitive display in accordance with the predefined gesture and the visual cue". According to the applicant, this feature is based on paragraphs 54, 55, 62, 71 and 73. The examining division considers these passages to be most pertinent too.

These passages disclose that a gesture is performed on the display, and that an unlock image is dragged on the screen accordingly. However, the claimed scope is much wider. For example, it encompasses methods in which the unlock image changes its shape (e.g. gets larger), its rotation, its colour or other aspects of its appearance. As there is no basis for such a generalization, the feature in question cannot be derived from the earlier application.

- 17 As the two features mentioned above are not unambiguously derivable from the content of the earlier application as filed, the divisional application contains subject-matter which extends beyond the subject-matter of the earlier application. Therefore, the requirements of Article 76(1) EPC are not met.

18 **Discussion of the arguments of the applicant**

19 In the letters received on 29-06-2019 and 27-01-2020, and during the oral proceedings, the applicant provided arguments in favour of impugned features.

20 Concerning the feature "remote from an unlock image", the applicant argued that, when taking the system of figure 4 and paragraph 71 as a "base embodiment", and the system of paragraph 78 as a specific variant of this embodiment, it can be observed that the channel and the unlock image form a unit. The unlock image is displayed in the channel and is moved along the channel. Accordingly, making it possible to perform a gesture "as if ... following the channel", teaches that the gesture has to be performed remote from the unlock image.

The examining division believes that this argument is unsuitable to support that the claimed feature is disclosed. The examining division understands that "detecting a predefined gesture on the touch-sensitive display at a location remote from an unlock image and remote from a visual cue distinct from the unlock image" does not mean a detection is made in some arbitrary way, and due to other factors (the placement of the visual cue and the unlock image), the detection coincidentally fulfils the requirement "remote from an unlock image". It rather prescribes a specific way of detection, which takes into account the position of the unlock image.

In contrast, the specific example of paragraph 78, it may be the case that performing the gesture remote from the channel also means that the gesture is performed remote from the unlock image. However, in this example it is only important that the gesture can also be performed in another way with respect to the channel (namely outside the channel). Since it is not required to take into account the position of the unlock image for the gesture detection at all, it cannot be derived that the specific detection is made remote from the unlock image.

21 Concerning the continuous modification of the unlock image, the applicant pointed out that paragraph 55 discloses a continuous execution of a gesture input. Along with paragraphs 54, 62, 71 and 73, this would show that the unlock image is continuously modified.

The passages show that the unlock image is continuously moved across the screen. However, a continuous movement is only one of many possible options

to perform a continuous modification. Since the parent application provides no other examples of a modification, let alone a general statement of "continuous modification", the applicant's argument cannot convince.

III. Decision

- 22 It is decided to refuse the application based on Article 97(2) EPC, since it does not fulfil the requirements of Article 76(1) EPC.