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**Datasheet for the decision
of 27 November 2007**

Case Number: T 0859/07 - 3.2.04

Application Number: 03700271.4

Publication Number: 1469922

IPC: A63F 3/00

Language of the proceedings: EN

Title of invention:

Method and apparatus for multi player bet auxiliary game

Applicant:

DEQ SYSTEMES CORP.

Opponent:

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Headword:

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Relevant legal provisions:

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Relevant legal provisions (EPC 1973):

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

Keyword:

"Inventive step - no"

"Patentable inventions - technical and non-technical features"

"Patentable inventions - games"

Decisions cited:

T 0953/97, T 1173/97, T 0641/00, T 0258/03, T 0928/03

Catchword:

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Case Number: T 0859/07 - 3.2.04

D E C I S I O N
of the Technical Board of Appeal 3.2.04
of 27 November 2007

Appellant: DEQ SYSTÈMES CORP.
1840 1ère Rue
Suite 103A
St-Romuald QC G6W 5M6 (CA)

Representative: Le Forestier, Eric
Cabinet Régimbeau
20, rue de Chazelles
F-75847 Paris Cedex 17 (FR)

Decision under appeal: Decision of the Examining Division of the
European Patent Office posted 27 November 2006
refusing European application No. 03700271.4
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. The Appellant (Applicant) lodged an appeal, received 2 February 2007, against the decision of the Examining Division of 27 November 2006 to refuse European Application No. 03 700 271.4, and simultaneously paid the appeal fee. The statement setting out the grounds was received 5 April 2007.

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, citing the following document:
D1: US-A-5 570 885.

II. Following a communication from the Board oral proceedings were duly held on 27 November 2007.

III. The Appellant requested that the decision under appeal be set aside and a patent be granted on the basis of the claims filed with letter of 26 October 2007.

IV. The wording of claim 1 is as follows:

1. "A system for playing an auxiliary casino game, the system comprising:
a player participation station controller (76);
a player selection receiver (68), in communication with the player participation station controller (76), receiving a player selection identifying at least one participating player (48,44) participating in an underlying casino game (58) during a play of said underlying casino game;

an event receiver (70), in communication with the player participation station controller (76), for receiving an identification of at least one event related to at least one play of said underlying game, wherein said event is meaningful within said underlying game;

a bet receiver (64, 66), in communication with the player participation station controller (76) for receiving a bet from at least one betting player (46) that said at least one event received by the event receiver will occur in association with said at least one participating player received by the player selection receiver during said at least one play of said underlying game;

auxiliary bet display means (72), in communication with the player participation station controller (76), for displaying the said at least one participating player received by the player selection receiver and said at least one event received by the event receiver and related to said participating player of said underlying game;

an event determiner (14) receiving an indication of at least one event occurring with respect to at least one participating player participating in said underlying casino game during said play of said underlying casino game;

an outcome receiver (22), in communication with the player participation station controller and the event determiner, for receiving an outcome indication indicating if said at least one event received by the event receiver in said underlying game occurred in association with said at least one participating player received by the player selection receiver during said

at least one play of said underlying game, according to the event received by the event determiner; a winning player determiner (22), in communication with the outcome receiver (22), for determining which of said betting players placed a bet on the outcome which occurred."

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

D1 is considered to represent the closest prior art. With regard to the D1 device the central difference of the claimed invention resides in the player participation station controller in communication with player selection, event and bet receivers. This provides a single interface to which all bet data is communicated. In D1 bet event and bet amount are entered via separate interfaces by player and dealer respectively. The system architecture of the present invention is therefore simpler. Such a simplification is not obvious to the skilled person.

This architecture is moreover independent of the bet data or the game rules, and purely technical in nature. An approach in which the skilled person is given the underlying game rules is based on hindsight and results in a shift of the invention into the non-technical domain. Likewise, the idea of automating the functions of the dealer also departs from prior knowledge of the invention. The skilled person, a game designer, tends to be more conservative, and will preserve the role of the dealer.

