



PATENTS ACT 1977

APPLICANT	Dr Nes Irvine
ISSUE	Whether the application complies with Section 76(2), Section 14(5) and Section 1(1)(b) of the Patents Act 1977
HEARING OFFICER	Peter Mason

DECISION

Introduction

- 1 The decision relates to patent application GB1620562.7 (the Application), entitled “*A method of touch and a touch device*”, filed in the name of Dr Nes Irvine on the 2nd December 2016 and claims an earliest priority date of 2nd December 2015 from PCT application WO 2016/087855 (P1). The Application additionally claims priority from GB 1604767.2 (P2), GB1609970.7, and GB1609963 all of which have since been terminated.
- 2 There have been a number of rounds of examination. The examination reports dated 4th August 2017 and 17th June 2020 both identify that the priority claim is invalid. This does not appear to be contentious, and was acknowledged during the hearing by Dr Irvine, therefore I will proceed with my decision on the premise that the priority date for the application is to be taken as the filing date; 2nd December 2016.
- 3 Despite several rounds of correspondence and several amendments, the applicant has been unable to persuade the examiner of the patentability of their invention and Dr Irvine accepted an offer to present his views to a hearing officer. The hearing took place on the 24th March 2021 where Dr Irvine attended in person.

The Invention

- 4 The invention relates to a method of operating a graphical user interface (GUI) provided on a touch screen device. The Application was filed with two main claims relating to a method for operating the touch screen device, and a method of performing a task on the touch screen device. The claim set has been amended on several occasions with the final amendment being made with a second set of skeleton arguments dated 22nd March 2021. These claims were accepted for the hearing and it is these claims on which I will base my decision. There are two main claims as follows;

Claim 1. A method of operating a graphical user interface GUI for a device, the method is characterised by the steps of

- i. An operation available within the GUI is performed by an only required input of a touch on a powered touch component, and*
- ii. The touch comprises a predetermined movement of one or more digits on the touch component of a touch-sensitive display screen, and*
- iii. The operation performed by just the touch as the touch operation determines everything else including at least one of providing backward compatibility, and replacing, and an alternative, to at least one of*
 - a. An appearance of the touch-sensitive display screen whether a display component is powered on or off, and*
 - b. An existing touch operation predetermined within the source code of an existing graphical user interface GUI to comprise a function represented by an image of a graphical display element GDE on the screen operated in the existing GUI by at least a contact of one digit within the boundary of the image displayed on the screen to perform the operation, and*
 - c. An existing operation from any other input or combination of inputs of the existing GUI operating system includes iOS, Android and Windows, or any other GUI operating system disclosed at least before 2nd December 2015, and*
- iv. The touch operation 142, may include the operation on the screen being determined by a text input as a scripting language during runtime including the text input in the form of a text file, including being a task of one or more operations which may or may not be displayed as a task menu.*

And

Claim 31. A method a user performs a task by the steps of

- a) selection of one or more virtual options for each item for a list of virtual items on a touch-sensitive display screen, and*
- b) the selection of the one or more options can be undone, and*
- c) when the selection of options for the list of items is completed by a pointer input a processor connectively coupled to the touch-sensitive display screen performs an operation of the task, and*
- d) the pointer input includes a finger movement, a stylus movement, a pointing device pointer movement, and a mouse pointer movement on the touch-sensitive display screen, and*
- e) the pointer input may only be a finger movement input on a touch-sensitive display screen to perform the task.*

The issues to consider

- 5 I acknowledge that the claims before me have not strictly been examined, however the differences between these claims and those previously examined are trivial and therefore the issues to be heard, as outlined in the Pre-Hearing Report dated 9th February 2021, appear relevant to the present claims also. There are three issues to be considered:
- i. Whether the amended claims disclose added matter as set out in Section 76(2).
 - ii. Whether the amended claim clearly defines the scope of the invention as required by Section 14(5)(b).
 - iii. Whether the invention involves an inventive step as required by Section 1(1)(b).
- 6 Having considered the amendments, skeleton arguments, and the application prior to the hearing claim 31 relates prima facie to a separate inventive concept that has not been examined, claim 31 was therefore set aside for the purposes of this hearing.

Added matter and inventive step

- 7 Prima facie I was of the opinion that there was no added matter, however in light of the clarity issue (see below) I was unable to determine conclusively the issue of added matter and as such it was set aside for consideration at the outset of the hearing.
- 8 Being able to clearly, and unambiguously identify or construe the claim is fundamental to the assessment of inventiveness and therefore it is appropriate that I first consider clarity in this instance. I will only go on to consider inventive step if I am content that the claim clearly defines the invention.

