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**Datasheet for the decision  
of 8 February 2008**

**Case Number:** T 1482/05 - 3.2.04

**Application Number:** 00986172.5

**Publication Number:** 1268019

**IPC:** A63F 3/06

**Language of the proceedings:** EN

**Title of invention:**

Entry ticket in the system of numerical games of chance and method of completing the said ticket

**Applicant:**

Bojan Spende

**Headword:**

-

**Relevant legal provisions:**

EPC Art. 52(1)

**Relevant legal provisions (EPC 1973):**

EPC Art. 54(1), (2), 84, 116

**Keyword:**

"Statement not to attend oral proceedings and requesting a decision on record amounts to a withdrawal of the request for oral proceedings"

**Decisions cited:**

T 0003/90, T 0641/00

**Catchword:**

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Case Number: T 1482/05 - 3.2.04

**DECISION**  
of the Technical Board of Appeal 3.2.04  
of 8 February 2008

**Appellant:** Bojan Spende  
SiSenska 2  
SI-1000 Ljubljana (SI)

**Representative:** Matthias Graf Lambsdorff  
Patentanwälte  
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**Decision under appeal:** Decision of the Examining Division of the  
European Patent Office posted 21 July 2005  
refusing European application No. 00986172.5  
pursuant to Article 97(1) EPC.

**Composition of the Board:**

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

## Summary of Facts and Submissions

I. This appeal lies from the decision of the Examining Division of 21 July 2005 to refuse European patent application No. 00 986 172.5. The subject-matter of claim 1 as filed with the letter of 15 October 2004 was found to lack an inventive step as required by Articles 52(1) and 56 EPC.

II. The Applicant lodged the notice of appeal on 13 September 2005 and paid the prescribed fee simultaneously. The statement of grounds of appeal and amended application documents were received on 21 November 2005.

III. Claim 1 of these documents reads as follows:

" A system of numerical games of chance, characterized in that

- said system comprising a set of time, calendar and astrology related fields of said game, wherein each field comprises a number of time, calendar or astrology related data, respectively, wherein

- the set of fields is comprised of one or several of the following fields: day of the week, day of the month, month, year, zodiac sign, season of the year, hour, odd/even, minute, day/night, morning/afternoon, decanate of the month, week of the year and phases of the moon,

- an entry ticket comprising one or several user selected fields of the set of fields, wherein said user selected field or fields are represented graphically in the form of building blocks on said entry ticket,

- a device which is adapted for making a random selection of one or several numbers out of each one of the fields".

As compared to claim 1 on which the decision of the Examining Division was based, the wording "which is adapted" was added to its last feature.

IV. The Appellant (Applicant) requested to cancel the decision to refuse the European patent application of the Examining Division dated July 21, 2005 and to state that the present application with the replacement documents filed with the statement of grounds of appeal is in condition for grant (main request); to schedule oral proceedings according to Article 116 EPC (auxiliary request).

V. The Appellant argued that the technical features of an entry ticket comprising one or several user selected fields of the set of fields, wherein said user selected field or fields are represented graphically in the form of building blocks on said entry ticket, and of a device for making a random selection of one or several numbers out of each one of the fields were not known from the prior art.

The Appellant also expressed his disagreement with the principles set out in decision T 641/00 which would rely on a rather artificial separation of technical and non-technical features. Therefore, he reserved the right to file a request to refer a respective question to the Enlarged Board of Appeal, if necessary, in oral proceedings.

VI. The Appellant was then summoned to oral proceedings. In the annex to the summons, the Board indicated that it did not see much prospect of success for the appeal, giving in particular the following reasons for its preliminary findings:

"2. Although the Board, in principle, shares the view of the Examining Division, the Appellant's attention is drawn to the following points:

3. Novelty

3.1 Systems of numerical games of chance are known, for example, from US-A-3 873 092 (D1), US-A-4 874 178 (D2), or FR-A-2 616 677 (D3).

These systems comprise a set of time, calendar and astrology related fields of said game, wherein each field comprises a number of time, calendar or astrology related data, respectively, wherein the set of fields is comprised of one or several of the following fields: day of the week, day of the month, month, year, zodiac sign, season of the year, hour, odd/even, minute, day/night, morning/afternoon, decanate of the month, week of the year and phases of the moon (D1: column 1, lines 44 to 46 in a combination with figure 1; D2: colour to come, lines 39 to 45; D3: paragraph 9 ("Chaque signe ... fiche") and figure II).

