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**Datasheet for the decision  
of 7 December 2006**

**Case Number:** T 1023/06 - 3.2.04

**Application Number:** 98113910.8

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**Language of the proceedings:** EN

**Title of invention:**  
Computer implemented game process

**Applicant:**  
IGT

**Opponent:**  
-

**Headword:**  
-

**Relevant legal provisions:**  
EPC Art. 52(1), 56

**Keyword:**  
"Inventive step (no)"  
"Mixture of technical and non technical features"

**Decisions cited:**  
T 0258/03, T 0641/00, T 0928/03, T 0049/04

**Catchword:**  
-



Case Number: T 1023/06 - 3.2.04

**D E C I S I O N**  
of the Technical Board of Appeal 3.2.04  
of 7 December 2006

**Appellant:** IGT  
(Applicant) 9295 Prototype Drive  
Reno  
Nevada 89521-8986 (US)

**Representative:** Körber, Martin Hans  
Mitscherlich & Partner  
Patent- und Rechtsanwälte  
Postfach 33 06 09  
D-80066 München (DE)

**Decision under appeal:** Decision of the Examining Division of the  
European Patent Office posted 21 October 2005  
refusing European patent application  
No. 98113910.8 pursuant to Article 97(1) EPC.

**Composition of the Board:**

**Chairman:** M. Ceyte  
**Members:** A. De Vries  
T. Bokor

## Summary of Facts and Submissions

I. On 21 December 2005 the Appellant (Applicant) lodged an appeal against the decision of the Examining Division of 21 October 2005 to refuse European patent application No. 98 113 910.8 and paid the prescribed appeal fee. The statement of grounds of appeal was filed on 7 February 2006.

The Examining Division held that the application did not meet the requirements of Article 52(1) in combination with Article 56 EPC for lack of inventive step of the claimed subject-matter having regard to the following document:

D2: US-A-5 356 140

II. Oral Proceedings were held on 7 December 2006. During the discussion of the requests on file, submitted with letter of 7 November 2006, the Appellant offered as further amendment to claim 1 the addition of features pertaining to the step of placing a wager, and to the step of dealing from separate decks.

III. The Appellant requested that the decision under appeal be set aside and a patent be granted on the basis of a main, first auxiliary and second auxiliary requests filed with letter of 7 November 2006.

IV. The wording of claim 1 of the requests is as follows :

**Main request**

1. A method of operating an electronic video poker machine having a display screen, the method comprising:
  - a) displaying on the display screen a first poker hand and a second poker hand, said first poker hand having at least five face-up playing card images and said second poker hand having at least five playing card images, each of the face-up playing card images of the first poker hand being displayed in a first row and each of the playing card images of the second poker hand being displayed in a second row, the first row of face-up playing card images of the first poker hand being a top row displayed on said display screen;
  - b) detecting the selection by a player of none, one or more of the face-up playing card images of the first poker hand as playing cards to be held;
  - c) if one or more of the face-up playing card images of the first poker hand were selected to be held, displaying a duplicate of each of the one or more face-up playing card images selected to be held from the first poker hand into the second poker hand;
  - d) if one or more of the face-up playing card images of the first poker hand were not selected to be held, terminating the display of the one or more face-up playing card images in the first poker hand that were not selected to be held and replacing the display of each such playing card image with display of a replacement face-up playing card image to display a completed first poker hand having at least five face-up playing card images;
  - e) if one or more of the face-up playing card images of the first poker hand were not selected to be held, displaying one or more face-up playing card images in

the second poker hand in addition to the duplicate playing card images that were displayed in the second poker hand via step c) to form a completed second poker hand having at least five face-up playing card images; f) determining a poker hand ranking of the completed first poker hand, g) determining a poker hand ranking of the completed second poker hand, and h) determining an amount to be awarded to a player based on the determined poker hand rankings of the completed first poker hand and the completed second poker hand.