Clarity – the law

- 9 The requirement that the claims be clear is set out in Section 14(5) of the Act:

The claim or claims shall –

(a) define the matter for which the applicant seeks protection;

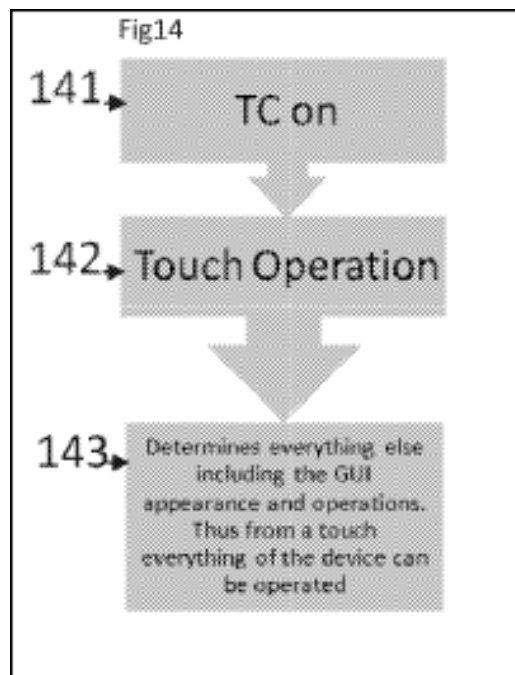
(b) be clear and concise (my emphasis);

(c) be supported by the description; and

(d) relate to one invention or to a group of inventions which are so linked as to form a single inventive concept.

Analysis – Clarity

- 10 In their letter dated 9th February 2021 the examiner appears content with the scope of integers (i) and (ii) of the previous claim set, which are substantially the same as those being considered today. The examiner describes the operation of these integers as ‘a touch operation comprising the movement of one or more digits performs an operation.’ Whilst there appears to be no contention over this interpretation of integers (i) and (ii) it would be amiss for me not to consider these further.
- 11 During the hearing Dr Irvine was invited to describe the invention in respect to integers (i)-(iv) of claim 1. Dr Irvine described a typical device as illustrated in figure 1B of the Application; here the typical device comprises a touch sensitive display screen having a touch component, for example a capacitive grid touch digitizer, and a display component, for example a liquid crystal display (LCD). In this typical arrangement the LCD will display several distinct applications and the user can access these applications by touching an area of the touch component directly adjacent the displayed application. Therefore, in order to perform an operation, the LCD must be powered, the relevant application displayed, and the user must touch an area of the touch component directly adjacent that displayed application. Dr Irvine refers to this typical arrangement as ‘what you see is what you get’ (WYSIWYG).
- 12 Dr Irvine alleged that the application, as set out in integer (i) and (ii), requires a touch sensitive display screen having both a touch component and a display component, wherein only the touch component needs to be powered in order to perform an operation, for example accessing an application. Dr Irvine, referring to figure 14 reproduced below, described operations 141, 142 and 143 drawing the distinction between his invention wherein the display component need not be powered, and the prior art which requires power to the display component.



- 13 Dr Irvine intends the term “**only** required input” and “*performed by just the touch*” (my emphasis) to limit the claims such that it is not strictly necessary for the display to be powered to access an application using a predetermined touch input.

Therefore, opening an application, or performing any operation on a device, is achieved solely by the user touching a predetermined area on the touch component wherein the predetermined area corresponds to a predetermined operation. This allows the touch component to operate entirely independently to the display component. Dr Irvine refers to this arrangement as 'what you touch is what you get' (WYTIWYG).

