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**Datasheet for the decision
of 17 January 2023**

Case Number: T 1424/19 - 3.4.03

Application Number: 12795734.8

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Language of the proceedings: EN

Title of invention:
MULTIPLAYER GAMING SYSTEM

Applicant:
Novomatic AG

Headword:

Relevant legal provisions:

EPC Art. 56
RPBA 2020 Art. 13(2)

Keyword:

Inventive step - all requests (no)
Amendments after summons - exceptional circumstances (yes) -
response to objections first raised by the board

Decisions cited:

Catchword:



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Case Number: T 1424/19 - 3.4.03

D E C I S I O N
of Technical Board of Appeal 3.4.03
of 17 January 2023

Appellant: Novomatic AG
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Decision under appeal: **Decision of the Examining Division of the
European Patent Office posted on 11 December
2018 refusing European patent application No.
12795734.8 pursuant to Article 97(2) EPC.**

Composition of the Board:

Chairman M. Stenger
Members: M. Papastefanou
E. Mille

Summary of Facts and Submissions

- I. The appeal is against the decision of the examining division refusing the European patent application No. 12 795 734.8 (published as WO 2013/075838 A1) on the grounds that the main, first and second auxiliary requests before it did not involve an inventive step (Articles 52(1) and 56 EPC) and the third auxiliary request contained subject-matter extending beyond the originally filed content of the application (Article 123(2) EPC).
- II. Reference is made to the following documents, cited in the impugned decision:
- D1: US 5,588,650
D7: US 2009/0104963 A1
- III. At the end of the oral proceedings before the board, the appellant's (applicant's) requests were that the decision under appeal be set aside and a patent be granted on the basis of the main request or one of the auxiliary requests I to V. The main request and auxiliary requests I to III correspond to the respective requests underlying the impugned decision, while auxiliary requests IV and V were filed during the oral proceedings before the board.
- IV. Claim 1 of the **main request** reads as follows:
- A multiplayer gaming system (1) comprising a ball game device (2) having a launching mechanism (5) for launching a ball into a gaming area (3) to start a game,
the gaming system further comprising a start control*

means (6) for controlling start of the launching mechanism (5)
and a plurality of gaming terminals (T1, T2, T3, Tn) for a plurality of players, said gaming terminals including an input device (7) for inputting a prediction and/or a bet for the outcome of a game, wherein the input device (7) of each gaming terminal (T1, T2, T3, Tn) includes start signal input means (8) for inputting a start signal for starting the launching mechanism (5),
wherein a display signal generator (10) is provided for generating a display signal indicative of the gaming terminal (T1, T2, T3, Tn) to generate the start signal characterized in that the start control means (6) includes a random signal generator (RNG) for randomly selecting at least one of the gaming terminals (T1, T2, T3, Tn) for enabling to generate the start signal wherein the start control means (6) include a random timeout delay for providing a random delay upon receipt of the start signal from the selected gaming terminal (T3) to activate the launching mechanism (5) with a random delay upon receipt of the start signal from the selected gaming terminal (T3).

V. Claim 1 of **auxiliary request I** has the following wording:

A multiplayer gaming system (1) comprising a ball game device (2) having a launching mechanism (5) for launching a ball into a gaming area (3) to start a game,
the gaming system further comprising a start control means (6) for controlling start of the launching mechanism (5)
and a plurality of gaming terminals (T1, T2, T3, Tn) for a plurality of players, said gaming terminals

including an input device (7) for inputting a prediction and/or a bet for the outcome of a game, wherein the input device (7) of each gaming terminal (T1, T2, T3, Tn) includes start signal input means (8) for inputting a start signal for starting the launching mechanism (5), wherein a display signal generator (10) is provided for generating a display signal indicative of the gaming terminal (T1, T2, T3, Tn) to generate the start signal, wherein the start control means (6) is responsive to a timer device (15) providing for a timeframe for placing predictions and/or bets on the outcome of a game, characterized in that the start control means (6) includes a random signal generator (RNG) for randomly selecting at least one of the gaming terminals (T1, T2, T3, Tn) for enabling to generate the start signal, wherein a selector (9) is adapted to select the gaming terminal (T3) for the generation of a start signal at a predetermined first point of time within said timeframe for placing predictions and/or bets and wherein the display signal generator (10) is adapted to generate the display signal indicative of the gaming terminal selected for the generation of the start signal at a predetermined second point of time after said timeframe.

