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**Datasheet for the decision
of 7 September 2006**

Case Number: T 0717/05 - 3.4.03

Application Number: 01902216.9

Publication Number: 1254440

IPC: G07F 17/32

Language of the proceedings: EN

Title of invention:

Apparatus and method for playing an auxiliary game with prize rewarding system

Applicant:

Labtronix Concept Inc.

Opponent:

-

Headword:

Auxiliary game/LABTRONIX CONCEPT INC.

Relevant legal provisions:

EPC Art. 56, 52(2)(c), 52(2)(d)

Keyword:

"Inventive step - yes (auxiliary request)"

"Rules for playing a game as such - no"

Decisions cited:

T 1194/97, T 0115/85

Catchword:



Case Number: T 0717/05 - 3.4.03

D E C I S I O N
of the Technical Board of Appeal 3.4.03
of 7 September 2006

Appellant: Labtronix Concept Inc.
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Decision under appeal: Decision of the Examining Division of the
European Patent Office posted 24 January 2005
refusing European application No. 01902216.9
pursuant to Article 97(1) EPC.

Composition of the Board:

Chairman: R. G. O'Connell
Members: V. L. P. Frank
T. Bokor

Summary of Facts and Submissions

- I. This is an appeal from the refusal of European patent application 01 902 216.9 for lack of inventive step (Article 56 EPC).
- II. In oral proceedings before the board the appellant applicant filed amended claims of a main and an auxiliary request and an adapted description.

Claim 1 of the main request is now worded as follows (the differences with respect to the main request in the examination procedure are highlighted):

"A method of operating a gaming apparatus (101) to **automatically** process outcomes of a principal game to determine a prize in an auxiliary game component coupled to the principal game, the method comprising the steps of:
detecting outcomes of the principal game and classifying these outcomes in at least a first class and a second class;
assigning said first class of outcomes a credit event and said second class of outcomes and (*sic*) a no-credit event in said auxiliary game component;
monitoring said credit events and said no-credit events in said auxiliary game component over a predetermined number of **consecutive said** past events;
determining a prize to be awarded in said auxiliary game component dependent on the detected credit events and no-credit events; and
signalling that the prize in said auxiliary game component is to be awarded."

The main request also comprises an independent claim 12 directed to a gaming apparatus. Its wording, which is essentially the same as the one of the auxiliary request, is however not relevant for the present decision.

Claim 1 of the auxiliary request is worded as follows:

"An automated method of operating a gaming apparatus (101) to process outcomes of a principal game to determine a prize in an auxiliary game component coupled to the principal game, the method comprising the steps of:
detecting outcomes of the principal game and classifying these outcomes in at least a first class and a second class;
assigning said first class of outcomes a credit event and said second class of outcomes and (*sic*) a no-credit event in said auxiliary game component;
monitoring said credit events and said no-credit events in said auxiliary game component over a predetermined number of consecutive said past events;
displaying a representation of said monitored credit events and no-credit events over at least said predetermined number of consecutive said past events;
determining a prize to be awarded in said auxiliary game component dependent on the detected credit events and no-credit events; and
signalling that the prize in said auxiliary game component is to be awarded."

Claim 12 of the auxiliary request is worded as follows:

"An automatic gaming apparatus (101) including an auxiliary game component, the apparatus comprising: a principal game controller (201) yielding outcomes in a principal game; class determination means for interpreting said outcomes from said principal game controller (201) and establishing at least first and second class values for said outcomes and assigning a credit event to said first class value and a no-credit event to said second class value in said auxiliary game component; monitoring means (204) for keeping track of each of said class values provided by said class determination means over a predetermined number of consecutive said past events; a display (209) showing a representation of said class values over at least said predetermined number of consecutive said past events; and a payoff controller (206) receiving output from said monitoring means and generating a signal indicating that a prize is to be awarded dependent on a number of credit events and no-credit events during said predetermined number of consecutive said past events."

Claims 2 to 11 are dependent on claim 1.

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

D1: DE 198 12 491 A

D2: EP 0 971 326 A

IV. In the decision under appeal the examining division found that the method of operating a gaming apparatus of claim 1 and the gaming apparatus of claim 19, which essentially correspond respectively to claims 1 and 12 of the main request in appeal, lacked an inventive step over document D1. In their view, the sole distinguishing feature was that the credit and no-credit events were monitored over a predetermined number of past events (ie the "moving window" feature where game events of only the previous n games were recorded to provide a trigger event, whereas in D1 each game was independent of any previous games). The examining division was of the opinion that only the (psychological) problem of keeping a player interested could be identified and that no technical problem was solved by the aforementioned feature. It was therefore considered that this feature related only to the rule for playing a game. Moreover, the claim was not formulated in terms of the implementation details, but only in terms of the concept or idea of how the player's interest should be maintained.