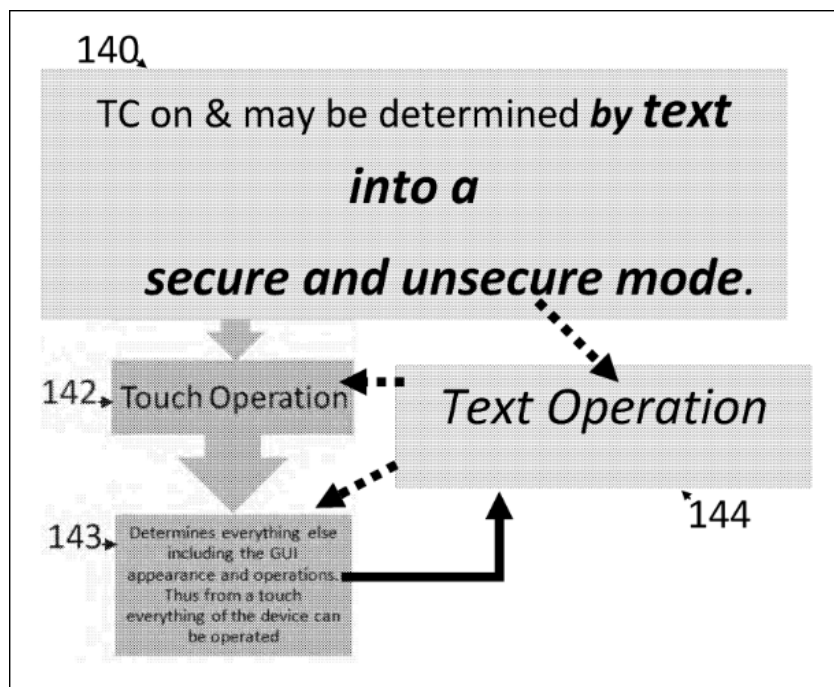
- 14 Therefore, in attributing '*a touch operation comprising the movement of one or more digits performs an operation*' to integers (i) and (ii) it seems that the examiner was taking a much wider interpretation than Dr Irvine intended. It appears that Dr Irvine and the examiner were at cross purposes wherein, adopting Dr Irvine's terminology, the examiner was assigning a WYSIWYG protocol to integers (i) and (ii) where a WYTIWYG protocol is intended.
- 15 I am content with Dr Irvine's interpretation up to this point and I agree that the skilled person, reading the claim in light of the description, particularly in regard to figures 13 & 14, would understand that where the prior art assigns a function, in relation to a touch operation on a touch component, with respect to a display component, this is not necessary of the present invention, wherein all functions are achieved through a touch operation, on a touch component, irrespective of an output of the display component.
- 16 Integer (iii) claims that the touch operation may be used to change the appearance of the touch-sensitive display screen, update an existing source code of a GUI in relation to reassigning a function in respect to an image of a graphical display element (GDE), or assign an alternative operation to an input of an existing operating system. In light of my understanding of integers (i) and (ii) I also consider integer (iii) to be clear enough.
- 17 At the outset of the hearing Dr Irvine acknowledged that the Application was not entitled to its earlier priority date and that the alleged priority document P1¹ impugned the novelty of integers (i)-(iii), and therefore Dr Irvine asserted that integer (iv) was necessary to negate any novelty objection based on the disclosure of P1 and to distinguish this invention.
- 18 Integer (iv) is framed as a preferential feature, however during the hearing Dr Irvine asserted that his intention was for the integer to be an essential feature of the invention and so I will base my analysis on this premise, therefore I will consider the following integer;

iv the touch operation includes the operation on the screen being determined by a text input as a scripting language during runtime including the text input in the form of a text file, including being a task of one or more operations which is displayed as a task menu. (My emphasis).

- 19 The examiner understood this integer to relate to a text file that sets up a menu function and that this menu function is operated by touch.

¹ PCT application number WO 2016/087855

20 Dr Irvine, during the hearing, relied on the alleged priority document P2² to clarify the scope of integer (iv), drawing attention to figure 20A, which is reproduced below, to illustrate a relationship between the touch operation and the text input.



21 Dr Irvine went on to discuss the operation of figure 20A wherein a device can receive a text message, or similar, at 144 and this text message could reconfigure an operation assigned to a predetermined touch at 143. Dr Irvine gave an example wherein a device having a predetermined touch assigned to the functionality of making a phone call could receive a text message 144 that reassigns the predetermined touch at 143 such that when the touch operation was performed, instead of making a phone call, balloons may appear on the display component.

22 Dr Irvine later went on to discuss integer (iv) in relation to figure 17, which is reproduced below, of the Application referring to step 172 which directs the user to P2 for an example embodiment. Dr Irvine drew attention to step 175 which alleges that the claimed task menu allows medical data capture to be between 40 times and 80 times faster than the prior art. Dr Irvine then went into great detail in regard to the generation, initialisation, and operation of the said task menu which essentially concerns creating a task menu, such as that disclosed in figure 18 of the Application, which is reproduced below. The task menu is created from a text input and is displayed on a display component of a touch-screen display, a user may input data by marking or tracking across the touch component of the touch screen display with a digit. Dr Irvine ably demonstrated, during the hearing, that a user could input data into his task menu much quicker than that of a prior art example.

