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**Datasheet for the decision  
of 28 February 2007**

**Case Number:** T 0717/04 - 3.2.04

**Application Number:** 99921316.8

**Publication Number:** 1057503

**IPC:** B64G 9/00

**Language of the proceedings:** EN

**Title of invention:**

Method for playing a space game and devices for realising this method

**Applicant:**

Sergei Mikhailovich Safronov

**Opponent:**

-

**Headword:**

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**Relevant legal provisions:**

EPC Art. 52, 54, 56, 133(2)

**Keyword:**

"Novelty, Inventive step (no)  
-non-technical features - contribution to technical character"  
"No comments on objections in board's communication"  
"Non-appearance in oral proceedings"  
"Direct submissions from the appealing applicant not confirmed  
by his representative (not considered)"

**Decisions cited:**

T 0641/00

**Catchword:**

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Case Number: T 0717/04 - 3.2.04

**D E C I S I O N**  
of the Technical Board of Appeal 3.2.04  
of 28 February 2007

**Appellant:** Safronov, Sergei Mikhailovich  
ul. Malysheva, 19-1-20  
Moscow 119263 (RU)

**Representative:** Kador & Partner  
Corneliusstrasse 15  
D-80469 München (DE)

**Decision under appeal:** Decision of the examining division of the  
European Patent Office posted 16 January 2004  
refusing European patent application 99921316.8  
pursuant to Article 97(1) EPC.

**Composition of the Board:**

**Chairman:** M. Ceyte  
**Members:** M. Poock  
C. Heath

## Summary of Facts and Submissions

I. This appeal is directed against the decision of the examining division posted 16 January 2004 in which European patent application 99 921 316.8 was refused.

The examining division held that the claimed subject-matter was not patentable under Article 52 EPC and referred to the following documents:

D1: DE-A-4 243 395,

D2: Patent Abstracts of Japan, vol. 016, no. 428,  
M-1307 & JP 04 146 900,

D3: Patent Abstracts of Japan, vol. 018, no. 292,  
M-1615 & JP 06 056 099,

D4: Patent Abstracts of Japan, vol. 1998, no. 14,  
& JP 10 250 699,

D5: US-A-3 159 029.

II. The representative lodged the appeal for the applicant on 11 March 2004 and paid the prescribed appeal fee simultaneously. The statement of grounds of appeal was received on 18 May 2004.

III. The representative requested for the appellant (applicant) that the decision be set aside and the patent be granted on the basis of the claims filed with the statement of grounds of appeal.

IV. These claims read:

"1. Use of a device as a space game, the device comprising: game elements capable of moving in space; game event assessment means for assessing a spatial position of the game elements relative to said game event assessment means, disposed in the same space, and a game event occurrence registration facility, wherein the game elements and the game event assessment means are located in cosmic space, the game elements being space vehicles, the game event assessment means being an object of natural origin, and the game event occurrence registration facility being adapted to detect a game event occurrence in cosmic space outside the Earth and display the game event occurrence on the Earth.

2. Use of a device as a space game, the device comprising: game elements capable of moving in space, game event assessment means for assessing a spatial position of the game elements relative to said game event assessment means, disposed in the same space, and a game event occurrence registration facility, wherein the game elements and the game event assessment means are located in cosmic space, the game elements being space vehicles, the game event assessment means being a technogenic object, and the game event occurrence registration facility being adapted to detect a game event occurrence in cosmic space outside the Earth and display the game event occurrence on the Earth.

3. Use according to claim 2 wherein said technogenic object is a space vehicle.

4. Use according to claim 2 wherein said technogenic object is space waste, the game element being provided with means for capturing the space waste.

5. Use of a device as a space game, the device comprising: game elements capable of randomly moving in space, game event assessment means for assessing a spatial position of the game elements on a surface of the game event assessment means, said surface being divided into game fields, and a game event occurrence registration facility for registering a game event occurrence, such as hitting a game field by a game element, wherein the game elements and the game event assessment means are located in cosmic space, the game elements being movable objects randomly moving in cosmic space, the game event assessment means being an external surface of a space vehicle, the game event occurrence registration facility being mounted on an external surface of the space vehicle comprising a game field divided into areas and adapted to detect a game event occurrence in cosmic space outside the Earth and transmit game event occurrence data to the Earth."

V. In the statement of grounds of appeal it was argued that the claimed subject-matter must be considered as being novel and involving an inventive step because none of the cited documents disclosed a game or the use of a device as a space game.

VI. The board gave its preliminary assessment of the case in the annex to the summons to oral proceedings of 29 December 2006. The board's statements regarding novelty and inventive step read as follows:

"3. Novelty and inventive step

3.1 In general, an invention consisting of a mixture of technical and non-technical features and having technical character as a whole is to be assessed with respect to the requirement of inventive step by taking account of all those features which contribute to said technical character whereas features making no such contribution cannot support the presence of inventive step (see T 641/00, OJ EPO 2003, 352). In the view of the board, this principle also applies for the assessment of the requirement of novelty where features which do not contribute to said technical character cannot be taken into account.