VI. Claim 1 of **auxiliary request II** comprises the combined features of claim 1 of the main request and auxiliary request I.

VII. Claim 1 of **auxiliary request III** comprises all the features of claim 1 of auxiliary request II with the additions of the following features:

- *wherein a game server (14) is, on the one hand, connectable to the ball game device (2), and, on*

the other hand, connectable to all gaming terminals (T1, T2, T3, Tn); and

- *wherein said selector (9) and the display signal generator (10) are included in at least one of the gaming terminals (T1, T2, T3, Tn) or in the ball game device (2).*

VIII. Claim 1 of **auxiliary request IV** has the same wording as claim 1 of auxiliary request III, but in which the last feature

"wherein said selector (9) and the display signal generator (10) are included in at least one of the gaming terminals (T1, T2, T3, Tn) or in the ball game device (2)"

was replaced by

"wherein said selector (9) and the display signal generator (10) are included in at least one of the gaming terminals (T1, T2, T3, Tn)".

IX. Claim 1 of **auxiliary request V** has the same wording as claim 1 of auxiliary request III, but in which the last feature

"wherein said selector (9) and the display signal generator (10) are included in at least one of the gaming terminals (T1, T2, T3, Tn) or in the ball game device (2)"

was replaced by

"wherein said selector (9) and the display signal generator (10) are included in a plurality of the

gaming terminals (T1, T2, T3, Tn)".

- X. The appellant essentially argued that the skilled person starting from D1 would have never considered D7 because the games described in D7 are different from the roulette-like game of D7. The examining division's conclusion was therefore tainted by hindsight.

Reasons for the Decision

1. The claimed invention
 - 1.1 The claimed invention relates to an electronic gaming system, similar to the known roulette game (see Figure 1). Multiple players using individual gaming terminals are connected to a central ball game device, which displays the game, including a virtual betting area and a virtual roulette wheel. The players can place bets using their terminals, as in a "normal" roulette game (see also Figure 2).
 - 1.2 In order to increase participation, the system allows the players to generate the start signal for the game (i.e. to "launch" the ball into the spinning wheel). In order to increase unpredictability, the system selects randomly the player (terminal) who will generate next the start signal. The selected terminal is displayed just before the game is set to start.
 - 1.3 A risk is that players may develop skills in "launching" the ball so that it may end at the number they have betted on. In order to avoid this type of manipulation, the system adds a random time delay, so that when a player (terminal) generates the start signal, the game is not activated right away, but only after this random time delay.

2. Main request

2.1 It was common ground that D1 represented the "closest prior art" and that claim 1 of the main request differed from it by two features:

- (a) that the control means of the game terminal include a random signal generator for randomly selecting at least one of the gaming terminals for enabling to generate the start signal, and
- (b) that the control means generate a random timeout delay for providing a random delay upon receipt of the start signal from the selected gaming terminal to activate the launching mechanism with a random delay upon receipt of the start signal from the selected gaming terminal.

In D1, the selection of which player (terminal) will generate the start signal follows "a predetermined pattern". When a player (terminal) is selected/enabled they have a predetermined time period in which they must activate the start signal, and if time time period is over without any activation, then the system activates it automatically (see column 5, lines 51 to 64).

2.2 The appellant did not question the examining division's conclusion that it would have been obvious for the skilled person to introduce a random selection of which player (terminal) would be enabled to start the game (give the start signal) in the system of D1 (feature (a)). The appellant's arguments, both in writing and during oral proceedings related only to feature (b). Therefore, the question of inventive step related only to the assessment of feature (b).

