

Internal distribution code:

- (A) [-] Publication in OJ
- (B) [-] To Chairmen and Members
- (C) [-] To Chairmen
- (D) [X] No distribution

**Datasheet for the decision
of 20 July 2020**

Case Number: T 2612/17 - 3.2.04

Application Number: 08827627.4

Publication Number: 2285458

IPC: A63F1/10

Language of the proceedings: EN

Title of invention:

TABLE WITH INDICATORS AND SMART CARD HOLDER FOR AUTOMATED
GAMING SYSTEM AND GAMING CARDS

Applicant:

French, John B.

Headword:

Relevant legal provisions:

EPC Art. 123(2), 56

Keyword:

Amendments - added subject-matter - main request (yes)

Inventive step - auxiliary request (yes)

Decisions cited:

T 0003/90

Catchword:



Beschwerdekammern
Boards of Appeal
Chambres de recours

Boards of Appeal of the
European Patent Office
Richard-Reitzner-Allee 8
85540 Haar
GERMANY
Tel. +49 (0)89 2399-0
Fax +49 (0)89 2399-4465

Case Number: T 2612/17 - 3.2.04

D E C I S I O N
of Technical Board of Appeal 3.2.04
of 20 July 2020

Appellant: French, John B.
(Applicant) 4170 Longknife Road
Reno, NV 89519 (US)

Representative: Mewburn Ellis LLP
City Tower
40 Basinghall Street
London EC2V 5DE (GB)

Decision under appeal: **Decision of the Examining Division of the
European Patent Office posted on 5 July 2017
refusing European patent application No.
08827627.4 pursuant to Article 97(2) EPC.**

Composition of the Board:

Chairman J. Wright
Members: G. Martin Gonzalez
T. Bokor

Summary of Facts and Submissions

- I. The appeal was filed by the appellant (applicant) against the decision of the examining division to refuse the patent application in suit (in the following "the application").
- II. The examining division decided that the subject-matter of claim 1 of all requests lacked inventive step.
- III. Oral proceedings before the Board were scheduled for 20 July 2020 pursuant to Rule 115(1) EPC. In a letter dated 3 July 2020, the appellant-applicant informed the Board that it would not attend the scheduled oral proceedings. In a communication sent 17 July 2020, the Board informed the parties that the oral proceedings scheduled for 20 July 2020 were cancelled because, as the appellant would not attend, the Board no longer saw a need for them.
- IV. The appellant requests that the decision under appeal be set aside and that a patent be granted on the basis of the main request or, in the alternative, on the basis of one of auxiliary requests 1 to 7, all filed with letter dated 3 July 2020.
- V. The claims relevant for this decision read as follows:

Main and first auxiliary requests, claim 1:

"A system for tracking movement and/or play and/or identity of playing cards 12 using an intelligent card holder 2 comprising:
a holding compartment in said holder 2 for receiving and holding playing cards 12;

a dispensing opening 44 in said holder 2 for distributing or dealing playing cards 12;
a plurality of electronically readable and writeable playing cards 12;
an electronic control system 32 in said holder 2 for interfacing with other electronic components and receiving, analyzing, and storing data;
at least one electronic component 13, 14, 15 in said holder 2 for reading data from said playing cards 12;
and
at least one electronic component 14, 15 in said holder 2 for writing data to said playing cards 12".

Main request, claim 6:

"The system as recited in claim 1, further comprising an electronic control system for interfacing and controlling an antenna at said holder, and for processing information received by the antenna when scanning the gaming cards, wherein:

said electronic control system is capable of maintaining a running inventory of all of the playing cards at the table, by value and by location, and is further capable of identifying an invalidating counterfeit and unauthorized playing cards;

said electronic control system is capable of maintaining a running inventory of all of the gaming chips at a table, by value, individual fingerprint and by location, and is further capable of identifying and invalidating counterfeit and unauthorized gaming chips;

said electronic control system is capable of maintaining a running or intermittent inventory of playing cards and/or chips at a table and is further

able to determine a piece's location on a table by determining proximity to table optical patterns and/or table antennas and/or table transponders; and

each movement of a playing card 12 between locations on a gaming table 20 is recorded as the card's transactional history, and said electronic control system 32 is capable of identifying a playing card 12 which is not in a location indicated by the transactional history for that card".

