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Datasheet for the decision
of 6 September 2021

Case Number: T 2662/16 - 3.4.03

Application Number: 11730779.3

Publication Number: 2585991

IPC: G06Q30/00

Language of the proceedings: EN

Title of invention:
SYSTEM FOR PROVIDING A LOTTERY GAME

Applicant:
Abacus Solutions International IP B.V.

Headword:

Relevant legal provisions:
EPC Art. 56, 84, 97(2)
EPC R. 103(1)(a), 111(2)

Keyword:
Inventive step - mixture of technical and non-technical
features - technical prejudice in the art (no)
Reimbursement of appeal fee - (no) - appealed decision
sufficiently reasoned (yes) - substantial procedural violation
(no)

Decisions cited:

Catchword:

Case Number: **T 2662/16 - 3.4.03**

D E C I S I O N
of Technical Board of Appeal 3.4.03
of 6 September 2021

Appellant:	Abacus Solutions International IP B.V.
(Applicant)	Scheepsbouwersweg 1G
	1121 PC Landsmeer (NL)
Representative:	V.O.
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Decision under appeal:	**Decision of the Examining Division of the European Patent Office posted on 12 July 2016 refusing European patent application No. 11730779.3 pursuant to Article 97(2) EPC.**

Composition of the Board:

Chairman	T. Häusser
Members:	M. Stenger
	G. Decker

Summary of Facts and Submissions

I.   The appeal concerns the decision of the Examining
        Division to refuse European patent application
        No. 11730779. The Examining Division argued that the
        subject-matter of all claims of the sole request then
        on file lacked inventive step (sections 1.1 to 1.5 of
        the Reasons) and that the subject-matter of claim 8
        lacked novelty (section 2.1).

II.   The appellant requested throughout the statement of
        grounds of appeal (page 1, first paragraph; page 4,
        first paragraph; page 5, second paragraph; page 9,
        second paragraph; page 11, last paragraph; page 12,
        last paragraph; page 13, third paragraph; page 14,
        first and last paragraphs) that the decision under
        appeal be set aside and that the "examining of the
        application" be remitted to the first instance, or a
        remittal "to instruct proper examination" or "for
        further and proper examination and grant of a patent".

        On an auxiliary basis, oral proceedings were requested.

        Further, the appellant requested that the appeal fee be
        refunded because "at least some of the four issues
        addressed above constitute substantial procedural
        violations" (grounds of appeal, page 13, last paragraph
        and page 14, second paragraph).

III.   The appellant did not explicitly mention in the
        statement of grounds of appeal the application
        documents on the basis of which "proper examination"
        should be instructed or a patent should be granted.
        However, the appellant referred throughout the grounds
        of appeal to claims which were interpreted by the Board

in its communication pursuant to Article 15(1) RPBA
2020 preparing the oral proceedings as the ones on
which the contested decision is based.

Further, in this communication the Board indicated that
it assumed that the appellant requested the Board, if
the appeal was allowable, to remit the case to the
Examining Division for further prosecution under
Article 111(1) EPC, second sentence, second alternative
(leading to the Examining Division having to re-examine
the case on the basis of the application documents on
which the contested decision is based, being bound by
the ratio decidendi of the Board, see Article 111(2)
EPC).
Claims 1 to 15 on which the contested decision is based
were filed with a letter dated 12 August 2013.

IV.   With a letter dated 14 May 2021, the appellant withdrew
         its request for oral proceedings and requested a
         decision "on the current dossier of the application".
         The appellant did not object to the interpretations and
         assumptions made by the Board in its communication
         pursuant to Article 15(1) RPBA 2020 in relation to the
         requests of the appellant.