- 2.3 According to the appellant, the examining division's reference to D7 and the combination of its teaching with the one of D1 was based on hindsight. D7 related to a different type of game and the skilled person would not have any reason to consider it. Moreover, introducing a (random) time delay at the activation of the start signal in the system of D1 would be against its overall teaching.
- 2.3.1 D7 describes an embodiment of a game similar to a roulette game (see Figure 58 and paragraphs [1039] to [1044]). Instead of using a ball which would stop at a number, the game of D7 uses a laser beam, which at a certain point is activated and aims at a number of the spinning wheel of the roulette. This number is regarded as the winning number. In particular embodiments, the players can activate the laser beam themselves (paragraph [1042]). As D7 explicitly mentions, in order to avoid that the players acquire skills over time and become able at "aiming" the laser beam at the number they have bet on, the system introduces a random time delay, so that when the player gives the activation signal, the laser beam is not immediately activated but only after this added random time delay. This makes the game less predictable (see paragraph [1042], in particular the last lines).
- 2.3.2 The appellant argued that the game described in the specific embodiment of D7 was a different game from the roulette-like game of D1. In the game of D7, a laser beam was activated and the result of the game, i.e. the selected number, was known instantly. So when the players activated the beam they were in essence selecting themselves the winning number. The game in D7 was thus a "shooting game" where players had to aim and shoot at the desired targets. In the game of D1, which

was more similar to the known roulette game, the player activated ("launched") the (virtual) ball into the (virtual) spinning roulette disc and the result of the game, i.e. the winning number, was still unknown as it depended on where the ball was going to stop. Hence, it was not the player who selected the winning number but this was a result of the rotation of the wheel and the stopping position of the ball. It was thus clear that the games were different and that the skilled person trying to improve the game of D1 in any way would have no reason to consider D7.

2.3.3 In such a case (i.e. without taking D7 into consideration), the skilled person seeking to compensate for the players' skill in launching the ball in the game of D1 would simply remove this feature from the game. D1 described that the player selected to activate the game (to "launch" the ball) had a certain time to do so, and if they did not activate the ball within this time, the ball was launched automatically (see column 6, lines 51 to 64). According to the appellant, the obvious solution for the skilled person, who was trying to stop the players from manipulating the game, would have been to set the automatic launching of the ball as a standard feature and remove the possibility of the players to launch it themselves. The idea to add a random time delay as in the claimed system would only have been arrived at with hindsight.

2.4 The board does not share the appellant's opinion regarding D7. The cited embodiment of D7 relates to a roulette-like game (see for example paragraph [1038]). In the particular embodiment of Figure 58, there is no ball but the winning number is selected by a laser beam (paragraph [1039]) instead of a ball. In the embodiment where the laser beam is activated by the players, this

can be done only when the wheel is spinning faster than a minimum speed (see paragraph [1042]). In this way, the player does not simply select the winning number as the appellant argued, but there is still an element of randomness in the result, since the wheel is rotating too fast for the player to simply aim at the desired number. The board does not agree, therefore, that the cited embodiment of D7 relates to a "laser-shooting" game. Nor does it seem to involve any player "shooting skills", at least not within the common understanding of "shooting skills" in the context of video/electronic games.

- 2.4.1 D7 also recognises that the players may develop a skill in aiming the laser beam and can arrive at selecting the desired winning number. Hence, not only the specific embodiment of D7 relates to an electronic roulette-like game but also it tries to solve the same problem which distinguishing feature (b) does.
- 2.4.2 The board's conclusion is thus that the skilled person, starting from the gaming system of D1 and trying to solve the identified problem, would consider D7 and the specific embodiment of Figure 58.
- 2.4.3 As D7 describes, the players may develop the skill to activate the laser beam so as to aim at the desired winning number despite the fast rotation of the wheel. In order to avoid any manipulation of the game based on this players' skill, the system of D7 introduces a random time delay when the player activates the laser beam (see last lines of paragraph [1042]), such that the beam is not activated immediately after the player gives the corresponding activation signal. Hence, D7 solves the same problem as distinguishing feature (b)

in the same way.

2.4.4 Furthermore, the board finds that the solution proposed by D7 is more adapted to the teaching of D1 than the "obvious solution" the appellant presented, i.e. the removal of any players' interference in the launching of the ball in the system of D1. One of the main aims in D1 is to make the game more interesting by giving the players the impression that they have at least some control of the game (see e.g. column 1, lines 53 to 59). One way to achieve this is to have the players activate the launching of the ball instead of an automatic launching by the system.