**First Auxiliary Request**

1. A method of operating an electronic video poker machine having a display screen, the method comprising: a) displaying on the display screen a first poker hand and a second poker hand, said first poker hand having at least five face-up playing card images and said second poker hand having at least five playing card images, each of the face-up playing card images of the first poker hand being displayed in a respective one of a plurality of first card positions aligned in a first row and each of the playing card images of the second poker hand being displayed in a respective one of a plurality of second card positions aligned in a second row, the first row of face-up playing card images of the first poker hand being a top row displayed on said display screen and each of the first card positions being vertically aligned with a respective one of the second card positions; b) detecting the selection by a player of none, one or more of the face-up playing card images of the first poker hand as playing cards to be held;

- c) if one or more of the face-up playing card images of the first poker hand were selected to be held, displaying a duplicate of each of the one or more face-up playing card images selected to be held from the first poker hand into the second poker hand, wherein each of the duplicate playing card images of the second poker hand is displayed in a card position that is vertically aligned with the card position of a respective one of the face-up playing card images of the first poker hand that was selected to be held;
- d) if one or more of the face-up playing card images of the first poker hand were not selected to be held, terminating the display of the one or more face-up playing card images in the first poker hand that were not selected to be held and replacing the display of each such playing card image with display of a replacement face-up playing card image to display a completed first poker hand having at least five face-up playing card images;
- e) if one or more of the face-up playing card images of the first poker hand were not selected to be held, displaying one or more face-up playing card images in the second poker hand in addition to the duplicate playing card images that were displayed in the second poker hand via step c) to form a completed second poker hand having at least five face-up playing card images;
- f) determining a poker hand ranking of the completed first poker hand,
- g) determining a poker hand ranking of the completed second poker hand, and
- h) determining an amount to be awarded to a player based on the determined poker hand rankings of the completed first poker hand and the completed second poker hand.

### **Second Auxiliary Request**

1. A method of operating an electronic video poker machine having a display screen, the method comprising:

- a) displaying on the display screen a first poker hand, a second poker hand and a third poker hand, said first poker hand having at least five face-up playing card images, said second poker hand having at least five playing card images and said third poker hand having at least five playing card images, each of the face-up playing card images of the first poker hand being displayed in a respective one of a plurality of first card positions aligned in a first row, each of the playing card images of the second poker hand being displayed in a respective one of a plurality of second card positions aligned in a second row and each of the playing card images of the third poker hand being displayed in a respective one of a plurality of third card positions aligned in a third row, the first row of face-up playing card images of the first poker hand being a top row displayed on said display screen, the second row of playing card images of the second poker hand being a center row displayed on said display screen and the third row of playing card images of the third poker hand being a bottom row displayed on said display screen, each of the first card positions being vertically aligned with respective ones of the second and the third card positions;
- b) detecting the selection by a player of none, one or more of the face-up playing card images of the first poker hand as playing cards to be held;
- c) if one or more of the face-up playing card images of the first poker hand were selected to be held,

displaying a duplicate of each of the one or more face-up playing card images selected to be held from the first poker hand into the second poker hand and into the third poker hand, wherein each of the duplicate playing card images of the second poker hand and the third poker hand is displayed in a card position that is vertically aligned with the card position of a respective one of the face-up playing card images of the first poker hand that was selected to be held;

d) if one or more of the face-up playing card images of the first poker hand were not selected to be held, terminating the display of the one or more face-up playing card images in the first poker hand that were not selected to be held and replacing the display of each such playing card image with display of a replacement face-up playing card image to display a completed first poker hand having at least five face-up playing card images;

e1) if one or more of the face-up playing card images of the first poker hand were not selected to be held, displaying one or more face-up playing card images in the second poker hand in addition to the duplicate playing card images that were displayed in the second poker hand via step c) to form a completed second poker hand having at least five face-up playing card images;

e2) if one or more of the face-up playing card images of the first poker hand were not selected to be held, displaying one or more face-up playing card images in the third poker hand in addition to the duplicate playing card images that were displayed in the third poker hand via step c) to form a completed third poker hand having at least five face-up playing card images;

f) determining a poker hand ranking of the completed first poker hand,



- g1) determining a poker hand ranking of the completed second poker hand,
- g2) determining a poker hand ranking of the completed third poker hand, and
- h) determining an amount to be awarded to a player based on the determined poker hand rankings of the completed first poker hand, the completed second poker hand and the completed third poker hand.

