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Our Ref: P338984EP-PCTDIV1/MH

Your Ref:

22 January 2016

**SIGNED AND SENT
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Dear Sirs

European Patent Application No. 09170574.9
Unlocking A Device By Performing Gestures On An Unlock Image
Apple Inc.

We refer to the communication pursuant to Article 94(3) EPC dated 18 August 2015. In response, we enclose an amended set of 10 claims, in clean and marked-up versions, to replace the claims currently on file for this application. We also enclose replacement description page 1a, again in clean and marked-up versions, to replace the corresponding page of the description currently on file.

Claim Amendments and Basis

Claim 1 has been amended only by the replacement of the term "touch screen", for which there is no antecedent basis, with the term "touch-sensitive display", as used throughout the rest of claim 1. A corresponding amendment has been made to independent claims 7 and 10.

It will be appreciated that these amendments are directly and unambiguously derivable from the application documents as filed, and thus meet the requirements of Article 123(2) EPC in relation to added subject matter.

Inventive Step

In the 18 August 2015 communication the Examiner objected that the claims currently on file lacked an inventive step in view of the newly cited D5 document "Touchscreen Toggle Design" by Plaisant *et al.* It is respectfully submitted that the claims do in fact define an invention that involves an inventive step over this document, as will now be explained.

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It is well established that, in order to assess inventive step in an objective and predictable manner, the problem-and-solution approach should be applied, and that deviation from this approach should be exceptional (see Guidelines G-VII-5).

The first stage in the problem-and-solution approach is to determine the closest prior art. According to the Guidelines (G-VII-5.1) *"In selecting the closest prior art, the first consideration is that it should be directed to a similar purpose or effect as the invention or at least belong to the same or a closely related technical field as the claimed invention. In practice, the closest prior art is generally that which corresponds to a similar use and requires the minimum of structural and functional modifications to arrive at the claimed invention (see T606/89)"*.

The Examiner appears to suggest that D5 represents the closest available prior art. However, as would be apparent to those skilled in the art, D5 is directed to a very different purpose than the claimed invention. The claimed invention addresses the problem of preventing unintentional unlocking of a portable electronic device, whilst at the same time providing an easy mechanism to unlock the device.

In contrast, D5 addresses the problem of a lack of clarity between a state indication and a possible action label of a two-state (on/off) graphical toggle switch (see, for example, the second paragraph of page 667 of D5: *"Computer based toggle switches can be very confusing. The most common problem is the confusion between state indication and possible action label; does the label ON indicate [sic] the state of the device or does it indicate the resulting state when the toggle is activated?"*). As the Examiner admits, D5 has nothing to do with unlocking a portable electronic device. Indeed, the only disclosed application of the system of D5 is in touchscreens that are flush mounted in a wall or cabinetry (see D5, page 667, column 2, paragraph 1), which suggests that the touchscreens are permanently installed in a fixed location. This is of course precisely the opposite of a portable device.

Since D5 has nothing to do with portable electronic devices, it fails to meet the criteria for selection as the closest prior art; D5 is not directed to a similar purpose or effect as the claimed invention, and nor does it belong to the same or a closely related technical field as the claimed invention. Further, in order to be applied to a portable electronic device (as opposed to a device that is permanently installed in a wall or cabinetry) substantial structural and functional modification to the system disclosed in D5 would be required.

Accordingly, D5 cannot be regarded as representing the closest available prior art. Indeed, given the completely different purpose of D5, it would not even be considered by the skilled person in seeking to solve the problem of preventing unintentional unlocking of a portable electronic device, while at the same time providing an easy mechanism to unlock the device.

Thus, any objection of lack of inventive step based on D5 is unsustainable.

Accordingly, the invention of claim 1 involves an inventive step over D5. Independent claims 7 and 10 are also inventive, for analogous reasons, whilst the dependent claims are inventive by virtue of their dependencies.

No further objections of lack of inventive step were raised in the 18 August 2015 Communication. It is thus submitted that the claimed invention also involves an inventive step over all of the other cited prior art.

Formal Issues

The newly-cited prior art document D5 has been identified and briefly discussed in the enclosed replacement description page, in accordance with the requirements of Rule 42(1)(b) EPC.

Concluding Remarks

It is respectfully submitted that the enclosed amendments and the comments above address all of the outstanding objections and thus place this application in condition for allowance. We therefore look forward to receiving a communication pursuant to Rule 71(3) EPC in due course.

Nevertheless, if any minor deficiencies remain as an obstacle to grant of a European patent the Examiner is invited to contact the undersigned representative by telephone in order to resolve any such deficiencies as efficiently as possible.

As a precaution against summary refusal we request oral proceedings in the event that the Examining Division is minded to refuse this application.

Yours faithfully

Matthew Howell
Professional Representative
WITHERS & ROGERS LLP