Datasheet for the decision of 23 September 2011

Case Number: T 2449/10 - 3.2.04
Application Number: 06717747.7
Publication Number: 1861184
IPC: A63F 3/06
Language of the proceedings: EN
Title of invention: Lottery game utilizing nostalgic game themes
Applicant: Scientific Games Holdings Limited
Opponent: -
Headword: -
Relevant legal provisions: EPC Art. 52(2)(c), 56
Relevant legal provisions (EPC 1973): -
Keyword: "Patentable inventions - games" "Inventive step - no (all requests)"
Decisions cited: T 0641/00, T 1543/06, T 0336/07, T 0012/08
Catchword: -
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DECISION
of the Technical Board of Appeal 3.2.04
of 23 September 2011

Appellant: Scientific Games Holdings Limited
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Decision under appeal: Decision of the Examining Division of the European Patent Office posted 13 July 2010 refusing European patent application No. 06717747.7 pursuant to Article 97(2) EPC.

Composition of the Board:
Chairman: A. de Vries
Members: M. Poock
T. Bokor
Summary of Facts and Submissions

I. The Appellant lodged an appeal, received 27 August 2010, against the decision of the Examining Division posted 13 July 2010, refusing the European patent application No. 06 717 747.7 and simultaneously paid the appeal fee. The statement setting out the grounds of appeal was received 23 November 2010.

In its decision the Examining Division held that the application did not meet the requirements of Article 52(1) in combination with Articles 56 EPC for lack of inventive step.

II. The Appellant requests that the decision under appeal be set aside and that a patent be granted on the basis of claims of a main request, or in the alternative, according to claims of an auxiliary request 1 both filed with the statement of the grounds of appeal.

III. The wording of the independent claims of the requests is as follows:

Main Request

1. "A method for hosting a lottery game, comprising the steps of:
   designating a plurality of game player positions on a predetermined grid, the game player positions defining a pathway on the grid, said pathway including all of the player’s designated positions and being linear and continuous from a first grid position to a second grid position wherein:
a controller of a standalone gaming device or a game
server of the lottery authority randomly selecting a
plurality of positions on said grid; and
determining an outcome of the game based on the
intersection of the pathway and at least one of the
plurality of the randomly selected positions on the
grid, wherein
the step of randomly selecting a plurality of positions
on the grid further comprising the step of randomly
selecting a plurality of positions from a plurality of
separate subsets of positions defined on said grid,
wherein the number of subsets is equal to the number of
randomly selected positions, and only one position is
selected from each of the subsets."

2."A system for hosting a lottery game, comprising:
either a communication network; at least one gaming
machine in communication with the communication network;
and a server in communication with the at least one
gaming machine through the communication network, or a
standalone gaming device,
wherein said server or said standalone gaming device
are capable of:
receiving a path from a player, the path being defined
on a predetermined grid,
placing a plurality of player indicia on the path,
randomly placing a plurality of symbols on a plurality
of separate subsets of predetermined positions on the
predetermined grid, wherein the number of subsets is
equal to the number of randomly placed symbols, and
only one symbol is placed on each of the subsets of the
predetermined positions,
determining a set of player indicia based on the
interception of the path of the plurality of player
indicia with any of the plurality of symbols on the grid,
generating a set of winning indicia, 
comparing the set of player indicia and the set of winning indicia, and 
awarding a prize to the player based on comparison between the set of player indicia and the set of winning indicia."

Auxiliary Request 1

The auxiliary request 1 includes only a claim to the system which is identical to claim 2 of the main request.

IV. The Appellant's arguments, presented in the statement of the grounds of appeal, are as follows:

Not only is the feature of claim 1 of the controller randomly selecting positions technical but so are the final two features of claim 1. Thus, comparing data to determine game outcome is technical. The particular way the positions are randomly selected from grid subsets, an important aspect of the invention, is a technical approach that influences the outcome scenario. The subset selection allows the host to limit the range of outcomes and better predict them. This gives him a better control of outcome and return, and so enhances the efficiency of the game hosting operation. It is not a game rule providing a guideline as to how to play, as it does not influence the player's behaviour and in fact the player need not know it. Nor is it a scheme for playing a game in the sense of being a plan for human beings.
V. With the annex to a summons to oral proceeding before the Board pursuant to Article 15(1) RPBA, dated 6 July 2011, the Board made preliminary observations concerning inventive step.