V. The appellant applicant argued essentially as follows:

- Design and implementation of gaming machines, mechanical as well as electronic ones, have traditionally been regarded as an engineering discipline and therefore have been susceptible to patent protection. Several granted European and German patents were mentioned which all solved the problem of increasing player attention, player thrill and ultimately revenue of the playing

apparatus operator. Gaming apparatus as the one claimed were not constructed by psychologists, but by engineers and programmers. The person skilled in the art in the sense of Article 56 EPC was therefore an engineer or programmer with experience in the design and implementation of gaming machines and not a psychologist. All types of gaming apparatus shared the same objective, ie increasing and maintaining player's interest so that they would continue playing and generating more profits for the owner of the gaming apparatus. The design and implementation of a concrete gaming apparatus or a concrete method of operating a gaming apparatus were technical problems to be solved by the technical expert using technical means. The "moving window" monitoring mechanism of an auxiliary game based on the results of a primary game was not a rule of playing a game. It defined the technical infrastructure on which games having different rules as eg Blackjack or Poker could be played.

- The technical problem to be solved by the present invention was to design auxiliary game infrastructure and mechanism providing a varied or progressive reward in the auxiliary game depending on the outcomes of the primary game, thus keeping the player on the same gaming apparatus and generating more profit for its owner. This problem was solved by an auxiliary game infrastructure applying the "moving window" monitoring mechanism. This mechanism was of a technical nature and could not be disregarded when assessing inventive step.

VI. The appellant applicant requests that the decision under appeal be set aside and that a patent be granted in the following version:

Description:

pages 1, 6-8, 10, 11, 13-15 as originally filed
pages 2, 2a, 4 as received on 14 May 2003 with
letter of 13 May 2003
pages 3, 5, 9, 12, as filed during oral
proceedings.

Claims:

1-12 filed during oral proceedings according to a
main or an auxiliary request.

Drawings: as originally filed.

Reasons for the Decision

1. The appeal is admissible.
2. *Amendments (Article 123(2) EPC)*

No objections in this respect were raised during the examination procedure.

The claims of the main and auxiliary requests require now that the predetermined number of past events is **consecutive**. This feature was disclosed in the originally filed claim 14.

The feature that the processing of the outcomes of the principal game is done **automatically** by the gaming

apparatus follows from the overall content of the description.

The description has been adapted to the claims.

The board is therefore satisfied that Article 123(2) EPC is not contravened.

3. *Document D1*

It is common ground that document D1 is the most relevant prior art on file.

This document discloses an electronic gaming apparatus 1 of the type named usually "fruit machine" in which three reels 5 having several symbols on them (ie different types of fruits, bell, bar and number symbols) rotate behind a window displaying a single symbol on each reel once stopped. A secondary game is started when a given symbol combination is obtained (eg "7-7-7"). Although this document discloses several different secondary games that can each be associated with a specific symbol combination (eg "7-7-7", "7-J-60"), one of this secondary games is of special relevance for the present case. This secondary game employs an illuminated display unit 28 on which letters representing different metals are shown (eg "G" for gold, "S" for silver, "B" for bronze, "C" for copper, etc). The relative frequency of these letters on the display relates to the "quality" of the metal, eg there is one "G", two "S", three "B", etc. Once the winning symbol combination (eg "7-7-7") is obtained in the fruit machine 1 the secondary game starts and the letters of its display are sequentially illuminated

until the process stops after a random number of steps. Hence the letter selected depends on its relative frequency on the display. For each type of metal an individual counter 25 having several fields 26 that can be individually illuminated is located above the proper fruit machine display. Each time a particular letter is selected in the display unit 28 of the secondary game a field of the corresponding metal counter 25 is lighted up. When all the fields of a counter are illuminated a prize proportional to the metal's "quality" is allocated to the player.

4. *Main request - Inventive step*

4.1 The gaming apparatus disclosed in the preferred embodiments of the present application is not a fruit machine, but a gaming apparatus in which the judgement of the player is required (eg for playing poker or blackjack). This difference is however not specified in the independent claims, as these require only that the outcomes of the principal game be detected and classified as a first or second class, eg wins and losses. The outcomes of a fruit machine play, however, can also be mapped into a first and second class, eg the achievement of a "7-7-7" as a first class and its non-achievement as a second class.

