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**Datasheet for the decision
of 27 April 2021**

Case Number: T 1511/15 - 3.4.03

Application Number: 03781901.8

Publication Number: 1563432

IPC: G06F17/60

Language of the proceedings: EN

Title of invention:

METHOD, APPARATUS AND INTERFACE FOR TRADING MULTIPLE TRADEABLE
OBJECTS

Applicant:

Trading Technologies International, Inc.

Headword:

Relevant legal provisions:

EPC Art. 123(2)

EPC 1973 Art. 84

RPBA 2020 Art. 15(1), 24(1), 25(1), 25(2), 25(3)

RPBA Art. 13

Keyword:

Amendments to main and first auxiliary requests - added
subject-matter (yes)

Late-filed second auxiliary request - admitted (no)

Decisions cited:

Catchword:

In a case where the Board has sent more than one summons to oral proceedings, it is normally the summons which was first sent which is "the summons to oral proceedings" within the meaning of Article 25(3) RPBA 2020 (Reasons, point 3.6).



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Case Number: T 1511/15 - 3.4.03

D E C I S I O N
of Technical Board of Appeal 3.4.03
of 27 April 2021

Appellant: Trading Technologies International, Inc.
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Decision under appeal: **Decision of the Examining Division of the
European Patent Office posted on 13 March 2015
refusing European patent application No.
03781901.8 pursuant to Article 97(2) EPC.**

Composition of the Board:

Chairman T. Bokor
Members: S. Ward
M. Ley

Summary of Facts and Submissions

I. The appeal is against the decision of the Examining Division to refuse European patent application No. 03 781 901 on the grounds that the claimed subject-matter did not involve an inventive step within the meaning of Article 56 EPC.

II. As confirmed at the end of the oral proceedings held before the Board, the appellant requests that the decision under appeal be set aside and that a European patent be granted on the basis of the main request (claim set "A") or the first auxiliary request (claim set "B"), both filed with the statement of grounds of appeal, or on the basis of the second auxiliary request filed at oral proceedings before the Board.

III. (i) Claim 1 of the main request reads as follows:

*"A method of displaying market information relating to two tradeable objects being traded on at least one electronic exchange using a graphical user interface and a user input device and having preset parameters for trade orders, the method comprising:
dynamically displaying a first indicator at a location corresponding to a first price level on a common static price axis, the first indicator being associated with a highest bid price available in the market for the first tradeable object;
dynamically displaying a second indicator at a location corresponding to a second price level on the common static price axis, the second indicator being associated with a lowest ask price available in the market for the first tradeable object;*

receiving a first offset value in relation to a second tradeable object, which is different from the first tradeable object;
applying the first offset value to a highest bid price available in a market for the second tradeable object to determine a third price level at which to display a third indicator in relation to the common static price axis;
dynamically displaying the third indicator at a location corresponding to the third price level on the common static price axis, the third indicator being associated with the highest bid price for the second tradeable object;
receiving a second offset value in relation in relation [sic] to the second tradeable object;
applying the second offset value to a lowest ask price available in the market for the second tradeable object to determine a fourth price level at which to display a fourth indicator in relation to the common static price axis; and
dynamically displaying the fourth indicator at a location corresponding to the fourth price level on the common static price axis, the fourth indicator being associated with the lowest ask price for the second tradeable object;
wherein the first and second indicators and the third and fourth indicators can move relative to the common static price axis when the market changes for the first and second tradeable objects respectively."

(ii) Claim 1 of the first auxiliary request is identical to claim 1 of the main request, except that "using a graphical user interface" in the first paragraph has been amended to "using a graphical user interface in a window on a display screen", and "dynamically displaying" (which occurs four times) has

been amended to "dynamically displaying, in the window,".

