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**Datasheet for the decision
of 8 June 2010**

Case Number: T 1547/09 - 3.2.04

Application Number: 02770314.9

Publication Number: 1448280

IPC: A63F 13/12

Language of the proceedings: EN

Title of invention:
System and method for playing a game

Applicant:
M-Comm B.V.

Headword:
-

Relevant legal provisions:
EPC Art. 52, 56

Relevant legal provisions (EPC 1973):
-

Keyword:
"Inventive step (no) (all requests)"

Decisions cited:
T 0931/95, T 0258/03, T 0641/00, T 1543/06

Catchword:
-



Case Number: T 1547/09 - 3.2.04

D E C I S I O N
of the Technical Board of Appeal 3.2.04
of 8 June 2010

Appellant: M-Comm B.V.
Hoogstraat 113 G
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Representative: de Vries, Johannes Hendrik Fokke
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Decision under appeal: Decision of the Examining Division of the
European Patent Office posted 3 February 2010
refusing European patent application
No. 02770314.9 pursuant to Article 97(1) EPC.

Composition of the Board:

Chairman: A. de Vries
Members: M. Poock
T. Bokor

Summary of Facts and Submissions

I. On Tuesday 14 April 2009 the Appellant lodged an appeal against the decision of the Examining Division posted 3 February 2009, refusing the European patent application no. 02 770 314.9 and paid the prescribed fee. He filed the statement of the grounds of appeal with letter of 3 June 2009.

The Examining Division held that the application did not meet the requirements of Articles 52(1) and 56 EPC in view of the following document:

D1: DE-199 40 954 A1

During the appeal proceedings the Board also considered the following further document:

D2: WO-01/48712 A1

II. Oral proceedings were held on 8 June 2010 in the absence of the duly summoned Appellant. With letter of 26 May 2010 he had indicated he would not attend.

III. The Appellant requests that the decision under appeal be set aside and that a patent be granted on the basis of the set of claims on which the examining division based its decision (main request) or, alternatively, on the basis of the set of claims in accordance with an auxiliary request filed with the grounds of appeal.

IV. The wording of the independent claims of the requests is as follows :

Main Request

1. "A system for playing a game, which system comprises a game unit (1) and a number of mobile terminals (2) which can communicate with the game unit, which game unit is adapted to send a game code (4) to one or more mobile terminals and which mobile terminals are adapted to send at least one reply message (5) to the game unit, wherein each reply message comprises an identification code of the mobile terminal, characterized in that the game code (4) is a number comprising two or more digits, wherein one or more of said digits identify a key of a mobile terminal, and each reply message (5) is a word or a part of a word composed of one or more letters which have been selected by means of the key(s) identified by digits of the game code, wherein the game unit is adapted to verify the letters of the reply message on their correspondence to the digits of the game code."

9. "A method for playing a game, wherein a game code (4) is sent to one or more mobile terminals (2) by means of a game unit (1), and wherein the mobile terminals send at least one reply message (5) to the game unit, wherein each reply message comprises an identification code of the mobile terminal, characterized in that the game code (4) is a number comprising two or more digits, wherein one or more of said digits identify a key of a mobile terminal (2), and each reply message (5) is a word or a part of a word composed of one or more letters which have been selected by means of the key(s) identified by digits of the game code, wherein the game unit verifies the letters of the reply message on their correspondence to the digits of the game code."

17. "A game unit (1) for use in a system according to any one of the claims 1-8".

Auxiliary Request

Claim 1 is as in the main request but for the following amendments (where emphasis added by the Board highlights what has changed) :

- the preamble now reads "A system ... , which game unit is adapted to *generate a game code and send the game code ...* ";
- the characterizing part of the claim now reads "characterized in that the game code (4) is a number comprising two or more digits, *wherein each digit corresponds to three or four different letters from the alphabet and wherein ...*".

Claim 9 is as in the main request but for the following amendments (emphasis again indicates what has changed):

- the preamble now reads: "A method ... wherein a game code is *generated and sent ...*";
- the characterizing part now reads: "characterized in that the game code (4) is a number comprising two or more digits, *wherein each digit corresponds to three or four different letters from the alphabet and wherein ...*".

Claim 17 is as in the main request.

V. In its decision the Examining Division argued that SMS based gaming systems are per se known from D1. The differences of the claimed invention are dictated by new, different game rules. These have been executed in

straightforward manner. The problem of bandwidth is in any case not disclosed in the application, nor is it solved. Rather it is circumvented by changing the game rules.

VI. The Appellant argues as follows :

All features of claim 1 are technical. Apart from the structural features these include in particular the specific formats of the game code and reply message. Likewise the identification code, sending of game code and reply messages, and verification of the message, all have technical character.