VI. In the present decision, reference is made to the following documents:

D1: EP 1762991 A
D2: WO 2007067213 A
D5: GB 2428013A
D10: WO 02/094397 A
D11: US20050059482 A
D12: US7114718B2

VII. The appellant-applicant's arguments can be summarised as follows:

Main request:

Claim 6 does not add subject-matter because it combines original claims 11, 15, 26 to 29 and 32.

For the first auxiliary request, the subject-matter of claim 1 is new and involves an inventive step.

The invention concerns a system for tracking pre-printed gaming pieces using electronic components and achieved by reading and writing whereas D1 relates to a

game phase detector applied to cards that have no read-write capability.

Documents D1 and D10 are fundamentally incompatible so the skilled person would not combine their teachings.

Reasons for the Decision

1. The appeal is admissible.
2. Procedural matters

The appellant informed the Board with its letter of 3 July 2020 of its non-attendance at the oral proceedings then scheduled for 20 July 2020. According to generally established practice, the Board considers that such statement amounts to a withdrawal of the request for oral proceedings, see CLBA III.C.4.3.2, for example T0003/90 (headnote and reasons, point 1).

3. Background

The application (see published application, WO2009/026110, paragraphs [0017] and [0018]) relates to a playing card holder that can read and write data from playing cards.

4. Admissibility of requests

The latest requests, filed with letter of 3 July 2020, appear to be a genuine attempt to address objections raised by the Board in its communication regarding certain dependent claims. Although the requests were filed very shortly before the date for oral proceedings then still scheduled, the amendments mainly combined

features from originally filed claims and deleted certain claims. Therefore, the Board considered that the amendments could be readily dealt with by the Board without delaying the proceedings.

4.1 The Board therefore decided to exercise its discretion under Articles 13(1) and 13(3) RPBA 2007 with Article 114(2) EPC by admitting all those requests into the proceedings which are relevant for the present decision, as apparent from the reasons below.

5. Main request, added subject-matter, claim 6

5.1 In the Board's communication dated 10 March 2020 (see point 6.4), the Board opined that claim 6 then on file added subject-matter. The relevant part of the provisional opinion reads as follows:

"Claim 6 depends on claim 1. The wording of claim 6 appears to come from original claim 32 which was dependent on each of original claims 26 to 29. However, the subject-matter of the latter claims has not been incorporated into claim 6. Therefore, this claim appears to add subject-matter extending beyond the application as filed. [...]".

5.2 With a letter dated 3 July 2020, the appellant filed a new set of claims as a main request. Claim 6 of this request incorporated, amongst other features, the wording of original claim 26 starting with "further comprising an electronic control system...". However, original claim 26 also contained a back reference to each of claims 21 through 25. The subject-matter of none of these claims was incorporated into present claim 6. Therefore, present claim 6 is broader in scope than the combination of original claims 11 and 26

(amongst other claims) would allow. In its letter of 3 July 2020 (see point 4.1), the appellant merely stated that claim 6 had been amended to include the features of original claim 26 without explaining why the subject-matter of any of the back referenced claims 21 through 25 need not be included. The Board does not see why such a broadening of the subject-matter with respect to original claim 26 might be allowable.

5.3 Therefore, the Board finds that claim 6 of the main request adds subject-matter that extends beyond the application as filed.

5.4 Main request, added subject-matter, claims 7 and 8

For completeness, the Board notes that the conclusion regarding claim 6 (added subject-matter), also applies to claims 7 and 8 of the main request. This is because they likewise incorporate (amongst other features) wording of claim 26 without the subject-matter of any of its back referenced original claims 21 through 25.

5.5 Moreover, the appellant-applicant has had the opportunity to comment on these matters, Article 113(1) EPC.

In the Board's communication dated 10 March 2020 (see point 6.4) the appellant was made aware of the added subject-matter objections in respect of claims 6 to 8 of the main request. It therefore had sufficient opportunity to take a position thereon in writing, as indeed it did with the present main request, aimed at overcoming the above objections. The Board is thus satisfied that the requirements of Article 113(1) EPC have been met.

- 5.6 The Board concludes that the main request must fail.