V.   The following documents are referred to:

         D1:   WO 03/039697 A1
         D2:   US 6 119 099 A
         D3:   US 2005/170880 A1

VI.   Claim 1 has the following wording:

         Terminal (102, 104, 112) for instructing payment
         transactions comprising:
         a) a visual communication unit (210, 212);

*b) an input unit (206, 208) for receiving
identification comprising account information of a
customer and a confirmation of requesting entry of the
customer to a lottery game;*
c) a remote communication unit (214, 216); and
*d) a processing unit (202) for controlling operations
of elements of the terminal;*
wherein the processing unit is arranged to:
*e) display a first transaction amount for goods or
services to be purchased by the customer by means of
the visual communication unit;*
*f) propose entry in a lottery game to the customer by
means of the visual communication unit;*
*g) upon receiving a confirmation of requesting entry of
the user to a lottery game by means of the input unit,
display a second transaction amount being the first
amount plus an amount for entry in the lottery game;*
h) control the remote communication unit to
   *i) send out an instruction for executing payment of
   the second amount to a banking server (160);*
   *ii) communicate the request of entry in a lottery
   game to a lottery server (150), the request
   comprising the account information; and*
   *iii) receive lottery information sent by the
   lottery server in response to the request;*
*i) upon receiving the lottery information, display at
least part of the lottery information to the customer
by means of the visual communication unit.*

VII.   Claim 8 has the following wording:

Lottery brokerage server (130) comprising:
a) a communication unit (306, 308);
b) a storage unit (304); and
*c) a processing unit (302) for controlling elements of
the lottery brokerage server;*

wherein the communication unit is arranged to
communicate with a customer terminal (102, 104, 112)
for receiving customer lottery entry requests
comprising account information of a customer and with a
lottery server (150) for sending server lottery entry
requests, wherein the storage unit has validation data
stored on it and wherein the processing unit is
arranged to:
d) extract identification data and account information
of the customer from a customer lottery entry request
received from the customer terminal;
e) if the identification data corresponds to at least
part of the validation data, control the communication
unit to send a server lottery entry request to the
lottery server, the server lottery entry request
corresponding to the customer lottery entry request;
f) in response to receiving server lottery information
sent by the lottery server in response to receiving the
server lottery entry request, sending customer lottery
information to the customer terminal, the customer
lottery information corresponding to the server lottery
information; and
g) if the server lottery information indicates that the
lottery entry request resulted in winning a prize,
instruct, via the communication server, a banking
server (160) to pay a prize amount to an account of the
customer identified by the account information.

VIII.   Claim 11 has the following wording:

System for providing a lottery game, comprising:
a) the terminal (102, 104, 112) according to claim 1;
b) the lottery brokerage server (130) according to
claim 8; and
c) a lottery server (150) operatively to the lottery
brokerage server [sic];

wherein the terminal is arranged to communicate with the lottery server via the lottery brokerage server.

IX.   Claim 13 has the following wording:

Method of operating a terminal (102, 104, 112) for instructing payment transactions comprising:
a) display (406) a first transaction amount for goods or services taken by a customer by means of a visual communication unit (210, 212);
b) propose (408) entry in a lottery game to the customer by means of the visual communication unit;
c) upon receiving a confirmation of requesting entry of the user to a lottery game from the customer, display (416) a second transaction amount being the first amount plus an amount for entry in the lottery game;
d) send out (420) an instruction for executing payment of the second amount to a banking server (160);
e) communicate (436) the request of entry in a lottery game to a lottery server;
f) receive (476) lottery information sent by the lottery server in response to the request; and
g) upon receiving the lottery information, display (478) at least part of the lottery information to the customer by means of the visual communication unit.

X.   Claim 14 has the following wording:

Method of operating a lottery brokerage server (130) comprising:
a) extracting (440) identification data from a customer lottery entry request received from a customer terminal (102, 104, 112);
b) if the identification data corresponds to at least part of the validation data, controlling (458) the communication unit to send a server lottery entry

request to a lottery server (150), the server lottery
entry request corresponding to the customer lottery
entry request;
c) in response to receiving server lottery information
sent by the lottery server in response to receiving the
server lottery entry request, sending (474) customer
lottery information to the customer terminal, the
customer lottery information corresponding to the
server lottery information.