The game code and reply message are not defined by their content but by their specific format. Thus the game code comprises two or more digits, each identifying a key of a mobile terminal. The reply messages on the other hand are defined as a word or part of a word composed of letters selected by means of the keys identified by the game code.

Using numbers rather than letters to form the game code results in a reduction in data traffic between mobile terminal and game unit, and the objective technical problem can be formulated accordingly. The game unit is adapted to send the specifically formatted code producing the data reduction. D1 does not disclose a game unit that is so adapted.

Reduction of network traffic is a result of implementation of the system, not of the game rules. The latter are themselves a result of the claimed technical features. The features of the claimed system,

method and game unit may enable playing of a game, the game rules as such are not defined in the claim.

The auxiliary request stresses that the game code is not just sent but is also generated by the game unit. The game unit thus has an active role in achieving network traffic reduction. D1 does not generate such a game code.

Reasons for the Decision

1. The appeal is admissible.
2. *The Invention & Technicity*
 - 2.1 The invention is concerned with a gaming system where game play takes place between a central game unit and mobile terminals. The game unit sends a game code to the mobile terminals in the form of a number comprising two or more digits, each of which identifies a key on the mobile terminal. Participants can respond by sending a reply message from their mobile terminal to the game unit. The reply message includes code identifying the terminal as well as a word (or part of a word) composed of the letters using the keypads identified by the game code digits. In the main example, see the paragraph bridging pages 2 and 3, game code and reply messages are in the form of SMS messages, and the game is played on mobile telephones in a mobile telephone network.

Claim 1 is directed at a system, independent claim 9 to a method for playing the game, while further

independent claim 17 defines the game unit for use in the claimed system.

2.2 The subject-matter of these claims undoubtedly has technical character following the generally accepted approach of T 931/95 (OJ EPO 2001, 441) and T 258/03 (OJ EPO 2004, 575). Thus, claims 1 and 17 are directed at the physical features of an entity - a system with interacting game unit and mobile terminals, respectively the game unit alone - while claim 9 defines the various sending and verifying steps in terms of the use of these technical means. This basic requirement of technicality as expressed in Article 52(1) EPC that an invention be "in all fields of technology" is thus met.

3. *Inventive step*

3.1 The Board assesses inventive step using the generally accepted problem-solution approach. This fundamentally technical approach requires an analysis of the claimed invention in terms of a technical solution to a technical problem. Differences over a notional closest prior art are established and the associated technical effects determined so as to formulate the objective technical problem solved by the invention. Of particular interest are those inventions that encompass both technical and *non-technical* aspects. "Non-technical" is a shorthand way of referring to matter which the EPC regards as excluded from patentability for one reason or another, such as the matter mentioned in Article 52(2) EPC.

For "mixed" inventions established case law, see for example T 0641/00 (OJ EPO 2003, 352), considers only those features that contribute to a claimed invention's technical character when assessing inventive step. That requirement cannot rely on excluded (non-technical) subject-matter *alone*, however original that matter might be. For example, new and ingenious business methods or games are inevitably rooted in the physical world when they are carried out, and so may be perceived to acquire technical character. The mere fact of carrying out these methods or games however should not by itself lead to patent protection; in other words *that* something excluded is technically implemented cannot form the basis for inventive step. Decisive for inventive step is the question *how* it has been technically implemented, and whether such implementation is obvious in the light of the prior art.

As explained in reasons 2.7 to 2.9 of T 1543/06, such a consideration focuses on any *further technical effects* associated with implementation of the excluded subject-matter over and above those inherent in the excluded subject-matter itself. The exact formulation of the technical problem and the extent to which features contribute to its solution is therefore critical.

- 3.2 Turning now to the present case, digital mobile communications networks based on GSM or higher standard using SMS capability are well known. D1 uses this technology for gaming purposes, with SMS messages ("SMS ... Kurzmitteilung": column 1, line 11 and 12) 22 used to transmit game actions between players from their respective mobile terminals 12 via a central service provider 24, see column 3, line 24 to 53. The

provider 24 may relay the messages via an agency 26, see the paragraph bridging columns 3 and 4. The agency may in turn be connected to a game computer as a game play opponent, column 4, lines 32 to 36. As is standard, the SMS messages also include identification code, column 4, lines 48 to 50. A typical exchange sequence for play against a game computer will have it sending a game action message or "code" to a player mobile terminal, which responds with a reply message encoding its play action. Any reply message will of course need to be verified as a valid response, as is evident from the example of chess cited in D1 where the computer must check that SMS-ed moves are valid chess moves.

D2 discloses a similar mobile network based gaming system (though without specific mention of SMSing) as acknowledged in the application, page 1, second paragraph.

3.3 The gaming system of claim 1 of the main request differs from this prior art in the characterizing features that specify the *nature* of the game code and reply message, and of the *verification* process. The game code is in the form of digits designating keys on the mobile terminal to be used in forming a word(-part) to be transmitted back in the reply message and verified as a validly composed word.