4.2 The appellant applicant has further argued that the relative probability for an outcome in one of the first and second classes is very different between the two kinds of gaming apparatus. While in a judgement game the wins and losses are nearly equally probable, the achievement of a "7-7-7" outcome in a fruit machine has a very low probability of occurrence. The board however

does not consider that this difference should be taken into account when evaluating the difference between the subject-matter of the claims and the prior art, since it is neither an explicit nor an implicit feature of the claims.

4.3 Consequently, the method of operating a gaming apparatus disclosed in document D1 comprises the following steps in the wording of claim 1:

- detecting outcomes of the principal game and classifying these outcomes in at least a first class and a second class (ie the achievement of a "7-7-7" combination or not);
- assigning to said first class of outcomes a credit event and said second class of outcomes a no-credit-event in said auxiliary game component (the achievement of a "7-7-7" combination starts the auxiliary game related to the illuminated display 28, while the non-achievement is ignored, ie not credited);
- monitoring said credit events in said auxiliary game component over a number of consecutive said past events (this is done by filling up the individual metal counters 25);
- determining a prize to be awarded in said auxiliary game component dependent on the detected credit events (in document D1 a prize is assigned when all the positions of one of the metal counters 25 are illuminated); and
- signalling that the prize in said auxiliary game component is to be awarded.

4.4 The method of claim 1 differs therefore from the method of document D1 in that:

- (a) the no-credit events are monitored,
- (b) the monitoring is done over a **predetermined** number of consecutive past events (In document D1 the monitoring is done for a number of events which is not predetermined, ie the oldest events are not "forgotten", but a prize is assigned when one of the counters 25 is filled up. Document D1 is not explicit on the further stage of the game, ie whether the whole auxiliary game resets after assigning the prize or whether only the counter concerned resets. In any case no predetermined number of events can be recognized.),
- (c) the prize to be awarded in said auxiliary game is determined depending also on the no-credit events.

4.5 In contrast to the gaming apparatus of claim 12 the method of claim 1 does not comprise any step of displaying the credit and the no-credit events. Hence the player is not informed on the development of the auxiliary game although the apparatus itself monitors these events and assigns a prize depending on this monitoring. This means that the player is suddenly informed by the gaming apparatus that he has won a given prize without being able either to follow the development of the auxiliary game or to determine how or when a further prize will be assigned. In the view of the board this will not induce the player to continue playing on the same machine, since the relation between reward and player behaviour is opaque. This is described in the application as one of the drawbacks of the conventional strategies for

maintaining the player's interest (see page 2, lines 12 to 17 of the application). The problem of maintaining the player's interest throughout his participation in the primary games specified in the patent application and also reaffirmed by the appellant applicant in the oral proceedings before the board is thus not addressed by the method of claim 1 (page 2, lines 24 to 26). Hence a technical problem which is addressed by the invention as claimed has to be defined. In the view of the board, the method of claim 1 addresses the less ambitious problem of providing an alternative to the conventional method of operating a gaming apparatus as disclosed in document D1.

- 4.6 Document D2 also relates to a method of operating a gaming apparatus which automatically processes the outcomes of a principal game for assigning a prize in an auxiliary game (Abstract and paragraphs [0039] to [0041]). It discloses further that the auxiliary game may be influenced *inter alia* by the outcomes of the principal game, and that the accumulated counts may be maintained throughout successive auxiliary games or may be reset or cancelled at the end of one game ([0046]). This document suggests therefore that the outcomes of the principal game may be used in different ways for influencing the auxiliary game.
- 4.7 The skilled person would thus monitor the outcomes of the principal game, ie the credit and no-credits events, and maintain them as long as they are required for awarding the prize in the auxiliary game, according to one of the possibilities of influencing the game as suggested in document D2.

4.8 The need of monitoring only a **predetermined** number of past events is inherent in any automatic monitoring system, since in such systems a decision has to be taken on the amount of data to be preserved due to the finite amount of available memory. This is the case eg in the clipboard of a computer, which may have one or several storage locations which are successively occupied and overwritten, or in an airplane's black box, which stores the last minutes of the flight and continuously overwrites the oldest records. The skilled person would therefore apply this principle in a gaming apparatus in which the outcome of previous games are to be monitored.

4.9 The method of operating a gaming apparatus according to claim 1 is considered therefore not to involve an inventive step in the sense of Article 56 EPC.

5. *Auxiliary request*

5.1 The method according to claim 1 of this request requires further to the features of claim 1 of the main request that a representation of the monitored credit events and no-credit events over at least a predetermined number of consecutive past events is displayed. The player is thus kept informed about the development of the auxiliary game and the problem of maintaining the player's interest is thus addressed by this method.