2.4.5 In the board's opinion, the appellant's suggestion that the obvious step for the skilled person would be to take the control of the start of the game away from the players, would thus be against the aim of D1. A solution as the one proposed by D7 would reduce the risk of manipulation without taking away from the players the impression of controlling the game (see also paragraph [1042]: *Thus the player may feel some degree of control over the laser*). In the context of D1, the skilled person would thus rather opt for a solution like the one in D7 than for an automated launch of the ball.

2.4.6 The board thus concludes that the skilled person would consider D7 and would apply its teaching in the game system of D1 in an obvious manner. Claim 1 of the main request, thus, does not involve an inventive step within the meaning of Article 56 EPC.

3. Auxiliary request I

- 3.1 Claim 1 of auxiliary request I does not comprise feature (b). Instead it defines that the system, using the random signal generator, selects the player terminal which will be enabled to give the start signal at a first point in time, during the time the players can place their bets, but that the selected terminal is only displayed to the players after the time for placing bets has ended.
- 3.2 According to the appellant, this feature provided for two different effects. Firstly, the players did not know who was to give the start signal when they were placing their bets. This prevented players from placing heavy bets when they knew they were to give the starting signal, i.e. prevented manipulation of the game. Secondly, by carrying out the selection during the time players place their bets, there was no delay after the bet placement time ended because the selection had already been completed. The system could directly display the terminal which was to give the start signal and in this way "down times" of the game system (i.e. the periods where the players could not play) were minimised.
- 3.3 Regarding the first effect, the board takes the view that it is not related to any technical aspects of the game. The assumption that the players may believe they can manipulate the game and place heavy bets when they know they will be the ones to give the start signal, does not relate to any technical aspects or involve any technical considerations. It is rather related to psychological/mental aspects of player behaviour. Selecting when the players will become aware who is to give the start signal is more a question of game rules, i.e. not related to any technical questions.

- 3.3.1 The board agrees with the examining division that the only technical aspect of the implementation of such a game rule lies in the splitting of the terminal selection process from the displaying of the selection result. The board also shares the examining division's opinion that this aspect is disclosed in D1, since the selection of the terminal is done in advance (according to a predetermined pattern) but the display of which terminal is enabled to give the start signal is done only shortly before the player is to give the start signal (see point 16.1 of the reasons of the impugned decision).
- 3.3.2 The board also agrees with the examining division that letting the players know who is to start the game during the time bets can be placed (as in D1) or only after this time has ended (as in claim 1 of auxiliary request I) is a question of game rules and as such is devoid of any technical character (see *ibid.*).
- 3.4 Regarding the second effect, the board is not convinced that there is one.
- 3.4.1 D1 does not provide any explicit timing of the actions of selecting the player to launch the ball, displaying the selection (i.e. letting the players know who is selected) and placing bets.

The application does not provide any information as to how long the selection process takes or how it may affect (i.e. delay) the whole gaming process. Given that the selection is carried out automatically and electronically (by a processor), the board's opinion is that the selection of which terminal will be enabled to give the start signal would take a fraction of a second, i.e. it would be below the perception threshold

of the players.

The board, therefore, does not accept at present that carrying out the selection before the end of the betting time would have any measurable effect on the system "down time".

- 3.4.2 The appellant argued that, since there was a technical effect, whether or not it was measurable or perceivable by the players was not decisive. The assessment of inventive step was not based on how big the technical effect was but rather whether there was one. In the method of claim 1 of auxiliary request I it was uncontested that the terminal would be ready to be played faster than in D1. Whether the players would perceive this or not it was therefore irrelevant.
- 3.4.3 The board notes that the technical effect argued by the appellant was minimising the system's "down times", i.e. the time where the system will not be available for the players to play. Such "down times", however, depend also on the players realising that the system is ready to be played. If any advantage in time lies e.g. in the range of micro-seconds, which is plausible for an automatic selection by a processor among a few terminals, the players would not even perceive that the system was ready to play earlier/faster and hence there will be no effect in the system's "down times".
- 3.4.4 Since the only technical aspect (splitting the terminal selection process from the displaying of the selection result) is disclosed in D1, the board finds that the identified distinguishing features do not produce any technical effect, i.e. they are considered to relate to non-technical constraints (game rules), which would be given to the skilled person for implementation. In the

absence of any implementation details in the application, the board's conclusion is that the skilled person would implement those features in D1 in an obvious manner on the basis of their common general knowledge.