(iii) Claim 1 of the second auxiliary request reads as follows:

"A method of displaying market information relating to two tradeable objects being traded on at least one electronic exchange using a graphical user interface and a user input device and having preset parameters for trade orders, the method comprising:
dynamically displaying a first indicator in relation with a first price level on a common static price axis, the first indicator associated with a highest bid price available in the market for a first tradeable object;
dynamically displaying a second indicator in relation with a second price level on the common static price axis, the second indicator associated with a lowest ask price available in the market for the first tradeable object;
dynamically displaying a third indicator in relation with a third price level on a common static price axis, the third indicator associated with a highest bid price available in the market for a second tradeable object;
and
dynamically displaying a fourth indicator in relation with a fourth price level on the common static price axis, the fourth indicator associated with a lowest ask price available in the market for the second tradeable object;
wherein the first and second indicators and the third and fourth indicators can move relative to the common static price axis when the market changes for the first and second tradeable objects respectively,

*wherein the first indicator, the second indicator, the third indicator and the fourth indicator represent quantities,
wherein the graphical user interface includes a first tradeable object offset indicator indicating a first offset and a second tradeable object offset indicator indicating a second offset, and
wherein method comprises:
a user selecting a value of the first offset, thereby to skew the first and second indicators by a first selected number of cells of the price axis; and/or
the user selecting a value of the second offset to skew the third and fourth indicators by a second selected number of cells of the price axis."*

- IV. Following the summons to oral proceedings, the Board sent the appellant a communication under Article 15(1) RPBA setting out its preliminary opinion that claim 1 of the main request did not involve an inventive step in the sense of Article 56 EPC 1973, and that the amendments made to claim 1 of the first auxiliary request did not appear to be suitable to overcome this objection. In addition, it might be discussed at oral proceedings whether the requirements of Article 123(2) EPC were met in relation to the "offset value" features of claim 1.
- V. The appellant's arguments, insofar as they are relevant to the present decision, may be summarised as follows:

The portions of claim 1 of the main request relating to the offset values had a basis in claim 32 (dependent on claim 22) as originally filed. Claim 32 taught that a user selectable offset caused the first indication (of a bid quantity for the first tradable object) to be shifted relative to the third indication (of a bid

quantity for the second tradable object). The skilled person would understand that the ask quantities (second and fourth indications) for the respective objects could also be shifted by means of a second offset. The use of two offsets was disclosed in the application on page 15. A similar argument applied to claim 1 of the first auxiliary request.

Claim 1 of the second auxiliary request should be admitted into the proceedings. Although the issue of added subject-matter was raised by the Examining Division in the summons to oral proceedings, this was dealt with by amendment and was not mentioned in the contested decision. The second auxiliary request was therefore a response to added matter objections raised by the Board, and did not give rise to any new issues in relation to inventive step.

Moreover, claim 1 of the second auxiliary request had a basis in the application as originally filed. Many of the features were based on original claims 1 and 7, and the remaining features relating to the offset values were based on page 15, first paragraph, and Fig. 2.

Reasons for the Decision

1. The appeal is admissible.
2. *Article 123(2) EPC: Main and first auxiliary requests*
 - 2.1 Claim 1 of the main request is based on claim 1 as originally filed, and contains two additional sections.

The first additional section reads as follows:

*"receiving a first offset value in relation to a second tradeable object, which is different from the first tradeable object;
applying the first offset value to a highest bid price available in a market for the second tradeable object to determine a third price level at which to display a third indicator in relation to the common static price axis".*

The second additional section reads as follows:

*"receiving a second offset value in relation in relation to the second tradeable object;
applying the second offset value to a lowest ask price available in the market for the second tradeable object to determine a fourth price level at which to display a fourth indicator in relation to the common static price axis".*

2.2 Neither of these sections has any literal basis in the application as originally filed. There is no explicit textual disclosure of "receiving" first and second offset values in relation to a second tradeable object, of "applying" first and second offset values to a highest bid price and a lowest ask price for a tradeable object, or that this is done "to determine" the third and fourth price levels.

2.3 The appellant argues that the basis is claim 32 as originally filed, which reads as follows:

"An interface as claimed in claim 22, further comprising a user selectable offset, the user selectable offset causing the first indication and the third indication to be shifted relative to each other."

Claim 32 therefore discloses a single (user selectable) offset (or "offset value" in the terminology of claim 1) which introduces a relative shift in the first and third indications (or "indicators" in the terminology of claim 1), i.e. those associated with the highest bid prices for the first and second tradeable objects respectively.

- 2.4 In the Board's view, the fact that original claim 32 discloses only a single offset, whereas claim 1 of the main request defines two offsets, is sufficient by itself to establish that original claim 32 alone cannot provide an adequate basis for claim 1 of the main request.

The appellant argues that, while original claim 32 discloses only a single offset, the skilled person would understand that the ask quantities (second and fourth indications) for the respective objects could also be shifted by means of a second (possibly different) offset. In the Board's view this is an argument directed to how a skilled person might further develop the invention disclosed in the present application, and has no relevance to the question whether the amendments to claim 1 of the main request have a basis in original claim 32.