5.2 The display means for representing the credit and no-credit events and the corresponding monitoring means are technical means and this has not been disputed by the department of first instance. The examining

division argued in the decision under appeal that the step of monitoring the credit and no-credit events over a predetermined number of past events related to rules for playing games and could therefore not contribute to the assessment of inventive step, as it was subject-matter excluded from patent protection (Article 52(2)(c) EPC). However, the board considers that the rules for playing the game are involved only in the step of determining the prize to be awarded dependent on the credit and no-credit events and not in the steps of monitoring and displaying them. Displaying the outcomes of the previous games informs the player of the internal state of the gaming apparatus and of the way it will behave under the occurrence of a further outcome and is in this way similar to any display of the internal state of an apparatus in a more classical field, such as displaying the temperature of an internal combustion machine or the pressure of an autoclave. The rules of the game, on the other hand, do not require any display at all.

- 5.3 In decision T 1194/97 (OJ 2000, 525) the then deciding board found that a record carrier having functional data recorded thereon was not a presentation of information as such and was hence not excluded from patentability by Article 52(2)(d) and (3) EPC. Functional data included in this context a data structure defined in terms which inherently comprised the technical features of the system in which the record carrier was operative (cf Headnote). A distinction was made between data which encodes cognitive content in a standard manner and functional data defined in terms which inherently comprise the

- technical features of the system (point 3.3 of the reasons for the decision).
- 5.4 This distinction, however, does not imply a *contrario* that data encoding a cognitive content have necessarily to be regarded as the presentation of information as such and be therefore excluded from patent protection. In the present case, the display of the outcomes of the past games has a cognitive content which is conveyed to the player. However, any display of information of the internal state of an apparatus conveys a cognitive content to the user, as this is the fundamental reason for its existence. To exclude all such systems from patent protection cannot be seriously envisaged.
- 5.5 Putting it another way, the gaming machine here is not a mere passive substrate, like a paper or magnetic medium, for the displayed information. Rather it actively determines the information to be displayed in response to a combination of player decisions and stochastic outcomes. The case would, of course, be different if the information displayed were merely an arbitrary text such as an advertising slogan. The above view of displaying a machine's state follows that taken in decision T 115/85 (OJ 1990, 30; see point 7 of the reasons).
- 5.6 The board considers, for the above reasons, that the step of monitoring the outcomes of the previous games and the step of displaying them are technical features which are not excluded from patentability as they relate neither to the rules of playing a game nor to the presentation of information as such (Article 52(2)(c) and (d) EPC).

5.7 As explained previously, only the credit events of the auxiliary game are displayed in the gaming apparatus of document D1, since they relate to the "metal" counters which are illuminated one by one for each credit event. The gaming apparatus disclosed in document D2 does not display the no-credit events, as they are completely ignored.

5.8 In the present case the inventive contribution resides not in the mere display of the past outcomes of the game, since this would not be novel, but in the manner in which the outcomes are displayed, namely as a consecutive sequence, and including in the display the non-credit events. This manner of displaying the outcomes of the game is not suggested by the prior art and there is no motivation therein to display the past no-credit events together with the credit events. This informs the player on the state of the gaming apparatus and maintains his interest in the game.

5.9 The board is not persuaded by the argument of the examining division that the problem of keeping the player's interest is not to be regarded as being a technical problem, but a psychological one (decision under appeal, reasons 6). This is a false dichotomy. This application bears the International Patent Classification G 07F 17/32 relating *inter alia* to "coin-freed apparatus...for games, toys, sports or amusements". While not suggesting that the IPC is a source of law, the board notes that amusement is the psychological purpose of a gaming apparatus and is the relevant objective technical problem to the extent that the enhanced amusement is achieved by technical

features of the claim - here the displaying and monitoring means; see point 5.2, first sentence. It amounts to a *petitio principii* to assess the contribution of these features as non-technical for the reason that the purpose or problem is alleged to be *per se* non-technical.

- 5.10 The above findings apply to the method of claim 1 as well as to the apparatus of claim 12.

- 5.11 The method of operating a gaming apparatus according to claim 1 and the automatic gaming apparatus of claim 12 are considered therefore to involve an inventive step in the sense 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 grant a patent in the following version:

Description:

pages 1, 6-8, 10, 11, 13-15 as originally filed,
pages 2, 2a, 4 as received on 14 May 2003 with
letter of 13 May 2003,
pages 3, 5, 9, 12, as filed during oral
proceedings,

Claims:

1-12 as filed during oral proceedings as auxiliary
request,

Drawings:

as originally filed.

Registrar

Chair

S. Sánchez Chiquero

R. G. O'Connell