- 6. First auxiliary request, added subject-matter
 - 6.1 In the Board's view, the claims have a basis in the original claims of the application.
 - 6.1.1 Claim 1 directly combines original claims 11 and 15. Claim 2 combines original claims 11,15, 12, 13, 19 and 24. Claim 3 combines original claims 11, 15 and 21. Claim 4 combines original claims 11, 15 and 23. Claim 5 combines the subject-matter of original claims 11, 15, 24, 25 (clarified) and 27 to 32. Claim 6 (renumbered), is a combination of original claims 11, 15 and 17. Claim 7 (renumbered) is a combination of original claims 11, 15 and 41.
 - 6.2 The Board also notes that claims 6 to 8 of the main request are not present in the first auxiliary request.
 - 6.3 The Board concludes that the claims of the first auxiliary request do not add subject-matter extending beyond the application as filed. Therefore they meet the requirements of Article 123(2) EPC.

- 7. First auxiliary request, clarity

The Board finds that the claims are clear (Article 84 EPC). In particular, claim 5 is clarified to refer to the "holder 2", consistent with claim 1 (rather than a "shoe", cf. original claim 25, which has no precedent in present claim 1).

- 8. First auxiliary request, claim 1, inventive step

- 8.1 The Board has no reason to doubt that the subject-matter of claim 1 is new.
- 8.2 The examining division dealt only with inventive step and found the subject-matter of claim 1 to lack inventive step starting from D1 in combination with D10. The Board disagrees with this finding for the reasons explained below.
- 8.3 D1 (see abstract) discloses a system for tracking movement/play and identity of playing cards (for example dealer hole cards in blackjack). The system comprises an intelligent card holder, for example the smart card dealing "shoe" 188 (cf. paragraph [0027]).

It is implicit that the dealing shoe has a compartment for receiving and holding cards and a dispensing opening from which cards are distributed or dealt. The (smart-shoe) card holder (see paragraphs [0027] and [0037]) can provide outputs to a computer, including the identity of particular cards.

This means that the holder has an electronic control system for interfacing with other electronic components (computer) and receiving data. This in turn implies some kind of data processing requiring analysis and storage, even if only to render data communicable to the computer.

- 8.4 The Board considers that the feature "electronically readable playing cards" implies that electronically encoded data is retrievable from the cards.

In the Board's view, although the playing cards in D1 are readable in a general sense, just as any playing

card, the Board does not consider them to be electronically readable as claimed.

In this regard, the Board notes that D1 discloses a plurality of *readable* playing cards (see for example paragraph [0035] and [0036]: cards can be interrogated in any known manner) and the shoe of D1 has a card detector (column 6, line 4 to 9). However, the only example given for reading the cards appears to be a camera (see paragraph [0036]). Interrogating a card with a camera is purely passive and does not involve an exchange of electronically encoded data from the card to the shoe. This interpretation of D1 appears to be confirmed (see paragraph [0076]) by the statement that D1's invention works with any type of playing card.

- 8.5 Therefore, the Board considers that the examining division was wrong in finding D1 to disclose electronically readable playing cards (cf. impugned decision, bottom of page 7).
- 8.6 However, the Board agrees with the examining division's finding (see impugned decision, top of page 8) that D1's cards are not electronically writeable. D1 does disclose (see paragraph [0031]) tokens which are read/writeable, but these are neither playing cards nor destined to be held in a holding compartment for playing cards. They are tokens representing money and are for placing in a token tray.

Moreover, D1's holder (shoe) does not have at least one electronic component for reading data from the playing cards, in the sense of reading electronically encoded data from an electronically readable card, as the Board interprets this claim feature to require. Nor does D1

disclose an electronic component for writing data to the playing cards as claimed.

In summary, the subject-matter of claim 1 differs from D1 in the system comprising electronically readable and writeable playing cards and the holder having an electronic component to read data from these cards and one to write data to these cards.

- 8.7 According to the application (see paragraph [0014]), making cards electronically read/writeable allows, amongst other things, game play to be monitored.

Therefore, in the Board's view, the objective technical problem can be formulated as: how to modify the system of D1 to improve game-play monitoring.

- 8.8 D10 discloses a card storage apparatus for cards that removes indicia, that is visible markings, from the cards and provides them with new indicia, then supplies the cards to users (see abstract and figure 4). D10 also discloses (page 5, line 25 to page 6, line 16) that the cards can be provided with an electronic or magnetic storage means so that they can be programmed, electronically interrogated and reprogrammed. The cards are thus electronically readable and writeable. This allows games to be monitored (see page 6, lines 25 to 32).