VI. The Appellant without further comment or observations informed the Board per fax of 16 September 2011 that he would not attend the oral proceedings scheduled for 23 September 2011. These were held in his absence.

Reasons for the Decision

1. The appeal is admissible.

2. Background

The invention concerns a method and system for hosting a new lottery game in which a player must select a path or sequence of adjacent positions from a grid. A game controller then checks whether the chosen path includes one of a number of randomly selected positions on the grid to determine a game outcome. The random selection of positions is effected by randomly selecting one position from each of a number of predefined separate subsets of the grid.

The idea of the invention is to utilize a nostalgic electronic game theme in a lottery game and so give the game more appeal, see paragraphs [0005] and [0007] of the as filed description.
3. Inventive Step

3.1 In the annex to the summons to oral proceedings issued 6 July 2011, the Board made the following preliminary observations regarding inventive step:

"1. The present application concerns a method and system for hosting what is undoubtedly a new type of lottery game. Game rules are per se excluded from patentability under Article 52(2)(c) EPC as they are considered inherently non-technical. However, the claimed hosting method and system also include technical features so that they are of "mixed" character, i.e. they include both technical and non-technical aspects."

"2. In dealing with such "mixed" inventions the Board adopts the approach as set out in T1543/06 (Gameaccount), reasons 2, which is based foremost on T0641/00 (OJ EPO 2003, 352). Thus, only those features that contribute to technical character are to be taken into account when assessing inventive step. That requirement cannot rely on excluded (non-technical) subject-matter alone, however original that matter might be. The mere technical implementation of something excluded cannot then form the basis for inventive step. Decisive for inventive step is the question how excluded subject-matter has been technically implemented, and whether such implementation is obvious in the light of the prior art. As explained in reasons 2.7 to 2.9 of T1543/06, such a consideration focuses on any further technical effects associated with implementation of the excluded subject-
matter over and above those inherent in the excluded subject-matter itself."

"Inventive step can therefore not be based on the game rules themselves or the mere fact that they are implemented. What is decisive is how they are implemented and whether this involves any further technical effect over and above effects that follow directly from the game rules. This is to be considered from the point of view of the skilled person, who is a software engineer or programmer and who is asked to automate game play of the game rules given him by the games designer."

"3. In the present case it will therefore be necessary to consider to what extent the claimed method and system concern game rules, how exactly they have been implemented, and whether technical effects can be associated with the way they have been implemented."

"3.1. The new lottery game involves a player choosing a path of adjacent positions on a grid, comparing the path against a set of randomly selected positions, and determining a game outcome if there is a match ("intersection"). This basic scheme of conditions and conventions form part of the game's regulatory framework, cf. T0336/07, reasons 3.3.1., and the Board is in no doubt that these are game rules."

"The main focus of debate is the nature of the way grid points are selected for comparison. This limits possible game outcomes. Do the conditions that determine possible outcomes, i.e. control game response to a player's actions, rather than those actions, form
part of a game's overall regulatory framework, even if hidden to a player? See e.g. T0012/08, reasons 4.6.2. Of interest is also whether the prescribed selection is inherently linked to the use of the controller of a gaming device or server. Are there other conceivable ways of carrying it out that do not involve a game controller, say with pen or paper?

"In this context it may also need to be considered whether the effect of limiting outcomes and so improving return is technical, or, say, a typical gaming business concern."

"3.2. Insofar as the selection of random positions from separate grid subsets turns out to be a game rule in its wider sense, the implementation of the set of game rules as in the claimed method or the claimed system then appears to be straightforward. The relevant claims define only the tasks that need to be performed by the gaming controller (claim 1) or the gaming device or gaming network server (claim 2), either of which are notoriously known, but give no detail as to how those tasks should be carried out. The tasks that are defined appear to be as expected, if a programmer were asked to automate game play of the new lottery game."