- 2.5 In the description, the only disclosure of the offsets in any detail is found in the passage from page 15, line 1 to page 16, line 2, and it is true that the possibility of two offsets is disclosed.

However, terms such as "bid", "third indicator", "ask" and "fourth indicator" which are used in defining the amended features of claim 1 appear nowhere in this passage.

2.6 The first paragraph (page 15, lines 1-6) of the cited passage reads as follows:

"In order to facilitate the display of multiple tradeable objects, and in particular the market depth of multiple tradeable objects in relation to a common price axis, the graphical user interface 200 may include a first tradeable object offset indicator 220 and a second tradeable object offset indicator 222. The offsets 220 and 222 are provided to skew, by the selected number of ticks or cells, the quantities displayed for the respective tradeable object relative to the price axis 202."

2.7 Hence, the first offset is provided relative to the first tradeable object, and the second offset is provided relative to the second tradeable object, in both cases for the purpose of skewing the "quantities" displayed for the respective tradeable objects. Which "quantities" are skewed (bid quantities, ask quantities or both) is not disclosed.

By contrast, in claim 1 of the main request, the first and second offsets are both provided relative to the same (second) tradeable object, one being applied to the highest bid price and the other being applied to the lowest ask price. The cited passage provides no basis for these claimed features.

2.8 The Board therefore judges that claim 1 of the main request contains subject-matter which extends beyond the content of the application as filed contrary to the requirements of Article 123(2) EPC, and hence the main request cannot be allowed.

2.9 Claim 1 of the first auxiliary request differs from claim 1 of the main request only in defining that the market information is displayed in a window on a display screen. Hence, the same objections apply in relation to the requirements of Article 123(2) EPC, and consequently the first auxiliary request cannot be allowed. This was not disputed by the appellant.

3. *Second auxiliary request: Applicable law*

3.1 According to Article 25(3) RPBA 2020, where the summons to oral proceedings or a communication under Rule 100(2) EPC has been notified before the date of the entry into force of RPBA 2020, Article 13 RPBA 2007 shall continue to apply.

3.2 In the present case the original summons to oral proceedings was dated 22 November 2019, and was therefore notified before the date of the entry into force of RPBA 2020, which was 1 January 2020 (Article 24(1) RPBA 2020). The oral proceedings were cancelled as part of the precautionary measures against the spread of coronavirus (COVID-19). A second summons to oral proceedings was subsequently sent dated 22 June 2020, and was therefore notified after the date of the entry into force of RPBA 2020.

In a case where more than one summons is sent, it is not explicitly stated in RPBA 2020 which is to be considered "the summons to oral proceedings" within the meaning of Article 25(3) RPBA 2020.

3.3 In general, submissions already on file at the date of the entry into force of RPBA 2020 may be affected by the new provisions. However, the special exceptions of Articles 25(2) and (3) RPBA 2020 are provided "in order

to protect legitimate expectations which parties may have had at the time of filing such earlier submissions" (see the "Explanatory remarks" to Article 25(1) RPBA 2020 in Supplementary publication 2, OJ EPO 2020, page 71).

3.4 The Board's understanding of this is as follows: Where, for example, a communication under Rule 100(2) EPC has been notified before the date of the entry into force of RPBA 2020, statements in the communication may give rise to the expectation that any amendments to a party's appeal case will be dealt with under Article 13 RPBA 2007, and it would therefore be unfair to subsequently impose the "strict provision of revised Article 13, paragraph 2" to such amendments (see the "Explanatory remarks" to Article 25(3) RPBA 2020, in Supplementary publication 2, OJ EPO 2020, page 72).

3.5 Where several communications under Rule 100(2) EPC are sent, such "legitimate expectations" may well arise as a result of statements made already in the first such communication, and so if such expectations are to be protected, it is the first communication which must be decisive for the purpose of applying Article 25(3) RPBA 2020.

Where a summons to oral proceedings is sent, there will also be a communication of the Board under Article 15(1) RPBA 2020, which may be sent together with the summons (see the "Explanatory remarks" to Article 15(1) RPBA 2020, in Supplementary publication 2, OJ EPO 2020, page 62). Where more than one summons is sent, "legitimate expectations" may arise as a result of statements in the first such communication, and the conclusions of the previous paragraph apply. This is certainly so in a case such as the present one where

the cancellation of the first summons and thereby the necessity to issue a further summons cannot be imputed to the party.

