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D E C I S I O N
of 15 November 2005

Case Number: T 0330/04 - 3.4.03

Application Number: 96933746.8

Publication Number: 848846

IPC: G07F 17/32

Language of the proceedings: EN

Title of invention:
Interactive wagering system and process

Patentee:
ODS Properties, Inc.

Opponent:
attheraces plc

Headword:
-

Relevant legal provisions:
EPC Art. 56
RPBA Art. 10(b)(3)

Keyword:
"Inventive step (no) main request and third auxiliary request"
"Inventive step (yes) fourth auxiliary request"

Decisions cited:
-

Catchword:
-

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Case Number: T 0330/04 - 3.4.03

D E C I S I O N
of the Technical Board of Appeal 3.4.03
of 15 November 2005

Appellant: (Proprietor of the patent)
ODS Properties, Inc.
12421 West Olympic Boulevard
Los Angeles CA 90064 (US)

Representative:
Hale, Peter
Kilburn & Strode
20 Red Lion Street
London WC1R 4PJ (GB)

Respondent: (Opponent)
attheraces plc
Royal Windsor Racecourse
Maidenhead Road
Windsor, Berkshire SL4 5JJ (GB)

Representative:
Lamb, Martin John Carstairs
Marks & Clerk
90 Long Acre
London WC2E 9RA (GB)

Decision under appeal:
Decision of the Opposition Division of the European Patent Office posted 2 January 2004 revoking European patent No. 848846 pursuant to Article 102(1) EPC.

Composition of the Board:

Chairman: R. G. O'Connell
Members: V. L. P. Frank
U. Tronser

Summary of Facts and Submissions

I. This is an appeal against the revocation of European patent 848 846 pursuant to Article 102(1) EPC.

Grounds of opposition were *inter alia* lack of novelty and of inventive step (Article 100(a), 54 and 56 EPC).

II. Claims 1 and 8 of the granted patent read as follows:

"1. An interactive wagering system (366) for off-track wagering on and viewing live real time races, said system characterized by:
a wagering data management facility (380) for providing real time racing data corresponding to preparation of, wagering on, odds determining and running of actual live races, and for maintaining wagering accounts for users of said system, said wagering data management facility incorporating at least one totalisator installed at at least one racetrack and responsive to wagers placed by persons local to and remote from said at least one totalisator at said at least one racetrack;
a racing data interface (372) that receives said real time racing data from said wagering data management facility (380);
a source of racing video (374), said source including means for generating real time simulcast video of live races from at least one of said at least one racetrack;
a video and data distribution system (368) for receiving said real time racing data from said racing data interface (372) and said real time simulcast racing videos from said source of live

real time racing video (374), said video and data distribution system (368) providing both said real time racing data and said real time simulcast racing video for remote viewing in real time;
a user terminal (370) for receiving, viewing, and responding to said real time racing data and said real time simulcast racing videos;
means (416) for simultaneously displaying said real time racing data and said real time simulcast racing videos; and
an access security interface (169) to identify an authorized user of said system (366) and wagering accounts thereof."

"8. A method of interactive wagering on live real time races using an off-track wagering system (366), said method characterized by:
generating real time racing data corresponding to preparation of, wagering on, odds determining, and running of actual live real time races with a wagering data management facility (380) that incorporates at least one totalisator installed at at least one racetrack and is responsive to wagers placed by persons local to and remote from said at least one totalisator at said at least one racetrack;
maintaining a wagering accounts for a user with said wagering data management facility (380);
receiving said real time racing data from said wagering data management facility with a racing data interface (372);
supplying real time simulcast racing video (374) from at least one of said at least one racetrack;

receiving both said real time racing data from said racing data interface (372) and said real time simulcast racing video (374) with a video and data distribution system (368);
providing with said video and data distribution system (368) both said racing data and said racing video (374);
securing access to said system (366) and user account data with a personal identification code and a smart card system (169);
receiving said racing data and said racing video (374) with a user terminal (370); and
simultaneously displaying said racing data and, said racing video (374) on a monitor (378) with said user terminal (370)."