Reasons for the Decision

1. The appeal complies with Articles 106 to 108 and Rule 64 EPC and is therefore admissible.
2. *Assessing inventive step of "mixed" inventions*
 - 2.1 Before considering the present case in detail, the Board wishes to review briefly the methodology applied by the Boards of Appeal of the EPO in dealing with "mixed" inventions, which are inventions having both technical and non-technical features. Technicality is a fundamental requirement of a patentable invention implicit in Article 52(1) EPC, and the matter listed in Article 52(2) EPC is generally understood as failing to meet this implicit requirement, see the Case Law of the Boards of Appeal of the EPO, 5th edition, 2006 ("CLBA" hereinafter), I.A.1, introductory portion on pages 1 to 3, and the decisions cited therein. It is also generally recognized, that an invention may legitimately be so "mixed", as long as it possesses technical character as a whole, cf. CLBA, I.D.8.1.1, see in particular T 0641/00 (OJ EPO, 2003, 352).
 - 2.2 The inventive step requirement of Articles 52(1) and 56 EPC is assessed using the well-established problem-solution approach, which is fundamentally technical in nature. When applied to "mixed" inventions as above, such an approach must necessarily differentiate between an invention's technical and non-technical features, cf. CLBA, I.D.8.1.2. In the approach adopted by T 0641/00, head-note I, an "invention consisting of a mixture of technical and non-technical features and having technical character as a whole is to be assessed with

respect to the requirement of inventive step by taking account of all those features which contribute to said technical character whereas features making no such contribution cannot support the presence of inventive step". This principle is recognized also by the present Board.

2.3 The Board adds that the principle as expressed in T 0641/00 may also be reformulated as follows: an invention which as a whole falls outside the exclusion zone of Article 52(2) EPC (i.e. is technical in character) cannot rely on excluded subject matter *alone*, even if novel and non-obvious (in the colloquial sense of the word), for it to be considered to meet the requirement of inventive step. The Board is of the firm belief, that it cannot have been the legislator's purpose and intent on the one hand to exclude from patent protection such subject matter, while on the other hand awarding protection to a technical implementation thereof, where the only identifiable contribution of the claimed technical implementation to the state of the art is the excluded subject-matter itself. It is noted that here the term "contribution" encompasses both means (i.e. tangible features of the implementation) and effects resulting from the implementation. In that case Article 52(2) EPC would be reduced to a mere requirement as to form, rather than of substance, and thus easily circumvented.

2.4 It follows from the above that the mere fact that excluded subject-matter is technically implemented cannot *per se* form the basis for inventive step. The Board concludes that inventive step can be based only on the *particular manner* of technical implementation.

To this end it is therefore necessary to ask *how the per se excluded subject-matter (e.g. a game or business method) is implemented*. In the context of the problem-solution approach this can be rephrased as a fictional technical problem in which the per se excluded subject matter appears as an aim to be achieved, cf. T 0641/00 head-note II. This formulation seemingly implies that the excluded matter is regarded as a given in the assessment of inventive step, which, when that matter is novel, appears to depart from what is in fact a hidden starting point, i.e. is based on "hindsight". This fiction is however an artefact of the systematic use of the problem-solution approach for assessing inventive step and the need to differentiate between excluded and non-excluded matter. This should not detract from the basic tenet that excluded subject-matter cannot form the sole basis for a patentable invention, however much genuine ingenuity or creative effort it may embody.

- 2.5 A consideration of the particular manner of implementation - from the point of view of the relevant skilled person under Article 56 EPC, who may be identified on the basis of the invention's technical character - must focus on any *further* technical advantages or effects associated with the specific features of implementation over and above the effects and advantages inherent in the excluded subject-matter. The latter are at best to be regarded as incidental to that implementation. The explicit requirement of a "further" technical effect has been first formulated for computer-related inventions in decisions T 1173/97 (OJ 1999, 609), see head-note and point 9.4 of the reasons, and see also T 0935/97, but the same principle

holds also for other categories of excluded subject-matter which may inherently possess some "technical" effect. In fact, inherent and arguably technical effects may be easily identified for practically all excluded subject-matter, for example such a simple one as time savings due to a more efficient order or scheme of actions. This is why it needs to be stressed that the "further" technical effect can not be the same one which is inherent in the excluded subject-matter itself.

2.6 This is analogous to the approach of T 0928/03 of 2 January 2006, which considers the actual contribution of each feature to the technical character by, for each feature, stripping away its non-technical content, while leaving its technical residue. Thus, see reasons 3.2, "the extent to which the characterizing features contribute to the technical character ... in relation to the effects achieved by those features" must be determined.

3. *The present invention*

3.1 Claim 1 is directed to a system "for playing an auxiliary casino game". The game itself is outlined in the paragraph bridging description pages 6 and 7 and involves placing side bets on events associated with game play of a selected player in an underlying game. The claimed system implements this game by providing receivers for receiving the bet data (player, event, bet amount), a display, and means (event and winning player determiners, outcome receiver) for identifying a winning bet by comparing the bet data to actually occurring events, all in communication with a central controller.

3.2 Whereas the game is itself excluded under Article 52(2) EPC as non-technical, the implementing features - the central controller in communication with the receivers, display, and processing means - are undoubtedly technical. Following T 0258/03 (OJ EPO 2004, 575), see reasons 4.5 and head-note I, the system itself then possesses overall technical character, even if it is "mixed" in the sense of section 2.1 above.