3.4 Description page 1, lines 16 to 30, expressly identifies the associated object as "to provide a system and method [according to the preamble of the claim] by means of which a game can be played, wherein the level of knowledge and/or dexterity of the player determines the output of the game". This stems from a

typical gaming insight that giving a player more control and a better sense of achievement can make a game more appealing. Neither insight nor object are technical in nature and neither can serve as a basis for formulating the objective technical problem required for assessing inventive step.

- 3.4.1 Looking at the way the stated object is achieved the Board sees this to be done in typical game fashion, by proposing a new game which is designed to make better use of a player's SMSing skills. This new game's central precept is as follows: *form words from the letters on the keys designated by the digits of a numerical game code*. Whether or not a player is successful now depends on his ability to associate letters with digits and recognize possible letter combinations, and his agility in then forming the reply message using the keys. The resultant game is no longer based on chance but on skill. A player readily recognizes that this game is different from chance games that use SMS technology. This is because in his perception the rules as encapsulated in the central precept are different.

Here the Board recalls what game rules are (cf. T 0336/07, reasons 3.3.1) : they define an agreed regulatory framework concerning conduct, conventions and conditions that are meaningful only in a gaming context. That framework is an inherently abstract, mental construct; its individual rules are also inherently abstract. The rules' execution interfaces with the real world, see above, and normally requires technical means - for example dice or a game board, or, as here, transmission of data in particular formats -

and will so be technical. This should however not detract from the fact that the core concept underlying the invention is the proposition of a new game based on the above central game precept.

3.4.2 As explained above inventive step cannot be based merely on the fact that excluded subject-matter, such as game rules, has been technically realized. The question to be asked is *how* is it technically implemented? In the present case and departing from the central game precept the notional objective technical problem can then be formulated as follows : *how to implement on a gaming system such as that of D1 or D2 a game the central rule of which is : compose words using the keys designated by the digits of a numerical game code.*

3.5 This problem is addressed to the relevant *skilled person* in the present field, a software or systems engineer specializing in gaming systems. This skilled person is generally responsible for the technical implementation of gaming ideas developed by a games developer. The two may form a team but it is only from the former's point of view that the intrinsically technical assessment of inventive step can proceed.

3.6 Given the above task of implementing the new game on a gaming system as in D1 or D2 the skilled person in the course of his normal duties will reconfigure the system in accordance with the new game rules. He need do no more than adapt the game logic in the central game unit and the mobile terminals so that game play unfolds according to the central game rule. This means reprogramming the central game unit and the mobile

terminal to issue appropriately formatted game code and reply messages: a numerical game code and a reply message containing the composed word. The game logic changes will naturally encompass also the verification steps carried out by the game unit, which must now check that the reply message contains a properly composed word, made up of the right letters. These tasks pose no particular problem to the gaming software engineer. In carrying them out and reconfiguring the system he arrives at the system of claim 1 (main request) using only routine skills, that is without an inventive step.

The Board reaches the same conclusion for claim 17 to the game unit on its own, as well as for the method of claim 9, which merely reformulates the central idea of the claimed invention in terms of the way the system of claim 1 must operate.

- 3.7 The Board is further unable to identify any further effect as discussed above that might speak in favour of inventive step. Any effects are those that are inherent in the new game concept itself or that follow directly from its implementation on the game system. The Board is unconvinced that there is any reduction in data traffic. The gaming system implements an entirely new game and neither replaces nor modifies prior art systems but rather *adds* to the variety of existing games and gaming systems.

The Board adds that the application as filed also makes no mention of a possible data reduction. The data reduction described by the Appellant is with respect to a hypothetical, non-existing game that is also not

apparent from the description or cited prior art and thus appears to be the result of an ex post facto consideration of the invention's potential benefits.

3.8 The independent claims 1,9 and 17 of the auxiliary request also fail to define inventive subject-matter. Thus, given the central role played by the game unit in the gaming system it is obvious to assign it also the central task of *generating* the game code it then transmits. D1 in the system layout of figure 2, with associated game computer, suggests as much. The further added feature, that digits (of the game code) correspond to three or four different letters rather than only one highlights that the game concept is specifically adapted for playing a mobile phone network using SMS input via a normal mobile phone keypad. The choice to have a game specifically adapted for SMS-ing is a game design choice and inherently non-technical. Once that choice is made its implementation is trivial.

3.9 From the above the Board concludes that the subject-matter of the independent claims 1, 9 and 17 of the main and the auxiliary request lacks inventive step and thus fails to meet the requirement of Article 52(1) and 56 EPC. It therefore confirms the finding of the decision under appeal.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar

The Chairman

A. Counillon

A. de Vries