- 3.4.5 Even if the appellant's argument were to be followed, the presence of a technical effect, assuming that there was one in this case, does not automatically lead to the conclusion that an inventive step is present. The relevant question would then be whether or not the skilled person starting from D1 would achieve the same technical effect in an obvious manner.

As mentioned above, in D1 the selection of the player to launch the ball is done in advance, following a predetermined pattern. It is common ground that replacing the predetermined pattern with a random selection of the player to launch the ball is an obvious step for the skilled person. In the absence of any explicit disclosure in D1 about the timing of the selection of which player will launch the ball with respect to the time the players are allowed to place bets, the board takes the view that the skilled person would contemplate various possibilities regarding the timing (or the sequence) of those actions.

In the board's opinion, the skilled person trying to achieve the identified technical effect, i.e. to enable the players to start the game as soon as possible after the time for placing the bets ends (i.e. to minimise "down times" of the system), would contemplate to configure the system in such a way as to have most of the operations/actions being carried out as early as possible, with respect to the betting end time. In the board's view, having the selection being carried out

before the betting end time would be an obvious choice the skilled person would make on the basis only of common general knowledge.

3.5 The board's conclusion is, therefore, that the subject-matter of claim 1 of auxiliary request I does not involve an inventive step.

4. Auxiliary request II

4.1 Claim 1 of auxiliary request II combines the features of claim 1 of the main request and of auxiliary request I, i.e. it comprises both features (a) and (b) and the feature relating to the timing of the selection and display of the terminal which is enabled to give the start signal.

4.2 As explained in the points related to the main request and auxiliary request I, the board does not consider that any of those features can support the presence of an inventive step. As no synergistic effect of those features is apparent, a mere juxtaposition of them cannot be seen as involving any inventive step, either.

The board concludes thus that claim 1 of auxiliary request II does not involve an inventive step, either.

5. Auxiliary request III

5.1 Claim 1 of auxiliary request III comprises all the features of claim 1 of auxiliary request II with the additions that

- [the system comprises] a game server connectable between the ball game device and all gaming terminals; and

- the selector and the display signal generator are included in at least one of the gaming terminals or in the ball game device.

5.2 It is uncontested that the gaming system of D1 does not comprise any game server. All the functionalities, especially those of the corresponding selector and display signal generator are included in the corresponding ball game device (see Figure 3 and column 6, lines 30 to 37). The second added feature identified above is thus disclosed in D1.

5.3 Regarding the game server, the board notes that claim 1 of auxiliary request III does not define which of the claimed functionalities - if any - are to be included in the game server. On the contrary, the claim defines that crucial functionalities of the gaming system, such as the selector (of which terminal is to give the start signal), and the display signal generator are *not included* in the game server. For other functionalities, such as the start control means (6), it is not defined in which part of the gaming system they are (to be) included.

5.4 In the board's view it was generally known at the priority date of the application that adding a server in a distributed system would bring some generally known advantages and disadvantages. For example, the modularity of the system could be improved when some functionalities were installed at a central server instead in each and every one of several terminals. It would become easier to add and/or remove terminals in such a case. A central server would also facilitate monitoring and controlling of the whole system. On another aspect, a central server may make the system more vulnerable in case it is compromised or it

malfunctions, rendering central functionalities of the system inaccessible to all of the terminals or allowing manipulation of several terminals.

- 5.5 Since there is no information of which functionalities of the claimed system the game server may include or what its role in the gaming system might be, the board is of the opinion that any advantages and/or disadvantages of the inclusion of such a gaming server into the claimed system do not go beyond the generally known advantages and disadvantages of adding a server to any distributed system.

