

# The sticky question: when is a GUI-related invention “technical”?

Case law on the European Patent Office’s approach to non-technical inventions is quite a minefield. This is particularly so in relation to inventions that involve a presentation of information. Some high-level principles can be drawn out of the existing case law; however, in general, decisions in this area come down to the facts, which, inevitably, differ from case to case.

One main theme that can be drawn out of the existing case law is that, for an invention to be considered “technical” and therefore patentable, it must involve more than a mere presentation of “cognitive” information (i.e. information that merely influences the way a human will react). This test is applied fairly consistently in existing case law (see e.g. T163/85 and T 1194/97).

However, as mentioned, this area of case law is quite thorny and it appears that the “cognitive information” test cannot be applied with a broad-brush approach. There are, for example, cases where information which appears to be “cognitive information” has been held to be technical (see e.g. T643/00).

A recent decision of the Board of Appeal (BoA) of the EPO is one such case. The decision arises from an appeal by Samsung against a decision by the Examination Division to refuse Samsung’s European patent application. The invention related to a method of providing menu icons via a graphical user interface (GUI) of a mobile device. The difference over the closest prior art was that the background of the GUI changes in response to a user’s selection of a particular menu icon. Samsung asserted that this difference gives the user an increased awareness of the “currently selected menu hierarchy”.

At first instance, the application was rejected by the Examining Division on the grounds of illegally added subject matter arising from claim amendments made during prosecution. However, the Examining Division also commented that the invention would not be patentable even if the added matter issues were addressed, on the basis that the invention related to a mere presentation of information.

On appeal, the BoA held that amended claims addressed the added matter objection. Moreover, the BoA held the invention to be technical and inventive. The problem to be solved by the invention was defined to be how to “increase the user’s awareness of the currently selected menu hierarchy, and thereby to achieve a more efficient man-machine interface.” The solution of “enhancing the precision of the input device ... by the manner of displaying background screen changes” was held to go “beyond a mere presentation of information” and was held not to be obvious in view of the prior art.

This decision is interesting because, on its face, the invention appears to be a mere presentation of non-technical, cognitive information. However, the BoA was able to identify technical features of the invention and thereby held the invention to be patentable, in a similar way as in the older decision T643/00.

The decision illustrates the importance of describing fully all technical aspects of an invention; particularly when an invention may, at first sight, appear to be non-technical. Without such details, the EPO will be unlikely to find the invention to be patentable. It is worth remembering that details cannot be added to a patent application once it has been filed, so it is of vital importance to ensure all relevant technical details are included from the word go at the drafting stage.