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**Datasheet for the decision  
of 16 July 2015**

**Case Number:** T 0273/12 - 3.5.01

**Application Number:** 07252207.1

**Publication Number:** 1870851

**IPC:** G06Q40/00

**Language of the proceedings:** EN

**Title of invention:**  
Handling orders for an asset

**Applicant:**  
Altex-ATS Ltd.

**Headword:**  
Electronic trading/ALTEX-ATS LTD

**Relevant legal provisions:**  
EPC Art. 52(1)  
EPC 1973 Art. 56

**Keyword:**  
Inventive step - mixture of technical and non-technical  
features  
Inventive step - technical effect (no)

**Decisions cited:**  
T 0641/00, T 0382/96

**Catchword:**



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Case Number: T 0273/12 - 3.5.01

**D E C I S I O N  
of Technical Board of Appeal 3.5.01  
of 16 July 2015**

**Appellant:** Altex-ATS Ltd.  
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**Representative:** Sackin, Robert  
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**Decision under appeal:** **Decision of the Examining Division of the European Patent Office posted on 21 September 2011 refusing European patent application No. 07252207.1 pursuant to Article 97(2) EPC.**

**Composition of the Board:**

**Chairman** R.R.K. Zimmermann  
**Members:** P. Scriven  
P. Schmitz

## Summary of Facts and Submissions

- I. This is an appeal against the decision of the Examining Division to refuse the European patent application EP 07252207.1.
- II. The Examining Division found that the method for handling orders for an asset as defined in claim 1 according to both the main and first auxiliary request did not provide any technical contribution over a notoriously known distributed information system. Therefore, the application did not meet the requirement for inventive step (Articles 52(1) and 56 EPC).
- III. The appellant requested that the decision of the Examining Division to refuse the application be set aside and that a patent be granted on the basis of the rejected main or first auxiliary requests, or on the basis of second, third, or fourth auxiliary requests filed with the statement setting out the grounds of appeal. The appellant additionally stated that, for brevity, a single substantive amendment had been included for each of the main and auxiliary requests. Where they could be combined, the appellant wished that all combinations of the requests be considered as "additional auxiliary requests". Oral proceedings were requested "in the event of the Board maintaining the decision in respect of any of the requests".
- IV. In a communication annexed to a summons to oral proceedings, the Board set out its preliminary opinion that the invention as defined in claim 1 according to the main and first to fourth auxiliary requests lacked inventive step over the prior art trading system described in the patent application itself.

V. The Board held oral proceedings on 16 July 2015. As announced by letter of 16 June 2015, nobody was present on behalf of the appellant.

VI. Claim 1 of the main request reads as follows:

*"A method for handling orders for an asset at an order handling system, the order handling system comprising a matching engine (46), the method comprising the steps of:*

*the order handling system receiving an order for an asset;*

*the method characterised by:*

*the matching engine (46) determining whether the received order matches a previous order that the order handling system had previously sent to an electronic exchange;*

*if the received order does not match a previous order that the order handling system had previously sent to an electronic exchange (42), sending the received order to the electronic exchange (42); and*

*if the received order does match a previous order that the order handling system had previously sent to an electronic exchange (42), the matching engine (46) generating an instruction to the electronic exchange (42) to revise the previous order sent to the electronic exchange (42) and the matching engine (46) performing a non-exchange based trade based on the received order and the previous order."*

- VII. Claim 1 of the first auxiliary request replaces "A method for handling orders" in claim 1 of the main request by "A computerised method for handling orders" and each occurrence of "matching engine" in claim 1 of the main request by "matching engine server"
- VIII. Claim 1 of the second auxiliary request differs from the main request by the addition of the text "*such that load on the electronic exchange is reduced*" at the end.
- IX. Claim 1 of the third auxiliary request differs from the main request by the addition of the text "*, local to the order handling system,*" after the first "*matching engine(46)*" in the characterising portion.
- X. Claim 1 of the fourth auxiliary request differs from the main request by the addition of the text "*, the matching engine being local to the order handling system rather than at the electronic exchange*" at the end of the first feature in the characterising portion.
- XI. The appellant's arguments can be summarized as follows:

The method of claim 1 was carried out by technical means (the order handling system, the matching engine and the electronic exchange). Thus, none of the features in the claims could be considered as *purely non-technical*.

The manner of handling orders according to the invention provided a technical solution to a technical problem. By allowing trades to be processed locally by the matching engine, the processing load on the electronic exchange was reduced, thus speeding up the exchange.

Additionally, the response time of the system as a whole from the point of view of the user entering an order was speeded up. In other words, the invention solved the objective technical problem of matching a trader's order entered into the system more quickly.

That the system as a whole was made faster by the matching engine was a surprising effect. Indeed, one might expect the system to slow down as it must take some time and resources for the central entity to interact with the local entity. Therefore, it would not have been obvious to modify the existing trading system to match orders locally. Indeed, the prior art cited by the Examining Division, in particular documents D1, D2 and D3, taught the use of a central exchange, and that any other intermediaries would slow things down.