III. The following prior art documents *inter alia* were cited in the opposition procedure:

D1: JP 06 325 062 A (in the following reference will be made to document D1b which is an English certified translation of this document submitted by the appellant proprietor)

D4: EP 0 583 196 A

The respondent opponent filed with his response to the appeal the following document:

D11: 4 467 424 A

IV. In the statement of grounds of appeal the appellant proprietor requested as sole request that the patent be maintained on the basis of amended versions of claims 1

and 8. In claim 1 of this request the penultimate paragraph was amended as follows (board's emphasis to mark the differences with respect to granted claim 1):

> "means (416) for simultaneously displaying said real time racing data and said real time simulcast racing videos, **allowing a user to select said real time racing data, and when real time racing data is selected by the user, automatically updating said displayed real time simulcast racing videos to correspond to said selected real time racing data**;"

A corresponding amendment was made to method claim 8.

V. In response to a communication of the board accompanying the summons to oral proceedings, the appellant proprietor withdrew his previous request and replaced it by a new main and four auxiliary requests. According to the main request the patent should be maintained as granted and according to first to fourth auxiliary requests on the basis of respectively amended independent claims 1 and 8.

VI. Claims 1 and 8 of the first auxiliary request differ from the granted versions of these claims in that a plurality of racetracks is specified.

Claims 1 and 8 of the second auxiliary request differ from the first auxiliary request in that it is further specified that the user terminal comprises a monitor and that the racing data and the racing videos are displayed on this monitor.

Claim 1 of the third auxiliary request is worded as follows:

"1. An interactive wagering system (366) for off-track wagering on and viewing live real time races, said system characterized by:
a wagering data management facility (380) for providing real time racing data corresponding to preparation of, wagering on, odds determining and running of actual live races **from a plurality of race tracks**, and for maintaining wagering accounts for users of said system, said wagering data management facility incorporating totalisators installed at **the race tracks** and responsive to wagers placed by persons local to and remote from said at least one **totalisators at said race tracks**;
a racing data interface (372) that receives said real time racing data from said wagering data management facility (380);
a source of racing **videos** (374), said source including means for generating real time simulcast video of live races from **said race tracks**;
a video and data distribution system (368) for receiving said real time racing data from said racing data interface (372) and said real time simulcast racing videos from said source of live real time racing video (374), said video and data distribution system (368) providing both said real time racing data and said real time simulcast racing video for remote viewing in real time;
a user terminal (370)**, including a monitor (378),** for receiving, viewing, and responding to said real time racing data and said real time simulcast

racing videos **and selecting a racetrack through the user terminal**;
means (416) for simultaneously displaying said real time racing data and said real time simulcast racing videos **on the monitor wherein the display of said real time racing data and said real time simulcast racing video are automatically updated to correspond to the selected track**; and
an access security interface (169) to identify an authorized user of said system (366) and wagering accounts thereof."

Claims 1 and 8 of the fourth auxiliary request are worded as follows:

"1. An interactive wagering system (366) for off-track wagering on and viewing live real time races, said system characterized by:
a wagering data management facility (380) for providing real time racing data corresponding to preparation of, wagering on, odds determining and running of actual live races **from a plurality of race tracks**, and for maintaining wagering accounts for users of said system, said wagering data management facility incorporating totalisators installed at **the race tracks** and responsive to wagers placed by persons local to and remote from said at least one **totalisators at said race tracks**;
a racing data interface (372) that receives said real time racing data from said wagering data management facility (380);
a source of racing **videos** (374), said source including means for generating real time simulcast video of live races from **said race tracks**;

a video and data distribution system (368) for receiving said real time racing data from said racing data interface (372) and said real time simulcast racing videos from said source of live real time racing video (374), said video and data distribution system (368) providing both said real time racing data and said real time simulcast racing video for remote viewing in real time;
a user terminal (370) for receiving, viewing, and responding to said real time racing data and said real time simulcast racing videos;
means (416) for simultaneously displaying said real time racing data and said real time simulcast racing videos; and
an access security interface (169) to identify an authorized user of said system (366) and wagering accounts thereof**, wherein said terminal (370) further comprises:**
means (132) for setting an alert function for a predetermined race for which it is desired to watch a racing video;
means (132) for triggering an alarm when said predetermined race is about to be run;
and means (110, 160) for displaying said real time simulcast racing video of said predetermined race when said race is run."