3.3 Following the approach set out above it is necessary to consider how the game is implemented technically, see section 2.4 above. This requires identifying further effects, if any, over and above those inherent in the game itself, see section 2.5.

In the case at hand implementation is by way of features defined in the claim only by their function. In the preferred embodiments detailed in the description and figures, these features are given more concrete form as "a combination of hardware and software components" with "data communication within a computer application" (page 9, opening paragraph of the section "detailed description"). More specifically, they may be identified as the bet data input devices 66, 70, 72, display 72 and station controller 76 of a "player gaming station" 10 shown in figure 4 and set in a local network 12 of a larger gaming network 18 shown in figure 1 and which includes underlying game interface 14 and game controller 22 (for determining a win and a winner). In the light of the description therefore the system of claim 1 is seen to be a computer implemented gaming system.

3.4 It follows that the relevant skilled person is a systems engineer specializing in implementing gaming systems. The questions raised in section 3.2 above are to be considered from the point of view of this skilled person, who is given the task of implementing the auxiliary betting game on a computer system. That the general idea of computer implementing games is trivially obvious behoves no further comment, given the fact that computer implemented gaming systems were manifestly known at the priority date of the present application. D1 gives examples of such known systems, see in particular its abstract and figures 7 and 8.

3.5 The main purpose of computer-implementation is to automate game play: to assign to a machine - here a computer - those functions that do not require a human agent, and which can be carried out more swiftly and reliably by a machine. In the present side betting game these are all the tasks and functions that are not carried out by the player, and which in a traditional betting scheme would be carried out by a bookie or bookmaker. They are receipt and confirmation of the bet, and determining of a winner by ascertaining which events actually take place, whether they correspond to events bet upon, and, finally, who placed the bet.

3.6 A software engineer faced with the task of computer implementing the auxiliary side betting game, will, as a matter of course, design the system with corresponding functionalities for carrying out these tasks. He will provide the system with means for receiving the various bet data and means for displaying it for confirmation by the betting player. He will also provide corresponding means for (automatically)

determining a win and monitoring actual events, and comparing them with events bet upon to determine whether a bet event has occurred and who has placed the relevant bet. Such a system must of necessity also include means to control and coordinate the carrying out of the various tasks, and which is thus in communication with the corresponding means. In so designing the system he arrives at a system falling within the ambit of claim 1 without the exercise of inventive skills.

3.7 The system, and thus its architecture, follows in straightforward manner from the various tasks and functions involved in playing the side betting game when implemented on a computer. Contrary to the Appellant's contention, the system architecture is dictated by the game rules, once it has been decided, as a matter of obviousness, to implement them on a computer system.

Any differences in architecture with regard to D1 are due to the fact that the D1 system is configured for a different game (a player in the main game can bet on the number of times he hopes to win in succession). In any case D1, which illustrates the idea of game play automation on a computer, is not limited to the semi-automated scheme of figure 1 where a dealer inputs bet amount in a separate interface (via touch-screen computer interface 22, see column 3, lines 53 to 55). It also details fully automated machines, see figures 2 and 4, which require no separate dealer interface, and which have a system architecture, see figure 8, closely similar to that inferable from claim 1.

- 3.8 Other than the effects typically associated with automation - increased speed (here of game play) and reliability (of bet transactions), relieving the human agent of effort - no other technical effects are identifiable in the particular manner of implementation. As noted this implementation is phrased in mainly functional terms and is unspecific to the particular, concrete manner in which these functions are (or might be) realized. Only effects associated with this functionally defined scheme can thus be considered.
- 3.9 Further effects identified by the Appellant and problems based thereon, such as the possibility of allowing a non-player to place side bets and thereby increase player participation and game profitability, result from the gaming scheme itself. They are moreover non-technical concerns and considerations that may play a role in game design, but are immaterial in an assessment of inventive step based on a technical contribution.
- 3.10 Finally, the argument that the systems engineer might be too "conservative" to want to automate dealer tasks, attributes such a decision to the engineer. This decision, however, in the Board's opinion at best reflects on the ingenuity of a games designer in designing the side betting game provided as specification to the systems engineer for implementation. The Board is unconvinced that, once given the task of automating such a game, the systems engineer would be technically hindered by such a non-technical prejudice.

3.11 In conclusion, the Board finds that the subject-matter of sole independent claim 1 does not involve an inventive step, and therefore does not meet the requirements of Article 52(1) in combination with Article 56 EPC.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar

The Chairman

G. Magouliotis

M. Ceyte