XI.   The arguments of the appellant set out in the statement
        of the grounds of appeal are referred to in the part
        "Reasons for the Decision" below.

Reasons for the Decision

1.   The appeal is admissible.

2.   Substantial procedural violation / request for refund
        of the appeal fee

        Separating technical features from non-technical
        features, identifying the closest prior art, defining
        the skilled person's common general knowledge and
        considering its application for solving the posed
        technical problem cannot be considered procedural
        tasks. Instead, these activities relate to judging in
        substance whether or not an invention involves an
        inventive step. Consequently, whenever one of these
        activities was performed incorrectly, this would
        pertain to an error of judgement rather than to a
        procedural violation.

        The first three issues addressed by the appellant in
        the last paragraph of page 13 of the grounds of appeal

(incorrectly separating technical features from non-technical features for assessing novelty and inventive step of claim 1; not properly identifying the closest prior art for assessing inventive step of claim 1; incorrectly applying the definition of common general knowledge) therefore do not relate to procedural aspects.

Concerning the fourth issue addressed by the appellant (i.e. not providing sufficiently reasoned statements for refusing the grant of a patent "for some claims"), the Board notes that decisions of the European Patent Office which are open to appeal shall be reasoned under Rule 111(2) EPC. This is a procedural requirement and the lack of such a reasoning would be considered a substantial procedural violation within the meaning of Rule 103(1)(a) EPC.
However, the requirement that the decisions shall be reasoned applies to the decision as a whole.
Rule 111(2) EPC does not require that a reason be given for each individual claim of an application, in particular not at the same level of detail. In this context, the Board points out that the whole application is already to be refused under Article 97(2) EPC if only one single claim of a sole claim set does not meet the requirements of the EPC.

In the present case, the contested decision substantiates in detail why the subject-matter of claims 1 and 13 is not considered inventive (sections 1.1 to 1.3 of the Reasons). Further, the contested decision comprises a detailed reasoning why the subject-matter of claim 8 is not considered new (sections 2.1 to 2.4). In addition, the contested decision indicates that "the subject-matter of all claims lacks an inventive step" (section 1.5) and gives

some reasons therefore concerning claims 8, 11 and 14
(section 1.4). For the reasons set out above, it is
irrelevant that the latter reasons are given at a lower
level of detail than the substantiations given in
sections 1.1 to 1.3.

Thereby, the contested decision is sufficiently
reasoned within the meaning of Rule 111(2) EPC,
contrary to the submission of the appellant.

Thus, the four issues raised by the appellant (grounds
of appeal, page 13, last paragraph) do not constitute
substantial procedural violations and the requirements
of Rule 103(1)(a) EPC for a refund of the appeal fee
are not fulfilled.

3.   Article 84 EPC, claim 8

Claim 8 refers to "the communication server" in feature
g). However, no communication server is mentioned as
part of the lottery brokerage server in the preceding
features of claim 8. Thereby, claim 8 does not fulfil
the requirements of Article 84 EPC.

In the following, as in the Board's communication
preparing the oral proceedings, the term "communication
server" in feature g) of claim 8 will be interpreted as
"communication unit" as defined in features a) and c)
of claim 8.

4.   Inventive step, claims 1, 8, 11, 13 and 14 - technical
        features / conventional payment processing systems

The appellant does not contest that the Examining
Division separated the technical features from the

non-technical features (grounds of appeal, page 2,
lines 13 to 16).

It submits, however, that when separating the technical
from the non-technical features, the features providing
a technical contribution should be identified instead
of the features *not* providing a technical contribution
(grounds of appeal, page 2, lines 18 to 22).

This will be done in the following for the independent
claims.

4.1   Claim 1

The Board agrees with the appellant's identification of
the following technical features of claim 1 (grounds of
appeal, page 3, second paragraph):

1   a terminal with
2   a visual communication unit,
3   an input unit for receiving information,
4   a remote communication unit and
5   a processing unit,
6   the various modules of the terminal being arranged
to communicate with a banking server
7   as well as with a lottery server, and
8   the visual communication unit being arranged for
displaying particular information.

