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**Datasheet for the decision  
of 5 February 2007**

**Case Number:** T 1274/06 - 3.2.04

**Application Number:** 99119350.9

**Publication Number:** 1025886

**IPC:** A63F 13/00

**Language of the proceedings:** EN

**Title of invention:**

Gaming device and method using programmable display switch

**Applicant:**

IGT

**Headword:**

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**Relevant legal provisions:**

EPC Art. 52(1), 56

**Keyword:**

"Inventive step (no)"

**Decisions cited:**

T 0641/00

**Catchword:**

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Case Number: T 1274/06 - 3.2.04

**D E C I S I O N**  
of the Technical Board of Appeal 3.2.04  
of 5 February 2007

**Appellant:** IGT  
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**Decision under appeal:** Decision of the Examining Division of the  
European Patent Office posted 9 March 2006  
refusing European Patent application  
No. 99119350.9 pursuant to Article 97(1) EPC.

**Composition of the Board:**

**Chairman:** M. Ceyte  
**Members:** A. De Vries  
C. Heath

## Summary of Facts and Submissions

I. On 15 May 2006 the Appellant (Applicant) lodged an appeal against the decision of the Examining Division of 9 March 2006 to refuse European Patent Application No. 99 119 350.9 and paid the prescribed appeal fee. The statement of grounds of appeal was filed on 18 July 2006.

The Examining Division held that the application did not meet the requirements of Article 52(1) in combination with Article 56 EPC for lack of inventive step having regard in particular to the following document as closest prior art:

D1: US-A-5 342 047

II. Oral proceedings were held on 5 February 2007.

III. The Appellant requested that the decision under appeal be set aside and a patent be granted on the basis of a main and a first auxiliary request filed with letter of 5 January 2007.

IV. Claim 1 of the requests reads as follows:

### **Main request**

"A method for operating a gaming terminal to play a game comprising:

providing a gaming terminal having a wager input device and a processor for determining game outcome;  
coupling at least a first controllable-legend switch to said gaming terminal, said controllable-legend switch having a legend region, said controllable-legend switch

being activatable by a player applying pressure to said legend region to result in motion of said legend region; controlling said controllable-legend switch to display a first legend during at least a first time period of a game, wherein player activation of said controllable-legend switch during said first time period results in a first function; controlling said controllable-legend switch to display a second legend different from said first legend, at least during a second time period of the same game, wherein player activation of said controllable-legend switch during said second time period results in a second function, different from said first function; and said controllable-legend switch being controlled to change the displayed legend in response to the player's application of pressure to the legend region in order to depress a movable activation surface of the controllable-legend switch that provides a tactile feedback, for signaling to the player that the first function has been chosen, and the first legend, corresponding to the first time period of the game, is replaced with the second legend, corresponding to the second time period of the game".

**First Auxiliary Request**

With regard to claim 1 of the main request the final two steps of claim 1 of the auxiliary request are amended to read:

"controlling said controllable-legend switch to activate a second time period in response to said first time period to display a second legend different from said first legend, at least during the second time

period of the same game, wherein player activation of said controllable-legend switch during said second time period results in a second function when certain predetermined conditions for the second function have been met by the player in the first time period and said second function being different from said first function,  
said controllable-legend switch being controlled to change the displayed legend in response to the player's application of pressure to the legend region".

V. The Appellant's arguments may be summarized as follows:

The essence of the invention resides in the changing of the switch's legend and function in response to its activation from one step to the immediately following step in the same game, as was best illustrated in the application as filed by switch 818f of figure 8 as described on page 20, lines 12-18, and in the bottom row of switches of figures 11B and 11C. The central concept was clarified further in the auxiliary request, where, moreover, legend and function change were carried out only conditionally as in a main and bonus game scheme.

As regards D1, mechanical switches 32a to 32e of figure 1 did not change display within the same game. Similarly, the controllable legend switches of column 3 onwards only changed legend in response to user activation of menu button 30 to select a new, different game, rather than between steps of a given game.

## Reasons for the Decision

1. The appeal complies with Articles 106 to 108 and Rule 64 EPC and is therefore admissible.
2. *Inventive step*
  - 2.1 The present application concerns a gaming terminal, as well as its method of operation, which uses controllable-legend mechanical switches for game control. These switches comprise a controllable display surface, and are used to provide different game control functions to a player, as a cheaper, fast-response alternative to touch screen game control.
  - 2.2 As acknowledged by the Appellant D1 represents the closest prior art. It discloses a gaming terminal, shown in figure 1, with wager input device at 44 and 46, and a gaming processor 50 (figure 3), and depressible gaming control buttons or switches 32a to 32e (see column 3, lines 26 to 27). According to column 3, line 53, to column 4, line 19, these depressible switches may be of the controllable legend type, with labels and implicitly their function, changing automatically to correspond to a particular game selected by a user via menu indicator 30 from a number of different games offered on the terminal (column 2, lines 41 to 44). The switch in effect operates in different modes, each with a label and function appropriate to the corresponding selected game. As noted these switches are *depressible*, i.e. necessarily have a movable activation surface which inherently provides tactile feedback to a user depressing the switch.

2.3 Claim 1 of the **main request** defines the method of operation of a gaming terminal in terms of the functions of its individual features. This claimed method differs from that derivable from D1 in the final two features of claim 1 which are summarized as follows:

- (a) controlling the switch to change its legend and function from first to second time periods of the *same* game, with
- (b) the switch being controlled to change its legend in response to activation of the switch itself, with the legend of the first time period replaced by the legend of the second time period.

As noted by the Appellant the term "game" is used in the present application to denote any sequence of interrelated gaming steps. It includes both an instance of a particular game, e.g. poker, as well as a sequence of several different games, such as a main game, which if producing a sufficient win is followed by a different bonus game.

