

At 9:00 the chairman opened the oral proceedings and introduced the members of the division.

The oral proceedings started with a Main Request and a First, Second and Third Auxiliary Request on file. These requests were filed on 25-04-2017 in reply to the summons to attend oral proceedings. The requests were maintained and no new requests were filed.

Main Request

The first examiner replies to arguments raised in the written submission in preparation to oral proceedings of 25-04-2016. The first examiner summarizes the common views and differences of opinion of the division and the applicant. In particular, the first examiner points to a passage in D6 that mentions highlighting of a user interface object (p. 668, col. 2, lines 9-10), which is considered to indicate progress and imply appearing and increasing in optical intensity.

The representative argues why the subject-matter of claim 1 is inventive over the prior art. He argues that the highlighting in D6 is instantaneous and that after the instantaneous change, the optical intensity remains the same. He argues that in the claim, the optical intensity changes gradually. He also argues that the highlighting does not necessarily change the optical intensity of the user interface object itself.

Referring to T336/014, paragraph 1.2.2, the representative argues that the differentiating features have a credible technical effect: to provide the user feedback about the internal operation state of the device. Hence, the features are technical.

At 9:17, the oral proceedings are adjourned in order to allow the division to discuss inventiveness of the Main Request.

At 9:32, the oral proceedings are resumed. The chairman announces that the division considers that the subject-matter of claim 1 of the Main Request lacks an inventive step, and briefly presents the reasons therefore.

At 9:34, and at the request of the representative, the oral proceedings are adjourned in order to allow the representative to draft a new request.

At 9:49, the oral proceedings are resumed. The representative did not submit a new request.

First Auxiliary Request

The representative describes the differences between the subject-matter of claim 1 of the First Auxiliary Request and the subject-matter of claim 1 of the Main Request: (a) the gesture input has been broadened and is not a user input condition, and (b) it is specified more explicitly that the intensity changes gradually, from a first value to a second value. The latter distinguishes it more clearly from D6.

The representative argues that the closest prior art D8 does not provide the user with any feedback. The problem solved is a technical problem. D6 discloses a solution to the technical problem; but not this solution. The unimaginative skilled person would not arrive within the scope of claim 1 when combining D8 and D6.

The first examiner clarifies the view of the division on what it considers a technical feature. The division considers the providing of feedback a technical effect, but considers the manner in which the feedback is provided an aspect that is likely not to be decided by the technically skilled person, but by a non-technical person, e.g., a graphical designer, based on non-technical considerations.

At 10:00, the oral proceedings are adjourned in order to allow the division to discuss patentability of the First Auxiliary Request.

At 10:10, the oral proceedings are resumed. The chairman announces that the division considers that the subject-matter of claim 1 of the First Auxiliary Request lacks novelty, and briefly presents the reasons therefore. In particular, it argues that the wording of claim 1 does not unambiguously limit the scope of protection to those cases wherein the optical intensity changes gradually. A step function is also a function.

At 10:15, and at the request of the representative, the oral proceedings are adjourned in order to allow the representative to draft a new request.

At 10:40, the oral proceedings are resumed. The representative submits a new Second Auxiliary Request. The Second and Third Auxiliary Request of 25-04-2017 becomes the Third and Fourth Auxiliary Request.

Second Auxiliary Request (filed during the oral proceedings)

The representative describes the subject-matter of claim 1 and identifies the support as follows: claim 1 of the Main Request, claim 1 of the First Auxiliary Request, and paragraphs [0086] and [0095]-[0098] of the description. The first claim is amended in such that the subject-matter is limited to method wherein the optical intensity changes gradually.

At 10:45, the oral proceedings are adjourned in order to allow the division to discuss admissibility of the First Auxiliary Request.

At 10:50, the oral proceedings are resumed. The chairman announces that the division considers the subject-matter of claim 1 of the Second Auxiliary Request satisfying the conditions of Article 123(2) EPC.

The representative argues why the subject-matter of claim 1 is novel and inventive over the closest prior art D8 and the combination of D8 and D6. The problem solved is a technical problem. D6 discloses a solution to the technical problem; but not this solution. The unimaginative skilled person would not arrive at the subject-matter of claim 1 when combining D8 and D6.

At 10:54, the oral proceedings are adjourned in order to allow the division to discuss allowability of the Second Auxiliary Request.

At 11:00, the oral proceedings are resumed. The chairman announces that the division considers the subject-matter of claim 1 of the Second Auxiliary Request lacks an inventive step, and briefly presents the reasons therefore. In particular, the chairman explains that the providing of feedback to the user is a technical solution, but that the manner in which the feedback is provided is considered a design option that would not be taken by the technically skilled person, but instead, stems from non-technical considerations, and for instance, would be part of a requirements specification drafted by a graphical designer.

Third and Fourth Auxiliary Request

The representative did not present further arguments in favour of the allowability of those requests.

The chairman announces that the division considers the Third and Fourth Auxiliary Request not allowable, because of the subject-matter of claims 1 lacks of an inventive step.

The representative did not file a new request. He instructed that all requests remained on file, and that a decision for each of them be provided.

Datum
Date 19.07.2017
Date

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Sheet 4
Feuille

Anmelde-Nr:
Application No: 10 194 359.5
Demande n°:

Decision

The chairman announces that the division decides that the First Auxiliary Request is not allowable for a lack of novelty (Article 52 EPC), and that the Main Request, and the Second, Third and Fourth Auxiliary Request are not allowable for a lack of inventive step (Article 56 EPC).

The oral proceedings were closed at 11:05.