Moreover, these systems comprise an entry ticket with one or several user selected fields of the set of fields, wherein said user selected field or fields are represented graphically in the form of

building blocks on said entry ticket (D1: Keno card 15; D2: 10 or lottery ticket mentioned in column 2, line 42; D3: lottery ticket) and a device which is adapted for making a random selection of one or several numbers out of each one of the fields (D1: claim 1; D2: 14 and figure 2; D3: claim 1).

3.2 Thus, it appears that all features of claim 1 are known, so that its subject matter does not appear to be novel.

#### 4. Clarity of claim 1

4.1 For clarity reasons it appears that the feature that the system comprises a "set of time, calendar and astrology related fields of said game, wherein each field comprises a number of time, calendar or astrology related data" should read "set of time, calendar or astrology related fields of said game, wherein each field comprises a number of time, calendar or astrology related data" (amendment underlined).

4.2 In view of figure 1, the feature "each field comprises a number of time, calendar or astrology related data, respectively" in claim 1 can only be understood to mean that each field only comprises one number related to either one of these data. However, the last feature of claim 1 contradicts this feature, because it also covers a random selection of several numbers out of each one of the fields. It should be specified that each field comprises only one single number respectively related to time, calendar of astrology.

4.3 In the feature of claim 1 "the set of fields is comprised of one or several of the following fields: day of the week, day of the month, month, year, zodiac sign, season of the year, hour, odd/even, minute, day/night, morning/afternoon, decanate of the month, week of the year and phases of the moon", it is unclear whether every field is respectively related to the day of the week, ... phases of the moon or all of them. Moreover, "odd/even" does not appear to be a time, calendar or astrology related data.

4.4 "Decanate of the month" does not appear to be an English term. Thus it is unclear what is meant with this expression.

4.5 It appears that "building blocks" are wooden toys for children. Thus, the use of this term in claim 1, renders it unclear. Moreover it should be noted that with claim 1 only entry tickets are protected in which one or several fields are selected. A virgin unmarked ticket is not covered by this claim.

5. The rules of the game of chance according to the invention may be in essence as follows:

(i) Each player receives a board or an entry ticket with a selected number of fields on it, e.g. days of the week (7 numbers) days of the months (31 numbers) two last digits of the year (100 numbers) seasons (4 numbers) day/night (2 numbers) and astrological signs (12 numbers);

(ii)the player begins a game by designating on each field of the entry ticket the number he wants and marks it off;

(iii)when a player's number in a field matches a number chosen at random in that field, there is a "hit", the numbers chosen at random in all the fields on the ticket being the "winning combination".

The fact that the entry ticket or board is provided with a selected number of fields, such as days of week, days of the months *et cetera* is a rule of that particular game and thus excluded from patentability and its implementation - a ticket provided with several numbered fields - would be obvious for any skilled person.

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

VII. The only response to the Board's summons to oral proceedings was the letter dated and received on 11 January 2008, in which the Appellant stated the following:

"Referring to the Summons to oral proceedings pursuant to Rule 71(1) EPC dated October 31, 2007:

The undersigned Attorney will not attend to the oral proceedings on January 31, 2008.

We ask you for a decision on record".



This letter did not contain a request to refer a particular question to the Enlarged Board of Appeal.

### **Reasons for the Decision**

1. The appeal is admissible.
2. With the statement in his letter of 11 January 2008 not to attend the oral proceedings before the Board and to ask for a decision on record, the Appellant unequivocally expressed that he is interested in an immediate decision on the file as it stands and does not wish to present his arguments orally in the requested oral proceedings. Such a statement amounts to a withdrawal of the request for oral proceedings, see in this respect T 3/90 (OJ EPO 92, 737) point 1 of the reasons. In the present case the Board found it appropriate to cancel the oral proceedings.
3. Having re-considered the objections set out in the annex to the summons to oral proceedings which were not challenged by the Appellant, the Board sees no reason to depart from them.

Consequently, for the reasons set out in the annex to the summons and quoted above, the appeal is not allowable.

**Order**

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

The appeal is dismissed.

The Registrar

The Chairman

G. Magouliotis

M. Ceyte