2.4 Interpreting the term "game" in the latter sense, difference (a) amounts to controlling the switch to change its legend and function between periods of a main and a bonus game respectively. Both differences then enable a sequence of main and bonus games to be played on a gaming terminal as in D1, with the switch changing state between main game and subsequent bonus game mode *automatically*, rather than *in response to user selection* from a separate menu as in D1. The Board formulates the associated problem as *how to implement a*

*sequence of main and bonus games on a gaming terminal of the type disclosed in D1.*

- 2.4.1 The Board notes that the various effects identified by the Appellant - decreasing cost, avoiding player confusion, increasing gaming terminal flexibility, as well as providing feedback to the user - are already present in a gaming terminal as in D1, and any associated problems are thus already solved in D1. Therefore, following accepted practice as set out e.g. in T 491/93, reformulation of the problem is justified.
- 2.4.2 The above technical problem is formulated along the lines of T 641/00, OJ EPO 2003, 352, see reasons 7, and includes non-technical aspects - the sequence of main and bonus games - which can be regarded as a non-technical framework within which the technical implementation takes place.
- 2.5 Assessment of inventive step next considers whether the skilled person, given the task of implementing the main-bonus scheme on a device as in D1, will implement the scheme in the manner claimed without the exercise of inventive skills. This is irrespective of whether the main-bonus scheme is known or not. The Board adds that such schemes are in any case well known in gaming, so that applying such a scheme to D1's multi-game device itself requires no special insight or ingenuity.
- 2.6 For the skilled person, whom the Board holds to be a software designer specializing in gaming machines, the solution to the above standard problem is straightforward and follows in obvious manner from the way in which the main and bonus games follow each other.



In such a scheme a player advances from the main to the bonus game as dictated by game rules, i.e. only if he achieves a particular game result - e.g. a minimum score or payout - in the main game. It is obvious to the skilled person that if he is to implement such a scheme in the D1 device, a player will no longer himself need to choose or select the following bonus game. Rather, the next, bonus game follows by virtue of the game rules. He will therefore program the D1 device, to change into bonus game mode "automatically", i.e. without user intervention, and to control the switches to change their operation mode accordingly, in response to the required main game result. As the latter ensues from game play via the game control switches 32a to 32e set in "main game" mode, the switches in such an obviously modified device effectively change legend and function *in response to* activation of the switches in the main play in the sense of the present application. In such a device, a given one of the switches 32a to 32e then changes legend within the *same* game, i.e. from the main game portion to the bonus game portion, and *in response to its own activation*, as required by claim 1.

In summary, the Board finds that the obvious and straightforward implementation of a main and bonus game scheme on a device as in D1 results in a method of operation with the features of claim 1. The Board concludes that the subject-matter of claim 1 lacks inventive step.

2.7 With respect to the main request claim 1 of the **auxiliary request** includes a number of modifications which serve mainly to clarify, rather than change the substance of the claimed invention. Thus, the addition

"to activate a second time period in response to said first time period", and the deletion of the final 6 lines ("in order to depress ...") are inconsequential to the interpretation of the claim. However, the addition that the second function is activated "when certain predetermined conditions for the second function have been met by the player in the first time period" does represent a further limitation with respect to the main request. It refers to the switch changing to "bonus game" mode only if all the conditions for a bonus game have been met, as for example described on description page 13, lines 11-14. The Board has however already included this limitation in its assessment of inventive step for the main request (see above), which thus also applies to claim 1 of the auxiliary request.

- 2.8 Even if the Board were to interpret the term "game" as denoting an instance of a particular game, such as poker, it would arrive at the same conclusion of obviousness. In the gaming terminal of figure 1 of D1 switches 32a to 32e are shown with a double label, namely "HOLD" and "CANCEL", reflected in the term "hold/cancel buttons" of column 2, line 57. As also acknowledged by the Appellant in the submission of 5 January 2007, this double legend is taken to indicate separate functions of the switches. Using general knowledge of video poker gaming machines, the Board moreover holds that these pertain to a first "hold" function allowing a player to select the corresponding card from a hand of dealt cards, and a "cancel" function for cancelling a selection if he subsequently changes his mind. Cards must first be held before they can be cancelled, and the switches operate accordingly:

in a first period it activates the "hold" function, and if activated in that first period, it activates the "cancel" function in an immediately following period.

The sole difference of claim 1 (both requests) then resides in additionally *changing the switch label or legend* when its function changes. This serves to identify the current function of the switch.

D1 itself in column 3, line 53 onwards, provides a solution for this problem. When, following the suggestion of this passage, the skilled person applies an automatic legend changing mechanism to a multi-game machine, which may include the video poker game of figure 1, he must provide an appropriate label for switches 32a to 32e. The most straightforward option is to provide a double label as in figure 1. However, the Board holds that it will be evident to the skilled person, aware of the inherent purpose of the legend changing mechanism to provide different legends for different functions, that that mechanism can also be applied to the same effect to the double function of switches 32a to 32e, even if within the same game. This obvious further refinement results in a switch which prior to selection displays "hold" to allow card selection, and, subsequently, on the condition that a card has been selected, i.e. by activation of the switch in the first period, displays "cancel". The control of the switch then corresponds to that as claimed in *both* requests. Consequently, the subject-matter of the claims of either request lacks inventive step for these additional, alternative reasons.

3. In view of the above findings, the Board concludes that the subject-matter of claim 1 of the main request, and that of the auxiliary request do not involve an inventive step (Article 56 EPC). The main request and the auxiliary request must therefore be refused.

## **Order**

### **For these reasons it is decided that:**

The appeal is dismissed.

The Registrar

The Chairman

G. Magouliotis

M. Ceyte