"8. A method of interactive wagering on live real time races using an off-track wagering system (366), said method characterized by:
generating real time racing data corresponding to preparation of, wagering on, odds determining, and running of actual live real time races **from a plurality of race tracks** with a wagering data

management facility (380) that incorporates totalisators installed at **the race tracks** and is responsive to wagers placed by persons local to and remote from said totalisators at said **race tracks**;
maintaining a wagering account for a user with said wagering data management facility (380);
receiving said real time racing data from said wagering data management facility with a racing data interface (372);
supplying real time simulcast racing video (374) **from the race tracks**;
receiving both said real time racing data from said racing data interface (372) and said real time simulcast racing video (374) with a video and data distribution system (368);
providing with said video and data distribution system (368) both said racing data and said racing video (374);
securing access to said system (366) and user account data with a personal identification code and a smart card system (169);
receiving said racing data and said racing video (374) with a user terminal (370); and
simultaneously displaying said racing data and, said racing video (374) **on a monitor** (378) with said user terminal (370), further including:
using the terminal to set an alert function for a predetermined race for which it is desired to watch a racing video;
triggering an alarm when said predetermined race is about to be run; and
displaying said real time simulcast racing video of said predetermined race when said race is run."

VII. The appellant proprietor argued that the main request (ie the claims of the granted patent) should be admitted into the proceedings, since no prejudice was caused to the opponent by reverting to the granted version of the claims, as these claims had been discussed in the opposition proceedings. He emphasized that the new rules of procedure of the EPO Boards of Appeal (RPBA) did not restrict the discretionary powers of the board when deciding on admitting new requests. Moreover, the new requests were filed in response to the comments made in the board's communication.

No arguments were put forward in support of auxiliary requests 1 and 2.

On the issue of inventive step the appellant proprietor argued essentially as follows:

- The invention according to the patent had to be seen as a whole, viz as being directed to providing an enhanced at-home racing experience, ie to providing the on-track experience off-track.

- It was submitted that document D1b did not disclose that real time videos of the race were displayed on the monitor. Firstly, the problem addressed in this document was to enable the spectator to buy tickets while seated at his place and the provision of a monitor had to be seen in relation to this problem. Secondly, there was no point in showing a video of the race to a spectator who was viewing the real race in progress. Thirdly, the LCD monitors at the priority date of this document were capable of

displaying text information but not powerful enough to show a video stream. Last but not least, the transmission of video data over the power line was also not feasible at the priority date of this document.

– Accepting *arguendo* that document D1b disclosed the transmission of video data to the local users, the differences between the claimed system and the one disclosed in document D1b were essentially (i) remote viewing, (ii) remote wagering and (iii) simultaneous display of video and data. These differences had to be seen in synergy as providing the on-track experience off-track.

– There were no reasons to combine document D1b with documents D4 or D11 either separately or in combination, since these documents concerned different problems. In particular, document D11 related to playing casino games. However, this had no similarity with horse races. There was no point in playing the same game in different casinos, as all the games were the same and had the same rules. In contradistinction, races on different racetracks were not comparable to each other, as the racecourses, the weather conditions, horses, jockeys, etc were all different. Moreover, predetermined odds were found in casino games and no totalisators for evaluating the odds were required as on a racetrack.

– The claims of the third auxiliary request were directed to a plurality of racetracks so that a remote user could bet on and watch several races at the same time. Moreover, the race data and the race

video were updated automatically when selecting another race.

- The fourth auxiliary request further comprised an alert function that cued the user to watch a predetermined race.

VIII. The respondent opponent argued essentially as follows:

- Neither the main nor the first and second auxiliary requests should be admitted into the proceedings, since the amendments made to the first and second auxiliary requests were not directed to overcoming objections addressed by the board and were therefore not made in response to the board's communication. Admitting these requests into the proceedings would increase the procedural complexity of the case.