V. The Appellant's arguments may be summarized as follows:

As regards claim 1 of the main request, the main difference with respect to D2 concerned the duplication step c).

This duplication did not form part of the rules of the game, which were the standard rules of poker and which remained unchanged vis-à-vis D2. Rules of a game were excluded under Article 52(2)(c) EPC for the reason that they represent a form of intellectual activity or mental acts, whereas the duplication step was performed automatically by the video poker machine, and must therefore be technical. It was also practicable only on a video poker machine, and not feasibly playable on a casino table, which was in any case not claimed.

The duplication step served a clear technical function in comparison to D2: whereas in D2 a user still must select cards for each hand played, the invention required user selection only for the top hand, the held cards being duplicated into all other hands.

Elimination of user selection for the further hands allowed the use of existing single hand random number generators, rather than more powerful random number

generators, to cover all possible outcomes for a three hand play. Maintaining existing random number generators was an important concern in the gaming industry.

Duplication was not equivalent to mere sharing, which it was acknowledged, was known in the context of "Texas Hold'em Poker". Rather it should be seen within the meaning of the specification where it related to the processing steps necessary for such duplication, and where these steps had to be performed by an electronic video poker machine. It was particularly significant in the context of playing with separate decks using an existing random number generator. If necessary, claim 1 could be clarified accordingly.

The duplication in this present poker context was also different from splitting pairs as in blackjack. The processing involved in moving a "split" card from one hand to a newly created hand was essentially different to that involved in duplicating a card from one hand to another.

On the basis of the above effects the object of the invention could be formulated as providing a method of operating a video poker machine allowing an increase of the volume of poker games played per unit time while keeping both the number of user input operations to a minimum and the machine processing low. Neither problem nor solution was known from the prior art. The claimed solution went beyond a straightforward implementation of multiple independently playable games on a single machine.

Analogous to the situation described in T 928/03, reasons 4.3, the technical problem related to resolving conflicting interests: on the one hand that of playing multiple games on a single machine, on the other that of reducing the number of inputs. As in reasons 5.3.3, though rule constraints might be present in this formulation, these should be distinguished from the technical implementation. Thus, the fact that cards which will constitute the starting cards in the second and further hand have to be selected by the player is a game rule. That the transfer from the first hand to the second hand is done by duplication, that is automatically, refers to the technical implementation.

The claimed method showed outstanding commercial success and received acclaim in professional circles. It is also apparent that the prior art provides no hints at the claimed solution, and its conception required true ingenuity.

As regards the first and second auxiliary request, the additional feature of the vertical duplication of the selected cards into the other hands in the exact same position as in the main hand improved the readability of the displayed information much in the manner of T 49/04. It enabled the user to grasp the game quicker and comprehend the results better, so that he would be able to start and play a new game sooner, thus further raising the number of games played per unit time. The further limitation to at least three hands (second auxiliary request) was particularly advantageous in terms of the random number generator required.

## Reasons for the Decision

1. The appeal complies with Articles 106 to 108 and Rule 64 EPC and is therefore admissible.
2. *Allowability of the requests under Article 123(2) EPC*

The Board is satisfied that claim 1 of each of the requests finds support in the original disclosure and thus meet the requirements of Article 123(2) EPC.