- 8.9 In the Board's view, in solving the objective technical problem, it would be obvious for the skilled person to use the read/write cards disclosed in D10 in the holder (shoe) of D1.

Therefore, the issue of inventive step hinges on whether, in the interests of further improving

monitoring, it would be obvious to provide the holder of D1 with electronic components for reading and writing to the cards.

- 8.10 In the Board's view, it would be obvious to provide D1's smart shoe with an electronic component to read playing cards. In D1, cards are dealt from or shuffled in the smart shoe (see for example paragraph [0027]), and the type of card (rank and suit) is detected by a camera (see paragraph [0036]). If the shoe held electronically readable cards it would be obvious to provide an electronic reader, rather than a camera, to detect this identity.
- 8.11 However, the Board does not think it would be obvious to furthermore write data to the cards in the shoe, because its function is to shuffle or deal, but not to generate new cards (giving them a new identity) as D10's device does.
- 8.12 For completeness, the Board also notes that it would not be obvious to give D10's storage apparatus the ability to read cards. As already explained, D10's device deletes the old identity of cards and gives them a new one (for example by reprogramming them). D10's device therefore knows the new identity it is assigning to a card so the system of D10 would not need to read it from the card. Nor would it make sense to read the old identity of a card which was to be deleted.
- 8.13 Therefore the combination of D1 with D10 would, in the Board's opinion, not render the subject-matter of claim 1 obvious.
- 8.14 The Board has no reason to consider that any other document cited is of greater relevance than D1 and D10.

In its decision, the examining division has referred to D2. This also discloses an intelligent shoe (see paragraph [0054]), however, as with D1, it reads cards' identities optically (see page 9, line 21). The decision also mentions D5. This discloses a card with an integrated memory that stores card identity (see for example page 3, lines 5 to 20). It also discloses that this can be read when cards are dealt (page 5, lines 6 to 12). However, the readers are in the table, so there appears to be no suggestion to provide a holder such as a card shoe with an electronic reader, let alone an electronic writing component.

- 8.15 Other documents cited in the supplementary search report are of category A (technical background documents not prejudicial to novelty or inventive step). With regard to the International Search Report, only two documents are cited as more relevant than category A. These are D11 (US20050059482 A) and D12 (US 7114718 B2).

D11 discloses a read/write storage and dispenser arrangement for data cards that stores a user's credit and winnings etc. (see abstract and paragraph [0022]). However, it appears not to disclose any playing cards.

D12 discloses (see column 5, lines 19 to 27 and column 6, lines 18 to 21) a holder for cards which reads cards, for example optically with a camera. However, neither electronically readable or writeable cards are disclosed.

- 8.16 Therefore, none of the documents available to the Board are prejudicial to novelty or inventive step of the subject-matter of claim 1. Thus, the Board finds the subject matter of claim 1 to be new and inventive.

9. In light of the Board's finding on auxiliary request 1, the remaining requests need not be treated by the Board.
10. Adaptation of the description and/or drawings
 - 10.1 Rule 115(2) EPC and Article 15(3) RPBA 2020 address the situation that a duly summoned party is absent from the oral proceedings. Rule 115(2) EPC provides that the proceedings may continue without that party, and Article 15(3) RPBA 2020 confirms that the board is not obliged to delay any step in the proceedings, including its decision, by reason only of the absence of such party who may then be treated as relying only on its written case.
 - 10.2 In the present case, the appellant has not provided any adapted description and/or drawings for the various requests which were filed very shortly before oral proceedings then scheduled. Moreover, since the appellant has informed the Board that it would not attend these oral proceedings (amounting to a withdrawal of its request for oral proceedings), it is to be treated as relying on its written case.
 - 10.3 Without prejudice to the Board's decision to cancel oral proceedings deemed not to serve any purpose, extending written proceedings in order for the appellant to adapt the description and/or drawings would delay the Board's decision. In the Board's view, these special reasons warrant that the Board exercises its discretion under Article 111(2) EPC with Article 11 RPBA 2020 to remit the case to the examining division in order for the description/drawings to be adapted as necessary to the claim set found allowable by the Board.

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.
2. The case is remitted to the examining division with order to grant a patent with claims 1 to 7 filed as auxiliary request 1 with the letter dated 3 July 2020, and a description and drawings to be adapted thereto.

The Registrar:

The Chairman:



G. Magouliotis

J. Wright

Decision electronically authenticated