- It was agreed that document D1b represented the closest state of the art. It was contested, however, that the provision of video signals to the on-seat terminals, as disclosed in this document, was not feasible at its priority date. The appellant proprietor had not provided any evidence of his assertions and the explicit disclosure of document D1b should therefore be accepted.

- The system according to claim 1 of the main request allowed betting on and watching the horse races at home. The desire for remote betting was however known to the skilled person, as this problem was addressed in document D4. The totalisator protocol, which was already in use at the priority date of the patent, showed that betting at different racetracks

was currently done, since otherwise no protocol would have been required. Moreover, the simultaneous display of data and video was a well known option to the skilled person at the priority date of the patent. Consequently, the system according to the main request did not involve an inventive step having regard to document D1b and the general knowledge in the art.

– The system disclosed in document D4 used teletext information for displaying data for betting on a horse race. To superimpose this information on a racing video was obvious to the skilled person, as there was, in particular, no synergy between remote betting and the simultaneous display of data and video. Document D11 on the other hand disclosed the automatic updating of data and video streams when selecting a new game. Consequently, the system according to claim 1 of the third auxiliary request did not involve an inventive step.

IX. During oral proceedings the board announced that it would not admit the first and second auxiliary request since the respective amendments were not directed to overcoming the objections raised by the board's communication.

X. At the oral proceedings before the board the appellant proprietor requested that the decision under appeal be set aside and that the patent be maintained, auxiliarily that the patent be maintained on the basis of claims 1 and 8 according to the third or fourth auxiliary requests submitted with the letter dated

17 October 2005 and claims 2 to 7 and 9 to 17 as granted.

The respondent opponent requested that the appeal be dismissed.

Reasons for the Decision

1. The appeal is admissible.

2. *Admission of the main and auxiliary requests into the proceedings*

2.1 In the statement of grounds of appeal the appellant proprietor submitted amended independent claims (hereinafter "previous request"). However, after having received the board's communication annexed to the summons to oral proceedings, he submitted a new main and four auxiliary requests. The main request requested the maintenance of the patent as granted, ie the rejection of the opposition. This request was already put forward before the opposition division which found that the associated claims did not involve an inventive step. There is no doubt that this request would have not raised any difficulties if it had been submitted in the statement of grounds of appeal. The question arises if, having regard to the present circumstances, the appellant proprietor should be allowed to revert to the granted claims and whether the claims of the first and second auxiliary requests should be admitted into the proceedings, given that their scope is also broader than those of the "previous request".

2.2 Article 10(b)(3) RPBA provides that "amendments sought to be made after oral proceedings have been arranged shall not be admitted if they raise issues which the board or the other party or parties cannot reasonably be expected to deal with without adjournment of the oral proceedings".

2.3 However reverting to the claims as granted (ie the appellant's main request) does not create an undue burden for the respondent opponent, given that these claims were discussed in the opposition proceedings and dealt with in the decision under appeal and gives the opportunity to the appellant to have the granted claims examined by the board, ie at a second level of jurisdiction. Moreover, the procedural complexity of the case is in fact reduced, since the objection raised against the "previous request" under Article 123(2) EPC is eliminated. Neither was it contended by the respondent opponent that this amendment raised issues which could not reasonably be expected to be dealt with without adjourning the oral proceedings.

2.4 The appellant proprietor did not make submissions as to why the first and second auxiliary requests should be admitted into the proceedings. The first auxiliary request is directed to betting on and viewing races at **a plurality of race tracks** and the second auxiliary request specifies further that the user terminal comprises **a monitor** for viewing the data and videos. The amendments made to the claims are, however, not a response to the objection of additional subject-matter raised by the respondent opponent and referred to in the board's communication. These amendments go in a different direction from the one followed in the

"previous request" and raise therefore different issues. None of these requests moreover had been presented in the opposition proceedings.

2.5 The board considers that the third and fourth auxiliary requests should be admitted into the proceedings, since they include limitations with respect to the "previous request" intended to overcome the objection under Article 123(2) EPC raised by the respondent opponent.

2.6 For the reasons set out above, the board admits the appellant's proprietor main and third and fourth auxiliary requests into the proceedings.