Claim 1 of main and auxiliary requests is a reformulation of originally filed claim 3. Whereas that claim was directed at a computer implemented game process, the new claims 1 more specifically relate to a method of operating a video poker machine, which has a firm basis on page 1, lines 10-12. The various display controlling, input enabling, and ranking steps of original claim 3 have furthermore been rephrased as display, input detection and determination steps, without changing the substance and essence of the sequence of steps. Finally, features have been introduced - in particular relating to further hands, and the display arrangement on the display screen - which limit these claims to the specific embodiment of figures 14 to 16 described on pages 14-18 as version #2H.

3. *Inventive step : main request*
  - 3.1 The present invention relates to a method of operating an electronic video poker machine so as to play a card game. As outlined in the summary of the invention on pages 1-2 of the originally filed description, the

claimed method involves a card game in which a player is dealt at least two hands, one face up. The player selects cards to be held (kept) from the face up hand, which are then duplicated into the other hands. The remaining cards in each hand are then discarded and new cards are dealt to replace them and complete each hand. Each hand is ranked and a payout determined.

The card game is implemented in an electronic video poker machine in a series of display, detection and determination steps labelled alphabetically in the claims. These steps which imply the use of appropriate display and control means bestows technical character on the claimed method as a whole, following the approach of T 258/03, OJ EPO 2004, 575, points 4.1 to 4.4 of the reasons. Moreover, they are carried out in accordance with the above rules of a card game. Since the rules of playing games are explicitly mentioned under Article 52(2)(c) EPC as not to be regarded as inventions within the meaning of Article 52(1) EPC, the present invention inherently has non-technical aspects. The term "non-technical" as used here refers to subject matter which relates to things which are not to be regarded as inventions within the meaning of Article 52(1) EPC.

- 3.2 Following the principles set out in T 641/00, OJ EPO 2003, 352, when an invention consists of a mixture of technical and non-technical features, inventive step is to be assessed by taking account of all those features which contribute to the technical character; features making no such contribution cannot support the presence of inventive step (headnote I). This approach is refined in T 928/03 by considering the *actual*

contribution of each feature to the technical character. Thus, see reasons 3.2, "the extent to which the characterizing features contribute to the technical character ... in relation to the effects achieved by those features" must be determined. In that approach the differences of claimed subject-matter in relation to the prior art are first determined, after which the effect of each difference is established in relation to the prior art. From its effect the extent to which the respective difference contributes to the technical character, its technical "residue" so to speak, can be inferred.

3.3 As is acknowledged by the Appellant D2 represents the closest prior art. In particular, columns 4 and 5 in reference to figure 1 describe an electronic video poker game machine with a display screen operated so as to display two face up hands of cards, one of which the player discards. The other hand is then played in classical manner by holding selected cards, after which the machine completes the hand, calculates its ranking and determines a payout.

3.4 The method of claim 1 of the *main request* differs from the method of D2 in features a), c), e), g) and h) (using the notation of claim 1 of the main request). In essence these differences are:

- a) displaying one of the hands face-up and as *top row* on the display screen
- c) duplicating on the display screen the held cards from the first hand into the second hand,
- e) completing on the display screen the second hand
- g) determining the poker hand ranking of the completed second hand

h) determining an amount to be awarded based on the rankings of second hand, as well as that of the first hand.

3.5 The Board firstly notes that the link between features a), c), e), g) and h) resides in the fact that together they implement a set of rules of a game. The Board holds that such non-patentable matter cannot be taken into consideration when assessing the technical contribution of the invention as a whole, and that this must therefore lie in the individual technical contributions of the respective differing features. It is thus justified to consider these features in isolation.

3.6 Differences a), e), g) and h) have as an *overall* effect allowing play of a further hand on the same machine. Whereas D2 allows only one of the two displayed hands to be played, both hands are played simultaneously in the present invention. Based on this effect the main technical problem addressed by the invention may be formulated as *increasing the number of hands played per unit time on the machine*, or, as formulated by the Appellant providing a "higher volume of play per unit time".