In the contested decision (section 1.1 of the Reasons),
the Examining Division indicates that the claims
concern known payment processing systems composed of
POS terminals and banking servers.

The POS terminals of such systems commonly comprise
visual communication units/displays, input devices
(such as keypads, card readers and bar code readers),
remote communication units and processing units.
Further, such terminals conventionally communicate with

the banking servers of such known payment processing systems.

Thereby, known payment processing systems undoubtedly disclose features 1 to 6.

Further, such payment processing systems, at the priority date of the present application, usually involved a number of banking servers of different payment processing companies, for instance, different credit or banking card companies.

Therefore, the only aspect of feature 7 that is not disclosed by a commonly known payment processing system is that one of the servers to which the terminal is connected performs *lottery* instead of *banking* functions (see also grounds of appeal, page 4, lines 20 to 23).

In a similar manner, the only aspect of feature 8 that is not disclosed by a commonly known payment processing system is the particular information displayed, i.e. the content of what is displayed, relating to a lottery game (*ibid.*).

4.2   Claim 8

Claim 8 is directed at a lottery brokerage server and comprises the following technical features:

9   an intermediate server with
10   a communication unit arranged to receive data from and send data to a terminal and a server, the communication unit being further arranged to send data to another server
11   a storage unit,
12   a processing unit.

Intermediate servers according to feature 9 and further
comprising features 10, 11 and 12 were, however,
generally known at the priority date of the present
application (28 June 2010), for various aspects of data
processing. One of these generally known aspects of
data processing is to provide interfaces in order to
remove the need for individual computers to be able to
communicate with multiple other computers (see grounds
of appeal, page 6, lines 15 to 20). Examples would be
gateways or proxy servers. The Board does not believe
that it is necessary to provide written evidence in the
form of e.g. a textbook excerpt therefor.

Thus, the only technical aspects of claim 8 going
beyond what was generally known from intermediate
servers at the priority date of the present application
are those aspects relating to the lottery game.

The Board notes as an aside that documents D1 to D3
represent further examples of intermediate processing
by such intermediate servers, even in the context of
lottery systems, in line with the Examining Division's
reasoning in section 1.4 of the contested decision.

4.3   Claim 11

Claim 11 essentially combines the features of claims 1
and 8 to a system. The Board notes that the use of
intermediate servers in the framework of payment
processing systems was also generally known at the
priority date of the present application.

For the reasons set out above, the only technical
aspects of claim 11 going beyond what was generally
known from payment processing systems with terminals,

banking servers and intermediate servers at the
priority date of the present application are those
aspects relating to the lottery game.

4.4   Claims 13 and 14

Claims 13 and 14 relate to methods of operating a
terminal and a server for the purpose of conducting a
lottery game. The technical aspects of the terminal and
server referred to were generally known at the priority
date of the present application as set out above with
respect to claims 1 and 8. The methods themselves do
not add any technical aspects not already comprised in
claims 1 and 8.

Thus, the only technical aspects of claims 13 and 14
going beyond what was generally known from payment
processing systems with terminals, banking servers and
intermediate servers at the priority date of the
present application are those aspects relating to the
lottery game.

5.   Inventive step, claims 1, 8, 11, 13 and 14 - problem-
solution approach

5.1   Closest state of the art

It follows from the above that a generally known
payment processing systems with terminals, banking
servers and intermediate servers and the corresponding
method is a suitable starting point or closest prior
art in the framework of the problem-solution approach.

The Board does not believe that it is necessary here to
provide a reference in the form of a patent document to
any *specific* POS terminal or system, contrary to the

suggestion of the appellant (grounds of appeal, page 3, lines 25 to 27). This is dispensable since such terminals/systems and the corresponding methods were *generally known* at the priority date of the present application.

