

The examination is being carried out on the **following application documents**

Description, Pages

2-40 as originally filed

1, 1a received on 05-10-2010 with letter of 05-10-2010

Claims, Numbers

1-10 filed in electronic form on 22-01-2016

Drawings, Sheets

1/15-15/15 as originally filed

- 1 The amendments and arguments filed in electronic form on 22-01-2016 have been carefully considered. However, they fail to place the application in a condition for the grant of a patent.
- 2 Reference is made to the following documents; the numbering will be adhered to in the rest of the procedure.
 - D1 WO 2004/001560 A1 (NOKIA CORP [FI]; RYTIVAARA MARKKU [FI]; MUSTONEN MIKA [FI]; TOKKONEN T) 31 December 2003 (2003-12-31)
 - D2 US 5 821 933 A (KELLER NEAL MARTIN [US]; PICKOVER CLIFFORD ALAN [US]) 13 October 1998 (1998-10-13)
 - D3 "ACCESS/CONTROL ICONS (ICON KEYS)", IBM TECHNICAL DISCLOSURE BULLETIN, IBM CORP. NEW YORK, US, vol. 38, no. 4, 1 April 1995 (1995-04-01), pages 407-409, XP000516196, ISSN: 0018-8689
 - D4 US 5 907 327 A (OGURA TSUYOSHI [JP]; ITOH AKIHISA [JP]) 25 May 1999 (1999-05-25)

The following documents are cited by the Examiner. A copy of the documents is annexed to the communication and the numbering will be adhered to in the rest of the procedure.

- D5 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,
- D6 Anton Kotov: "Mobile-review.com Review GSM phone Neonode N1m", , 30 July 2005 (2005-07-30), XP055267274, Retrieved from the Internet:
URL:<http://web.archive.org/web/20050730004341/http://www.mobile-review.com/review/neonode-n1m-en.shtml> [retrieved on 2016-04-20]
- D7 "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]

3 Novelty and Inventive Step (Art. 52(1), 54 and 56 EPC)

- 3.1 In his letter the applicant casts doubt on whether **D5** is to be considered the closest prior art. The applicant has cited a passage of Guidelines G-VII.5.1 describing characteristics of the closest prior art. The applicant further stated that **D5** is not the closest prior art, as it serves a different purpose.
- 3.2 The arguments are not convincing for the following reasons: Guidelines G-VII.5.1 states that "In the event of refusal, however, it is sufficient to show, on the basis of one relevant piece of prior art in respect of at least one of these solutions, that the claimed subject-matter lacks an inventive step. In such a situation, there is no need to discuss which document is "closest" to the invention". If the examining division selects a document as closest prior art

and demonstrates convincingly, as has been done in the previous communication from the division, that a claim lacks an inventive step, then this document is the closest prior art. Hence, the arguments provided in the previous communication are still considered pertinent. If the applicant considers the subject-matter of **claim 1** to be inventive over **D5**, then he is invited to indicate the reasons therefore, starting from **D5** as closest prior art.

3.3 In 2004 the phone *Neonode N1* was available to public use (see **D6**, page 2). Document **D7** is the user manual of the *Neonode N1*.

3.4 **D7** considered to be the prior art closest to the subject-matter of **claim 1** and discloses:

A method of unlocking a hand-held electronic device, the device including a touch-sensitive display (**page 11, the phone is controlled by touching the screen with the finger**), the method comprising:
detecting a contact with the touch-sensitive display at a first predefined location ~~corresponding to an unlock image~~ (**page 9: "sweep right to unlock your unit"; in order to implement a sweep from right to left, a contact location on the left side of the display has to be defined**)
~~moving the unlock image on the touch-sensitive display in accordance with movement of the contact while~~ continuous contact with the touch screen is maintained (**sweeping implies a continuous contact**); and
unlocking the hand-held electronic device if the moving ~~the unlock image on the touch-sensitive display results in movement of the unlock image from the first predefined location to a predefined unlock region on the touch-sensitive display~~ (**sweeping from left to right implies that the unlock region is pre-defined to be right of the initial contact location**).

3.5 The subject-matter of **claim 1** therefore differs from this known method in that it comprises *moving the unlock image on the touch-sensitive display in accordance with movement of the contact* and in *the first predefined location corresponding to an unlock image*.

3.6 The effect achieved by the difference is that the user receives optical guidance and feedback before and during the unlocking operation. Such an effect may *in principle* be regarded to be a technical effect, since the aim is to provide tools which assist in a user activity (see e.g. T 643/00 of 16 October 2003, point 16). However, in *the present case* the question whether the effect is actually achieved depends exclusively on subjective user skills. The user

has to know that the unlocking is performed by pointing his/her finger on the image and by moving the image over the display. Without this knowledge, the display of the unlocking image does not provide any assistance to the user and is a mere decorative element. The display and the moving of the unlocking image are thus purely based on aesthetic considerations, not technical considerations. Therefore, in the present case the effect achieved by the difference over **D7** cannot be considered to be a technical effect, which could be used in formulating an objective technical problem (see also T 1958/13 of 11 June 2015).

Since **claim 1** does not solve any technical problem, the subject-matter of the claim cannot be considered to involve an inventive step (Articles 52(1) and 56 EPC).

- 3.7 The above reasoning applies mutatis mutandis also to **claims 7 and 10**, the subject-matter of which therefore cannot be considered to involve an inventive step (Articles 52(1) and 56 EPC).
- 3.8 Dependent **claims 2-6** and **8-10** do not appear to contain any additional features which, in combination with the features of any claim to which they refer, meet the requirements of the EPC with respect to inventive step. The additional features of the dependent claims are also purely based on aesthetic considerations.

4 **Procedure**

- 4.1 It is not at present apparent which part of the application could serve as a basis for a new, allowable claim. Should the applicant nevertheless regard some particular matter as patentable, an independent claim should be filed taking account of Rule 43(1) EPC. The applicant should also indicate how the subject-matter of the new claim differs from the state of the art and the significance thereof.
- 4.2 At least some of the objections raised above are such that there appears to be no possibility of overcoming them by amendment. Refusal of the application under Article 97(2) EPC is therefore to be expected.