² Patent Application number GB 1609970.7

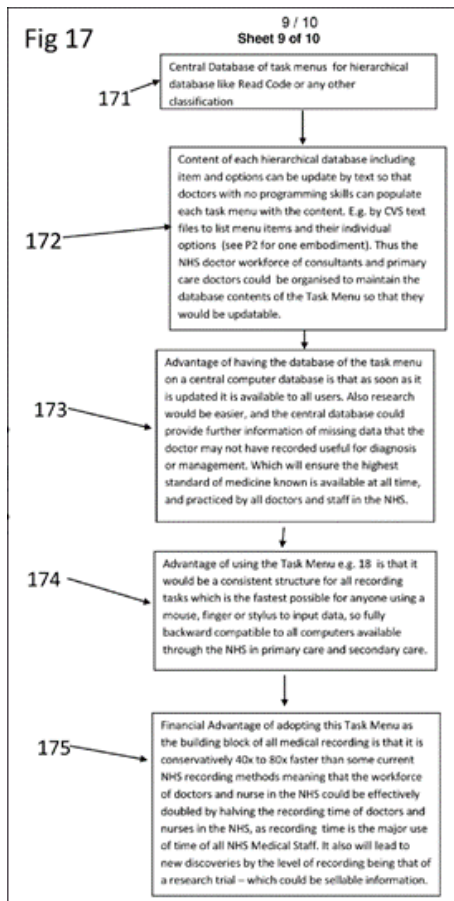


Fig 18

Text Driven Task Menu

Device:

187 →

185 →

186 →

180 →

181 →

182 →

183 →

184 →

188 →

PHQ-9 Total = /27

Question	Not at all	Several days	More than half the days	Nearly every day
Little interest or pleasure in doing things?				
Feeling down, depressed, or hopeless?				
Trouble falling or staying asleep, or sleeping too much?				
Feeling tired or having little energy?				
Poor appetite or overeating?				
Feeling bad about yourself – or that you are a failure or have let yourself or your family down?				
Trouble concentrating on things, such as reading the newspaper or watching television?				
Moving or speaking so slowly that other people could have noticed? Or the opposite – being so fidgety or restless that you have been moving around a lot more than usual?				
Thoughts that you would be better off dead, or of hurting yourself in some way?				
Total = /27				

23 When asked how the generation of the task menu, by way of a text input, determines the operation on the screen Dr Irvine referred back to figure 20A of P2, alleging that, whilst operating in an insecure mode, the integer (iv) initiated at 144 of figure 20A of P2 was needed during the operation of the system shown at figure 17 of the Application in order to make rapid task menus such as those disclosed with respect to figure 18. For support of this feature Dr Irvine directs us to 172 of figure 17 of the Application which reads;

“Content of each hierarchical database including item and options can be update by text so that doctors with no programming skills can populate each task menu with the content. E.g. by CVS text files to list menu items and their individual options (see P2 for one embodiment....”

- 24 Dr Irvine additionally relies on page 45 lines 38-40 of the Application which gives a general summation of 172 as recited above. Therefore, it appears that Dr Irvine is relying on the term *‘items and options can be updated by text’* to include updating an operation assigned to a predetermined touch operation as required by the outset of integer (iv).
- 25 It would appear, Dr Irvine intends integer (iv) to mean that a user provides a text input, for example a text file, which is interpreted by a scripting language to determine which GUI operation is accessed via a predetermined touch operation. In addition to this Dr Irvine intends the text file to also generate a task menu and update the touch operation associated with inputting into that task menu via the touch operation.

- 26 The interpretation of integer (iv) intended by Dr Irvine, in light of the narrative presented at the hearing, is far narrower than what the examiner understood the claim to mean. Furthermore, the claimed subject matter is far narrower than the general expressions used in respect to step 172 of figure 17. Dr Irvine was unable to identify any part of the application that provides a clear enabling and supporting disclosure in respect to integer (iv) beyond the generalised terminology understood by the examiner.
- 27 The description and figures provide me with no additional information on the features of integer (iv) and whilst these features may be interpreted from P2, figure 20A and description thereof, it is the description and drawings of the application, in front of me that I am restricted to when attempting to understand the invention.
- 28 A claim must be clear in order for a third party to have certainty of when their actions infringe a patent. Although the examiner has not specifically asserted that integer (iv) is unclear or provided any reasoned argument, in my considered view there can be no doubt claim 1, particularly in regard to integer (iv), does not meet the requirements of Section 14(5)(b).

Decision

- 29 I find that the claims in GB1620562.7 do not meet the requirements of Section 14(5)(b). The lack of clarity of the claims prevents me from forming any view on whether the invention involves an inventive step as required by Section 1(1)(b). Whilst there may be a patentable concept disclosed in the extensive specification, I am unable to identify any amendment that would render claim 1, regarding integer (iv), patentable. I therefore refuse the application under s18(3).

Appeal

- 30 Any appeal must be lodged within 28 days after the date of this decision.

Peter Mason

Deputy Director, acting for the Comptroller