This problem represents a common concern in the gaming field, and may for example be inferred from D2, see column 2, lines 46-49 ("higher volume of play" must naturally refer to a set time period). Simply offering two (or more) hands to the player is an obvious solution to this technical problem, which is implemented by features a), e), g) and h) in a routine manner by the skilled person, who is a gaming software

engineer, using his general knowledge. The machine is simply reprogrammed with additional display, complete, rank and payout steps for the second (or further) hand in accordance with standard poker play as already played for the first hand. Moreover, display of the two hands above one another (with the top hand already dealt) as in feature a) is not seen to serve any technical purpose (other than presenting two hands) and therefore cannot contribute to inventive step. Features a), e), g) and h) therefore do not involve an inventive step.

3.7 Difference c) is identified by the Appellant as the main distinction over D2. By duplication of the cards held in the first hand into the second hand a player need make only a single selection of held cards. In effect, the duplicated cards are then *shared* with the second (and any further) hand. Underlying difference c) thus is the concept of *shared* or *common* cards. This finding is not at variance with the Appellant's view that duplication and sharing are not identical. Rather, the claimed duplication represents the specific technical implementation of shared cards and thus extends beyond the pure notion of sharing.

3.7.1 The Board firstly notes that the concept of *common* or *shared* cards relates to *rules of a game*, which as such are excluded from patentability as non-technical. The concept of sharing in fact underlies a similar rule in the table card poker game of "Texas Hold'Em", mentioned on pages 20 and 21 of the originally filed description, whereby players complete their hands using shared community cards laid centrally on the table. Sharing as it takes shape in the present rule is undoubtedly new -



cards are shared between hands of the same player, rather than between a set of community cards and hands of different players - and in fact defines a new poker variant, i.e. a new set of rules of playing a poker game. As with Texas Hold'Em, this new variant is playable, albeit in a rather impractical manner, as a table card game: each of the underlying rules of dealing two hands, selecting and holding cards in one hand, sharing them with another, completing and ranking each of the hands and performing payout can be played with traditional card decks. The Board notes that it interprets "game rule" in its general sense of "a prescribed guide for conduct or action" in a game, which applies equally to the rules that are peculiar to a particular type of poker, such as "Texas Hold'Em", as well as to those that are common to all poker games.

- 3.7.2 Sharing held cards between hands inherently minimizes the number of player selections to be made for first and further hands. This effect is inherent in sharing as a *game rule*. Its implementation in an electronic video poker machine transposes the above explained effect of sharing to a technical context, allowing it to be redefined as "reducing the number of necessary user inputs" to the machine. However, though technical implementation of the new game rule may give its effect technical character, nevertheless, inventive step cannot rely on such an effect, which is ultimately inherent in non-technical subject-matter. Otherwise, the mere act of technical implementation of the new game would render patentable what had hitherto been unpatentable under Article 52(1) EPC. Rather, assessment of inventive step must be based on any *further* advantages or effects associated with the

particular manner of implementation over and above the game's inherent effects and advantages, which are at best to be considered as incidental to that implementation, i.e. as a bonus effect. For this reason the Board cannot accept the Appellant's formulation of the technical problem as "keeping the number of necessary user input operations and the processing necessary within the machine low" for multiple games and any further arguments based thereon.

3.7.3 It is thus necessary to consider the technical contribution of the specific technical implementation of the sharing by duplication in isolation from any effects inherent in the sharing per se. The effect of the duplication step *over and above* that associated with sharing is to present to the player the shared cards on a display screen in a more readable format, as has additionally been suggested by the Appellant. Played as a table card game the player would have to *mentally* combine the cards in the further hands with the shared cards. Displaying the shared cards in *each* of the hands relieves the player of this mental task, enabling him to comprehend the game results for each hand quicker. Following the approach of T 49/04, see e.g. reasons 4.6.3, the Board accepts that such an improvement in readability, which relates to **how** "cognitive content" is presented, constitutes a technical contribution. The corresponding technical problem may then be formulated as *improving readability*.