3. The only remaining issue in this appeal is that of inventive step.

4. *Main request - Inventive step (Article 56 EPC)*

4.1 It is common ground that document D1b is the closest state of the art. It discloses a betting terminal for a public race (eg a horse race) installed at the seats of spectators viewing the race so that betting tickets may be purchased without the spectators having to leave their seats. The display of the terminal is a small colour liquid crystal display (LCD) which displays predetermined betting data such as the odds information and video images of the actual state of the race in progress (cf page 4, [0014]; page 9, [0020]; page 14, [0040]; page 16, [0047]).

4.2 The appellant proprietor argued that at the filing date of document D1b (ie in May 1993) LCD monitors were technically incapable of displaying video streams and

that the distribution of video streams over a power line communication system, as suggested in D1b, was also not feasible at that date. There was furthermore no reason for showing videos of the race to spectators watching the actual live event. He argued therefore that this document did not disclose the displaying of video signals on the on-seat terminals.

4.3 The respondent opponent pointed out that the appellant had not submitted any evidence substantiating his assertions on the capabilities of LCD monitors or the transmission possibilities of a power line communication system. For these reasons, the explicit disclosure of document D1b should be taken on its face value.

4.4 In the view of the board, the technical plausibility of the disclosure of a prior art document cannot be successfully challenged without providing evidence to this effect unless the alleged implausibility is self evident, since the burden of proof lies with the party making the assertion. In the present circumstances it is not possible to assess the technical capabilities of LCD monitors 12 years ago without having any evidence of the state of the art at that moment and the same is true for power line communication systems given that the technical capacities of both these systems have developed significantly over time. For these reasons, the board accepts the disclosure of document D1b as it stands, namely that video streams of the actual race were provided to the on-seat terminals.

4.5 Document D1b discloses therefore that the user terminal displays various data information for ticket betting

and videos of the actual state of the race in progress (cf page 7, [0014]). However, it is not explicitly disclosed that the data and the video are displayed simultaneously as required by claim 1. In the understanding of the board, the term "and" has a double meaning, one referring to the conjunction of both items (ie they are displayed simultaneously), but also that the monitor has the disjunctive capability of displaying both items although not simultaneously.

4.6 It follows that document D1b discloses in the wording of claim 1 of the opposed patent an interactive wagering system for wagering on and viewing live real time races, comprising a wagering data management facility (42) for providing real time racing data corresponding to preparation of, wagering on, odds determining and running of actual live races, and for maintaining wagering accounts for users of said system, said wagering data management facility incorporating at least one totalisator (41) installed at at least one racetrack and responsive to wagers placed by persons local to said totalisator at said racetrack; a racing data interface (24) that receives said real time racing data from said wagering data management facility; a source of racing video (53), said source including means for generating real time simulcast video of live races from said racetrack; a user terminal (21) for receiving, viewing, and responding to said real time racing data and said real time simulcast racing videos; means (2) for displaying said real time racing data and said real time simulcast racing videos, and an access security interface (4) to identify an authorized user of said system and wagering accounts thereof (cf Figures 1 and 2).

4.7 The wagering system according to claim 1 differs therefore from the system disclosed in document D1b in that:

(d1) the racing data and the racing video are provided for remote viewing,
(d2) the totalisator is responsive to wagers placed remotely from it, and that
(d3) the racing data and the racing video are displayed simultaneously.

4.8 The board agrees with the precise and concise picture offered by the appellant proprietor that these differences provide the on-track experience off-track.

4.9 However, the desirability of this experience has already been recognized previously. Conventional betting systems where the transactions can be done at home over the telephone are disclosed in document D4 as well as the congestion caused by sending the required information over the telephone line (cf column 1, lines 13 to 48). This document therefore discloses broadcasting the information on a television channel and displaying it as teletext on the television screen (cf column 2, lines 10 to 14). The betting itself is still done over another communication channel such as the telephone line, but the transaction time and the transmitted information is greatly reduced. The broadcast data are displayed simultaneously with the video images on a separate portion of the screen, however, the data and the video are not related to each other (cf column 12, lines 9 to 12 and Figure 9).