In the board's view, therefore, it would be obvious for the skilled person to add a server to the system of D1 if it were required by particular needs and/or circumstances. The appellant's argument that such a server in D1 would necessarily include all the functionalities of the ball game device cannot be followed. On the contrary, the skilled person would rather chose to leave functionalities that may facilitate manipulation of the system if compromised, such as those related to the selection of which player will be giving the start signal, away from the server, as it is generally known that it may be more vulnerable to malicious attacks than the the ball game device.

- 5.6 The board's conclusion is, therefore, that claim 1 of the auxiliary request III does not involve an inventive step, either.

6. Auxiliary requests IV and V

6.1 Admission

- 6.1.1 Auxiliary requests IV and V were filed during the oral proceedings before the board and their admission is to be decided under Articles 13(1) and (2) RPBA 2020.
- 6.1.2 The board agreed with the appellant that before the issuance of the board's preliminary opinion no objections for lack of inventive step against auxiliary request III had been raised or discussed. The examining division had raised only objections for added subject-matter (Article 123(2) EPC) against claim 1 of auxiliary request III. The new objections raised by the board in its preliminary opinion constituted thus exceptional circumstances and the appellant had to be given the possibility to react to those new objections.
- 6.1.3 The board acknowledged, thus, that the appellant had justified the existence of exceptional circumstances with cogent reasons and admitted auxiliary requests IV and V into the proceedings.
- 6.2 Compared to claim 1 of auxiliary request III, claim 1 of the new auxiliary requests defines that the selector (9) and the display signal generator (10) are included in *at least one of the gaming terminals (T1, T2, T3, Tn)* (auxiliary request IV) or *in a plurality of the gaming terminals (T1, T2, T3, Tn)* (auxiliary request V).

In other words, the alternative that the selector and display signal generator are included in the ball game device was removed from the claim and these two functionalities are (to be) included in at least one gaming terminal (auxiliary request IV) or in several of the gaming terminals (auxiliary request V).

6.3 The appellant argued that in the context of the distributed gaming system it was safer to include those functionalities in the gaming terminals than in the ball game device. It would be even safer to include those functionalities in several gaming terminals, since with such redundant storage, the functionalities would still be available even if one of the terminals in which they were installed was compromised or malfunctioned. In D1 the functionalities were included in the ball game device and the skilled person would have no motivation to move any of them to one or more of the gaming terminals.

6.4 The board notes at first that there is no indication in the application that a gaming terminal is safer (i.e. there is smaller risk that it malfunctions or gets compromised/manipulated) than the ball game device. As discussed with regard to auxiliary request III, any advantages and disadvantages from adding a central server and re-distributing the various functionalities of the system would be part of the skilled person's common general knowledge (see points 5.4 and 5.5 above).

6.5 As with auxiliary request III, the decision to add a central server in the game system of D1 would be obvious in view of specific needs and circumstances. The skilled person would then have to decide how to (re)distribute the various functionalities of the gaming system among the server, the ball gaming device and the gaming terminals.

As explained in view of auxiliary request III such a decision would be based on generally known advantages and disadvantages of such distributed systems and it

would be obvious for the skilled person.

- 6.6 Hence, the board is of the opinion that whether the specific functionalities are included in the server, the ball game device or a gaming terminal is an obvious choice the skilled person would make on the basis only of common general knowledge and according to the specific needs and/or circumstances.

The same applies for the decision to include a functionality in several terminals. The board considers that the concept of redundant storage is generally known in computer networks and/or distributed systems, so that if one instance of the installed/stored functionality fails for any reason, another instance stored in an other terminal would be able to take over, ensuring continuous operation. D1 also mentions that the gaming system may comprise a remote back-up processor (see column 6, lines 34 to 36).

- 6.7 The board's conclusion is thus that the subject-matter of claim 1 of auxiliary request IV and auxiliary request V does not involve an inventive step.

7. Since none of the requests on file is allowable, the appeal cannot succeed.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:



S. Sánchez Chiquero

M. Stenger

Decision electronically authenticated