3.7.4 However, the claimed solution to this common problem merely reproduces in straightforward visual format what is necessarily already present at processing level (e.g. as input to the ranking), as well as in the mind's eye

of the player when completing and ranking hands. Moreover, each hand and its ranking must ultimately be communicated to the player for verification, and simultaneous display provides the highest level of verifiability. For these reasons duplicating the cards in each hand and thus showing each hand in its entirety is obvious. The Board concludes that the duplication step does not involve an inventive step.

3.7.5 As regards further arguments concerning reduced processing, the Board finds that this argument is based on features of random generators which are not present in claim 1. Nor are these effects and features deducible by the skilled person from the originally filed application documents. Consequently, the Board must disregard such arguments in the assessment of inventive step.

3.7.6 The fact that the present invention may actually have required some form of ingenuity - in the colloquial sense of the word - is not disputed by the Board. Neither has the Board any reason to doubt the commercial success, even if no evidence were put forward in support of the latter. However, such arguments are irrelevant in assessing inventive step, when a substantial part of the claimed subject-matter is excluded under Article 52(2) EPC. For example, the same could be said about a bestseller novel.

3.7.7 In summary, the Board finds that the differences of the method of claim 1 vis-à-vis D2 address the *technical* problem of enabling the machine to play more than one game, and doing so with improved readability. This problem is solved in part by adapting the machine

control to allow play of further games in a manner which is straightforward and obvious to the skilled person, a gaming software engineer. In part the solution involves a non-technical modification of the game rules, which, though it cannot itself contribute to inventive step, is then implemented in an obvious manner in the machine. In conclusion therefore, the Board finds that the subject-matter of claim 1 of the main request does not involve an inventive step.

4. *Inventive Step : Further Requests*

4.1 The additional feature of the vertical alignment of the duplicated cards in the display according to claim 1 of the first auxiliary request addresses the technical problem of improving readability of the hands on the display, see also section 3.7.3. It is obvious from general considerations that readability is best served by preserving the main attributes of the cards to be duplicated, in particular order and size. In this context the vertical placement of the hands as opposed to the hands being displayed side-by-side is marginally improved as it allows the relationship between the cards to be grasped by the user quicker than in the latter case. Nevertheless, such a layout is one of a limited number of options available to the skilled person in displaying simultaneously played hands, and from his consideration of these options this marginal benefit would be immediately obvious and thus motivate his choice. Consequently, the method of claim 1 of the first auxiliary request also lacks inventive step.

4.2 Claim 1 of the second auxiliary request adds to claim 1 of the first auxiliary request the further feature of a third row into which the held cards are duplicated and which is then played, ranked and paid out. The above arguments in respect of the main and first auxiliary request hold irrespective of the number of hands simultaneously displayed and played on the machine. That this is the optimal number of hands playable with a classical random number generator is immaterial as the latter feature is not derivable from the originally filed application documents, nor can this effect be deduced by the skilled person from a consideration of this subject-matter in relation to the prior art of D2. Consequently, the subject-matter of this claim also lacks inventive step.

4.3 The Board adds that the introduction into claim 1 of the further feature that each hand is played from a separate deck would not render the method of claim 1 inventive. In as far as this feature draws its technical significance from the continued and optimal use of an existing random number generator, such significance must be disregarded for the reasons stated previously. Otherwise, the decision to play separate hands from separate decks lies purely in the non-technical domain of rules of playing games and is moreover motivated by the evident choice to play each of the hands independently.

5. In conclusion, the Board finds that the subject-matter of independent claim 1 of the main, first auxiliary and second auxiliary request do not involve an inventive step, and therefore does not meet the requirements of Article 52(1) in combination with Article 56 EPC.

**Order**

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

The appeal is dismissed.

The Registrar:

The Chairman:

G. Magouliotis

M. Ceyte