4.10 Document D11 discloses a remote gaming system such that a user wishing to play on different casino games may do so remotely from the actual gaming room. The disclosed player's terminal comprises a monitor in which a live game is displayed together with a layout of the selected game, wagering possibilities and results of the game (cf column 1, lines 46 to 56 and column 4, lines 12 to 16). When a different game is selected the live transmission of the game is updated to correspond to the selected game as well as the game data (cf column 3, lines 26 to 32).

4.11 The appellant proprietor has pointed out the differences existing between playing games in a casino and betting on live races. There is, for example, no need for a totalisator in a casino game, as the odds are predetermined and invariable. However, the skilled person would not be deterred by these differences from considering how the on-track (or gaming) experience can be transferred to a remote location. This is achieved in D11 by the live transmission of the game in progress and in the opposed patent by the transmission of the live race. Both transmissions are not required for the betting itself, as only the relevant data are required for that. They serve in both cases to make the user feel that he is really taking part in the event.

4.12 The skilled person would therefore synchronize in the system disclosed in document D4 the data sent by teletext with the broadcast video image so that both relate to the same event. In the case of a horse race, the data would relate to the betting odds and the video would show the actual race, as has been done already in document D1b for the local users.

4.13 The wagering system according to claim 1 is therefore not to be considered as involving an inventive step within the meaning of Article 56 EPC.

5. *Auxiliary request three - Inventive step*

5.1 Claim 1 of this request further specifies essentially that

(a) the interactive wagering system is used for wagering on and viewing actual live races from a plurality of race tracks on a user's monitor and that

(b) the racing data and video are automatically updated to correspond to the selected race track.

5.2 As the respondent opponent pointed out the existence of the Intertote Track System Protocol (IT-SP) for communication between totalisators at different race tracks shows that it was usual practice in the prior art that the users located at one race track could view the odds and place wagers on races taking place at remote race tracks from their own (cf the opposed patent, column 6, lines 21 to 30). The users at one race track are, however, local to it but remote from all the other race tracks on which they may place bets. Nothing inventive can be seen in extending this principle to users at home which are therefore remote from all totalisators.

5.3 The automatic update of the racing data when selecting a race track is required for allowing the users to place wagers, as they require this information to do so.

This is not a choice but inherent to the system. To accompany the automatic data update with a corresponding update of the racing video is, on the contrary, an optional choice. However, it corresponds to providing the on-track (gaming) experience disclosed in document D11 (cf point 4.11 above), while watching video images unconnected to the racing data would correspond to the disclosure of document D4.

5.4 For the reasons set out above and the reasons given with respect to the main request, the wagering system according to claim 1 does not involve an inventive step.

6. *Auxiliary request four*

6.1 *Amendments*

6.1.1 Independent device claim 1 according to this request further requires the provision of an alert function which triggers an alarm when a predetermined race is about to be run. This feature has been disclosed *inter alia* in claim 5 of the granted patent.

The automatic updating of the racing data and video as well as the existence of a plurality of race tracks (since otherwise no update would be required) has been disclosed *inter alia* in column 32, lines 12 to 26 of the opposed patent.

6.1.2 Similar amendments have been made to independent method claim 8 and have the same basis.

6.1.3 The board is therefore satisfied that the requirements of Article 123(2) and (3) EPC have been fulfilled.

6.2 *Inventive step*

6.2.1 The provision of an alert function that is triggered when a predetermined event takes place is not disclosed in any of the prior art documents and the respondent opponent did not present any arguments to the contrary.

6.2.2 The board has therefore no reasons to judge otherwise than that the wagering system according to claim 1 and the wagering method according to claim 8 are to be considered as involving an inventive step within the meaning of Article 56 EPC.

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.

2. The case is remitted to the department of first instance with the order to maintain the patent on the basis of claims 1 and 8 according to the auxiliary request 4 submitted with the letter dated 17 October 2005 and claims 2 to 7 and 9 to 17 as granted and description and figures as granted.

Registrar: Chair:

D. Meyfarth R. G. O'Connell