The Examining Division's objection that the effect would only be present if the number of transactions carried out locally could compensate the extra overhead was incorrect. According to the Guidelines for examination (part C, III-8, 4.2 [version of April 2010]), a claim should be read with an attempt to make technical sense of it. In making technical sense of the claim, the skilled person would read it as only encompassing an interpretation that would provide a technical solution to the technical problem of making the system as a whole faster.

## **Reasons for the Decision**

### 1. *The invention*

- 1.1 The invention concerns the electronic trading of various assets, including derivatives such as futures contracts (published application, paragraph [0001]). Futures contracts are essentially contracts to buy or sell a particular asset on a future date at a price specified today. According to the application, in existing electronic trading systems, all such trades went through a central exchange ([0016]).

By contrast, the "order handling system" according to the invention enables exchange-based trading through an electronic exchange, as well as "non-exchange based" trading (also called "over-the-counter" (OTC) trading; see e.g. paragraphs [0001], [0014] and [0018]). The system comprises a "matching engine" for matching orders for an asset. If a received order matches an order that has previously been sent to the exchange (for example, if a sell order submitted by trader B matches a buy order previously submitted by trader A) the matching engine sends an instruction to the exchange to "revise" the previous order. The matching engine, then, performs a non-exchange based trade between the received order and the previous order.

### 2. *Main request, inventive step*

- 2.1 Claim 1 according to the main request is directed to a method for handling orders at an order handling system as described in point 1.1. above. It is common ground that this method differs from the prior art shown in

figure 1 and described in paragraph [0016] by the steps performed by the "matching engine".

2.2 It is established jurisprudence that only features which contribute to the solution of a technical problem by providing a technical effect can support the presence of an inventive step (T 641/00 "Two identities/COMVIK", OJ EPO 2003, 352). The question is whether the steps performed by the "matching engine" in claim 1 provide such a contribution. The Examining Division considered that they did not do so. The appellant argued that they provided a technical effect, namely improved response time, not only of the electronic exchange, but also of the trading system as a whole.

2.3 The Board is, however, not convinced that the invention provides this effect. Any technical effect on which patentability relies has to be credible.

Firstly, it is not clear that the invention reduces the load on the central exchange, in particular since claim 1 does not define what is entailed in revising an order. Indeed, the revision by the exchange might take more processing than the actual order execution.

Secondly, the Board sees no evidence that the response time of the order handling system as a whole is reduced compared to the prior art system. As the Examining Division pointed out in its decision, the effect depends on whether the number of transactions carried out locally can compensate the extra overhead.

Moreover, there is no basis for reading limitations into a claim such that a particular, alleged, technical



effect is achieved. Rather, it is the other way around: the effect must be achieved over the whole scope.

2.4 The Board agrees with the Examining Division that, even if the order handling system in claim 1 were faster than the prior art trading system, that would only be as a consequence of OTC trading, which is a method of doing business and, hence, not technical. Analogously, buying a used car directly from the owner means less work for the car dealer that might otherwise have acted as an intermediary in the deal and will often be faster for the buyer. It is inevitably the case that different business methods take different amounts of time to execute, but from this, it does not follow that the choice of one method over another provides a solution to a technical problem.

2.5 In conclusion, the Board shares the Examining Division's conclusion that the invention as defined in claim 1 does not provide a technical contribution over the prior art, and therefore, it lacks an inventive step (Article 56 EPC 1973).

3. *First auxiliary request, inventive step*

3.1 Claim 1 according to the first auxiliary request specifies that the method for handling orders is "computerised" and that the matching engine is a "server".

Since these features are already part of the prior art trading system shown in figure 1, they do not provide an inventive step (Article 56 EPC 1973).

4. *Second auxiliary request, inventive step*

4.1 Claim 1 according to the second auxiliary request defines the effect that "load on the electronic exchange is reduced". The reasoning as to why the main request is not allowable already takes account of this purported effect, and applies, therefore, equally to the second auxiliary request.

5. *Third and fourth auxiliary requests, inventive step*

5.1 The third auxiliary request provides that the matching engine is "local to the order handling system" and the fourth auxiliary further adds the wording "rather than at the electronic exchange". The Board considers that these features are already implied in the main request, and reaches the same conclusions as to inventive step.

6. *The "additional auxiliary requests"*

6.1 The appellant requested that all combinations of the requests be considered as additional auxiliary requests.

6.2 The Board cannot accept requests that merely refer to possible combinations of unspecified subject-matter, without specifying an actual text. The responsibility for defining the subject-matter for which protection is sought lies entirely with the applicant; this responsibility cannot be offloaded to a Board of Appeal (see e.g. T 382/96). Therefore, the Board declines to admit these additional auxiliary requests. Moreover, since all of the features added in in the various auxiliary requests are implicit in claim 1 according to

the main request, no combination of them could lead to inventive subject matter.

**Order**

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

The appeal is dismissed.

The Registrar:

The Chairman:



T. Buschek

R.R.K. Zimmermann

Decision electronically authenticated