5.2   Difference

The subject-matter of claims 1, 8, 11, 13 and 14 differs from a system/method according to the closest state of the art only by aspects directly related to the creation of a lottery. Considerations which parties and which entities are to perform which tasks in a lottery scheme, and how access to lottery-relevant information is managed are merely implementations of a business idea (see below), contrary to the submissions of the appellant (see grounds of appeal, page 6, lines 20 to 22 and page 10, line 12 to 15).

These aspects are all part of what was listed by the Examining Division in section 1.1 of the contested decision, i.e. steps a) to g) of claim 13 and what is further defined in steps a) to c) of claim 14.

5.3   Objective technical problem

Creating a lottery is *per se* a business idea, as set out by the Examining Division (section 1.1 of the contested decision). Thereby, the aspects relating thereto may be seen as requirements to be met that are given to the technically skilled person.

The objective technical problem to be solved can thus be formulated as how to implement the aspects relating to the creation of a lottery on a generally known payment processing system with terminals, banking

servers and a proxy server, and how to implement the
corresponding method.

5.4   Obviousness

5.4.1   Such an implementation does not involve any particular
         technical problems the solution of which would require
         the exercise of any inventive skills. The application
         does not mention any such problem, either. Instead,
         such an implementation has to be considered to be a
         straightforward task for the technically skilled
         person.

5.4.2   The appellant submitted that lottery business was a
         conservative business and that, in order to prevent
         fraud, lottery operators had a strong prejudice against
         system integration (grounds of appeal, page 5, lines 14
         to 21), which would have led the skilled person at most
         to provide a communication link between a lottery
         terminal and a POS terminal (grounds of appeal, page 6,
         lines 4 to 6) if they wanted to solve the problem of
         establishing an exchange of information between the two
         terminals (grounds of appeal, page 5, lines 9 to 12).

         However, the Board doubts that such a prejudice really
         existed, since D1, D2 and D3 all disclose lottery
         systems that are in some way integrated into other
         systems (D1: banking server 50, see figure 1 and
         page 13, lines 16 to 23; D2 and D3: POS systems, see
         figures).

         In any case, contrary to the arguments of the
         appellant, if such a prejudice existed, it would have
         been based on business considerations only and not on
         technical aspects of the lottery system. Such business
         considerations would include, *inter alia*,

considerations which parties and which entities are to perform which tasks in a lottery scheme, as noted above.
The technically skilled person, on the other hand, would not have had to overcome a technical prejudice in order to integrate a lottery system into a payment processing system with terminals, banking servers and a proxy server.

5.4.3   The appellant further submitted that in D1, the verification of winning numbers was performed at the agent server and that the skilled person would have had no reason to move this verification to the state lottery administrator (grounds of appeal, page 9, line 20 to page 11, line 8).

However, as mentioned above, considerations which parties and which entities are to perform which tasks in a lottery scheme, and how access to lottery-relevant information is managed are non-technical aspects of such a scheme. Such considerations include determining where winning numbers are drawn and where they are compared with numbers assigned to a lottery participant. Thus, even if the verification of winning numbers was performed in D1 at a different location than in the present application, this difference would reflect a non-technical aspect and could thus be incorporated into the requirement specification given to the technically skilled person.

5.4.4   In view of the above the subject-matter of claims 1, 8, 11, 13 and 14 lacks inventive step (Articles 52(1) and 56 EPC).

6.   Other issues

In view of the above, it does not need to be discussed whether D1 discloses in fact all the features of claim 8 of the present application or not. In a similar manner, the objection relating to Article 82 EPC raised in the Board's communication pursuant to Article 15(1) RPBA 2020 need not be discussed, either.

7.   Conclusion

Claim 8 does not meet the requirement of clarity (Article 84 EPC). None of claims 1, 8, 11, 13 and 14 meets the requirement of inventive step (Articles 52(1) and 56 EPC). Consequently, the appeal must fail.

Order

For these reasons it is decided that:

1.   The appeal is dismissed.

2.   The request for reimbursement of the appeal fee is refused.

The Registrar: The Chairman:

S. Sánchez Chiquero   T. Häusser

Decision electronically authenticated