3.6 Hence, in a case where the Board has sent more than one summons to oral proceedings, it is normally the summons which was first sent which is "the summons to oral proceedings" within the meaning of Article 25(3) RPBA 2020.

3.7 In the present case the first summons to oral proceedings was notified before the date of the entry into force of RPBA 2020, and hence, according to Article 25(3) RPBA 2020, Article 13 RPBA 2007 applies.

4. *Second auxiliary request: Admission into the proceedings*

4.1 The contested decision did not include any objection under Article 123(2) EPC (even if objections under this article had been raised by the Examining Decision in the written procedure prior to the oral proceedings). The Board therefore accepts that the appellant was first made aware that compliance with the requirements of Article 123(2) EPC in relation to the claimed "offsets" might be an issue in the appeal procedure as a result of the Board's communication under Article 15(1) RPBA 2020.

As a general principle, the appellant has the right to respond pursuant to Article 113(1) EPC to a new issue raised by the Board. However, the Board's communication was dated 15 April 2020 and the oral proceedings took place on 27 April 2021, giving the appellant ample opportunity to respond to the points made therein. In such a case the Board does not recognise any right on

the part of the appellant to delay its response on this issue until the oral proceedings.

Moreover, the appellant did in fact file a letter of response dated 23 February 2021 to the Board's communication, together with amendments to the description. It was the appellant's choice not to address in the letter of response the question of the basis of the claimed "offsets", nor to file any further requests with offset features more closely based on the text of the application as originally filed.

- 4.2 It is therefore a matter of discretion for the Board whether the second auxiliary request is admitted into the appeal proceedings pursuant to Article 13(3) RPBA 2007, which states the following:

Article 13(3) RPBA 2007: Amendments sought to be made after oral proceedings have been arranged shall not be admitted if they raise issues which the Board or the other party or parties cannot reasonably be expected to deal with without adjournment of the oral proceedings.

- 4.3 In applying this provision to requests filed during oral proceedings the Boards regularly apply the principle of "clear allowability", according to which such a request may be admitted if it is immediately apparent to the Board, with little or no investigative effort on its part, that the new request is clearly and obviously allowable, in that it successfully addresses the issues raised without giving rise to new ones (*Case Law of the Boards of Appeal*, 9th Edition, 2019, V.A. 4.5.1b)).

4.4 In relation to Article 123(2) EPC, the final paragraph of claim 1 of the second auxiliary request reads as follows:

a user selecting a value of the first offset, thereby to skew the first and second indicators by a first selected number of cells of the price axis; and/or the user selecting a value of the second offset to skew the third and fourth indicators by a second selected number of cells of the price axis."

As with the amendments to the main request, this text has no literal basis in the application as filed.

4.5 The basis cited by the appellant, the second sentence on page 15, reads:

"The offsets 220 and 222 are provided to skew, by the selected number of ticks or cells, the quantities displayed for the respective tradeable object relative to the price axis 202."

It is not disclosed in this sentence (containing the only occurrence of the word "skew" in the application as originally filed) which of the first to fourth indicators are skewed by the respective first and second offsets, and it is therefore difficult to see how this passage could represent an adequate basis for the wording in the final paragraph of claim 1 of the second auxiliary request.

4.6 It is, moreover, not evident *prima facie* that claim 1 of the second auxiliary request does not give rise to new objections.

For example, it may be doubted whether the claimed feature: "to skew the first and second indicators by a first selected number of cells of the price axis" has an unambiguously clear meaning. It could be taken to mean that the first indicator is skewed with respect to the second indicator, or it could refer to the first and second indicators together being skewed with respect to something else (e.g. the third and fourth indicators). It is therefore at least arguable that the amendments to claim 1 of the second auxiliary request have introduced a lack of clarity, contrary to the requirements of Article 84 EPC 1973.

- 4.7 For the above reasons, it is not immediately apparent that claim 1 of the second auxiliary request overcomes the Board's objections under Article 123(2) EPC or that it does not give rise to new objections. The second auxiliary request is therefore not admitted into the proceedings pursuant to Article 13(3) RPBA 2007.
5. In the absence of an allowable request, the appeal is to be dismissed.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:



B. Atienza Vivancos

T. Bokor

Decision electronically authenticated