3.2 The above can be summarized as follows: inventive step ultimately depends on whether or not the way grid points are selected for comparison is technical in nature. In so far as it is not and forms part of a set of game rules in a wider sense, that set is implemented in straightforward manner.
The Appellant has chosen not to address the central questions raised in the annex regarding the nature of the random selection. It is thus incumbent on the Board to answer them.

Failing arguments to the contrary the Board finds that the central feature prescribing how to select the grid positions with which the player's path is to intersect or not reflects on the game's inner mechanics, or rather the constitutive rules that express its core logic. As part of this core logic the selection from subsets certainly determines and thus limits possible game outcomes. That, however, is the very purpose of game rules, namely to determine possible game outcomes by defining the conditions that lead to them. Here the particular selection from subsets of positions for intersection sets game conditions determining game outcome and so forms an integral part of the game's overall regulatory framework. That it might be hidden to the player - initially at least, for he may bring this selection mechanism to light by diligent observation over time - is immaterial to the inherently game conceptual nature of such conditions.

In the decision referred to in the annex, T 12/08, see reasons 4.6.2, the Board, in a different composition, considered how to deal with game conceptual aspects in general, or what it referred to as "... a game rule in some wider sense, that is as a condition or regulation that governs the internal as well as the external, explicit workings of the game." It held that "Many of these aspects - such as narrative - are essentially conceptual in nature, relating to abstract and thus inherently non-technical schemes, which in their own
right fall short of the basic prerequisite of technicality to be patentable. Such aspects and their straightforward implementation by computer would, the Board agrees, fail patentability requirements in the same manner as subject-matter excluded in Article 52(2)(c) EPC, (see e.g. T 641/00 (OJ EPO 2003, 352) or T 1543/06, reasons 2).

3.3.2 Nor is the selection inextricably linked to the use of a game controller, which might thereby give it technical character. The underlying game scheme could easily be carried out with pen and paper (between two players), with one player making a mental selection from the grid subsets, the other plotting his path on the grid. Finally, it may well be that this measure is motivated by the desire to improve return. Increasing yield is a typical concern in the gaming business, which is however per se devoid of technical character.

3.3.3 In conclusion the claimed random selection of grid points from grid subsets is nothing more than a non-technical game rule in the wider sense. Together with the other steps of designating grid positions and determining game outcome it constitutes a game scheme or a set of game rules excluded per se from patentability.

3.4 In the annex to the summons, the Board had already expressed its preliminary view, see above, that the manner in which the set is implemented by a game programmer when given this task is straightforward. A game programmer or software engineer is the relevant skilled person from whose perspective the technical requirement of inventive step is to be assessed.
3.4.1 Thus, considering first the method of claim 1, the initial step of designating grid position in fact prescribes what the player must do, while the determining step could in principle also be carried out by an individual. Neither feature need be technical, and can be disregarded in the assessment of inventive step. By virtue of a controller of a standalone gaming device carrying out the random selection discussed above, those steps are necessarily technical. However, other than prescribing that the controller of the gaming device or server carries these steps out, no detail is given as to how these selection steps, which are inherently non-technical as stated above, are realized. Simply allocating the task to a controller is itself an obvious way of automating that task. The method of claim 1 of the main request lacks inventive step.

3.4.2 As for the claimed hosting system this merely defines all those tasks an otherwise notoriously known gaming network or a standalone gaming device would need to carry out if game play were to be fully automated. Such an automated system would need to receive the player's input of the chosen path and display it, then select and display the random grid positions, which it subsequently compares with the player's path to determine interception. Finally, it would need to compare the results of that determination with winning conditions to ultimately award a prize if there is a match. Other than specifying the tasks the system must necessarily carry out when the scheme is automated, the claim is silent as to the exact manner they are carried out. The list of tasks is entirely as would be expected.
if a game programmer or software engineer were given the task of automating game play on a gaming device or network. The system claimed in either main or auxiliary request 1 also lacks the requisite inventive step.

4. Neither request on file is allowable as each is directed at subject-matter that does not involve an inventive step, contrary to the requirements of Article 52(1) with Article 56 EPC. The appeal must therefore fail.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar

G. Magouliotis

The Chairman

A. de Vries