3.2 Document D2 discloses a device with elements (space vehicles 2, 3) capable of moving in space, event assessment means (fragment 1) for assessing a spatial position of the elements relative to said event assessment means which are disposed in the same cosmic space, and an event occurrence registration facility which is adapted to detect the distance and position of the elements and event assessment means in cosmic space outside the Earth and display these data on the Earth.

3.2.1 From this device, the subject matter of claim 1 is distinguished by its use as a space game and by the event assessment means being an object of natural origin. Since these features are not technical, have no technical function and provide no technical effect, they cannot be considered as

a technical feature in the meaning of Rule 29(1) EPC and, following the principle mentioned above, cannot be taken into account for the assessment of novelty and inventive step.

Therefore it appears that the subject matter of claim 1 is not distinguished from this device by any technical feature and consequently appears to lack novelty.

3.2.2 The subject matter of claim 4 is distinguished from this device by its use as a space game, the event assessment means being space waste and the element(s) 2, 3 being provided with means for capturing the space waste. Only the second and third of these features contribute to the technical character of the use of the device. Thus, the technical problem to be solved may be seen in the provision of a new use of such device for cleaning up cosmic space. Since document D3 addresses this problem in essence and discloses means for capturing the space waste, it appears that it would have been obvious for the skilled person to modify the known use of such device accordingly.

Consequently, it does not appear that the subject-matter of claim 4 involves an inventive step.

3.3 Document D1 discloses a device with satellites  $10_1 - 10_5$  capable of moving in the same cosmic space as a satellite 1 for assessing a spatial position of the satellites  $10_1 - 10_5$  relative to

said satellite 1. An event occurrence registration facility (see figure 5 and column 7, lines 17-21) is provided which is adapted to detect the relative positions and speeds of the satellites in cosmic space outside the Earth (see figure 5 and column 6, lines 13-25) and display these data on the Earth.

From this device, the subject matter of claim 3 is distinguished by its use as a space game. Again, since this feature is not technical, has no technical function and provides no technical effect, it cannot be taken into account for the assessment of novelty and inventive step. Therefore it appears that the subject matter of claims 2 and 3 is not distinguished from this device by any technical feature and consequently appears to lack novelty.

3.4 Document D4 discloses a device with elements (drifting objects 1) randomly moving in cosmic space, event assessment means (capturing apparatus I) for assessing a spatial position of the elements relative to said event assessment means disposed in cosmic space and being an external surface of a space vehicle, and an event occurrence registration facility I, 3, 6 which is mounted on an external surface of the space vehicle and is adapted to detect hitting of the device by an element in cosmic space outside the Earth.

The subject matter of claim 5 is distinguished from this device by its use as a space game, the



surface of the event assessment means being divided into fields, and the event occurrence registration facility I, 3, 6 comprising a field divided into areas and being adapted to transmit event occurrence data to the Earth.

Only the last one of these distinguishing features contributes to the technical character of the use of the device. Thus, the technical problem to be solved may be seen in the provision of a new use of such device which enables the real time evaluation of hittings on earth. Since document D5 addresses this problem and discloses an event occurrence registration facility which is adapted to transmit event occurrence data to the Earth (e.g. column 3, lines 58 to 61), it appears that it would have been obvious for the skilled person to modify the known use of such device accordingly.

Consequently, it does not appear that the subject-matter of claim 5 involves an inventive step.

4. In view of the foregoing, it appears that the appeal has to be dismissed."

VII. On 27 February 2007, a letter of the appealing applicant, a natural person, was faxed to the EPO with arguments and a new set of claims to be taken into account.

VIII. On 28 February 2007, oral proceedings before the board were held without the duly summoned representative of the appealing applicant. Different from the appealing applicant, the representative had not informed the board beforehand of his intention not to attend the oral proceedings.

### **Reasons for the Decision**

1. The appeal is admissible because it complies with the requirements of Articles 106 to 108 and Rule 64 EPC.

According to Article 133(2) EPC a natural or legal person without a residence or principal place of business within the territory of one of the contracting states must act through a professional representative in all proceedings established by this Convention with the exception of filing the European patent application.

The appealing applicant's address is in Russia, thus not within the territory of one of the contracting states.

Therefore, filing claims and arguments such as those in the appealing applicant's letter of 27 February 2007 would have required professional representation. As these submissions were made neither by the representative nor endorsed by him, the board cannot take them into account.

2. By not attending the oral proceedings, the appellant has not availed himself of the opportunity to orally present his case and in particular to comment on the board's observations in the annex to the summons to oral proceedings.

Having re-considered the reasons which were advanced therein and which are unchallenged by the appellant, the board sees no reason to depart from them.

Consequently, for the reasons set out in the above communication, the request of the appellant that the decision be set aside and the patent be granted on the basis of the claims filed with the statement of grounds of appeal is not allowable.

## **Order**

### **For these reasons it is decided that:**

The appeal is dismissed.

The Registrar:

The Chairman:

G. Magouliotis

M. Ceyte