

**Internal distribution code:**

- (A) [ ] Publication in OJ  
(B) [ ] To Chairmen and Members  
(C) [X] To Chairmen  
(D) [ ] No distribution

**Datasheet for the decision  
of 7 September 2007**

**Case Number:** T 0335/07 - 3.2.04

**Application Number:** 98965350.6

**Publication Number:** 1044043

**IPC:** A63F 3/06

**Language of the proceedings:** EN

**Title of invention:**  
Interactive gaming device

**Patentee:**  
IGS Limited

**Opponent:**  
-

**Headword:**  
-

**Relevant legal provisions:**  
EPC Art. 52(1), 54, 111(1)

**Keyword:**  
"Main, 1st auxiliary request - novelty (no)"  
"2nd auxiliary request - remitted for further prosecution"

**Decisions cited:**  
T 0641/00

**Catchword:**  
-



Case Number: T 0335/07 - 3.2.04

**D E C I S I O N**  
of the Technical Board of Appeal 3.2.04  
of 7 September 2007

**Appellant:** IGS Limited  
Portland House,  
Glacis Road,  
P.O. Box 475  
Gibraltar (GI)

**Representative:** Bergquist, Kjell Gunnar  
Albihns Göteborg AB,  
Box 142  
SE-401 22 Göteborg (SE)

**Decision under appeal:** Decision of the Examining Division of the  
European Patent Office posted 27 September 2006  
refusing European application No. 98965350.6  
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. The Appellant lodged an appeal, received at the EPO on 27 November 2006, against the decision of the Examining Division posted 27 September 2006, refusing the European patent application no. 98965350.6, and simultaneously paid the required appeal fee. The grounds of appeal were received 30 January 2007.

II. The Examining Division issued its decision in response to a request for a decision according to the state of the file. In the communications cited in its decision it held that the application did not meet the requirements of Articles 52(1) and 56 EPC having regard to the following documents:

D1: EP-A-0 647 912

D2: Abstract of JP-A-09 173 644 as published in the Patent Abstracts of Japan,

The Board considers the following further document cited in the search report of relevance:

D3: US-A-5 069 453.

III. The Appellant requests that the decision be set aside and a patent granted on the basis of the claims as originally filed, or, alternatively, on the basis of sets of claims in accordance with a first or a second request filed with the grounds of appeal.

IV. The wording of the (sole independent) claim 1 of the requests is as follows:

**Main Request**

"Interactive gaming device (100) which contains information concerning whether the device can be made to award a prize or not, which device comprises means (1,2,3,4,5,10,20,30,40,50,60,70) for interaction with a user, characterized in that the device is provided with information unknown to the user concerning how a user is to interact with the device (100) in order for a device which can award a prize to award a prize."

**1st Auxiliary Request**

Claim 1 is as in the main request with the addition of the following final lines: "and in that the means of interaction with a user comprises sensors (1,2,3,4,5) for detecting at least one of the following parameters:  
- sound,  
- light,  
- temperature,  
- touch,  
- atmospheric pressure,  
- movement of the device."

**2nd Auxiliary Request .**

Claim 1 is as in the 1st auxiliary request with the insertion after "parameters" of ", each parameter constituting a sense of the device" while adding the following final lines: "and that the device (100) contains information about within what range and for what periods of time the interaction with the device is to occur for every single one of the device's senses."

V. The Appellant argues as follows:

The difference in interaction with respect to D2 does not relate to rules of a game, excluded under Article 52(2) EPC, but rather implies hardware components which allow the device to assess interaction and compare it with stored information. In claim 1 of the 1st and 2nd auxiliary request these means are defined explicitly.

### **Reasons for the Decision**

1. The appeal complies with Articles 106 to 108 and Rule 64 EPC and is therefore admissible.
2. *Background of the invention*

The invention concerns an interactive game device which in particular contains "information unknown to the user concerning how a user is to interact with the device in order for [the] device ... to award a prize". In the main embodiment, see pages 9 to 10 of the description, the user interacts with the device via a plurality of different sensors, e.g. each sensing a different parameter (touch, sound, light, movement, etc.). To be awarded a prize, he must interact with each sensor in a given time slot and such that the sensed parameter lies within a predetermined range for that sensor. The user has no advance knowledge of the particular ranges or time slots. In this manner a high degree of interactivity is achieved, which increases game involvement and player excitement (page 2, lines 27 to 29; page 9, line 31, to page 10, line 2).

3. *Main Request*

3.1 Claim Interpretation

3.1.1 The feature that the device "contains information concerning whether the device can be made to award a prize or not" is unspecific to the particular form that this information might take. It may be read in the sense of page 6, lines 11 to 22 of the description, where the information is contained in the way the device is configured, namely by equipping it or not with all [the necessary] senses or by activating or not all those senses. In this case, the device is thus configured to award a prize or not, and, in this interpretation this feature would have no limiting effect. Alternatively, as on page 5, lines 30 to 35, it can be read as information stored in a microprocessor or memory, for example in the form of the conditions necessary for awarding a prize, and thus an inherent feature of any interactive prize awarding gaming device.

In the light of page 11, line 29, to page 12, line 4, the Board reads the term "prize" as any form of reward or encouragement.

3.1.2 The Board further interprets the indication "information ... *how the user is to interact...*" (italics added) as referring generally to information used by the device to identify the particular user response or input required for the device to award a prize. This very broad formulation is unspecific to the particular nature or type of interaction. It

encompasses any manner of interaction, contrary to the Appellant's arguments.

In this context, the Board adds that the further indication that this information is "unknown to the user" does not imply any clear structural limitations of the device itself. Whether or not this requirement is met will depend on a given user's knowledge. An otherwise known interactive gaming device will, in the hands of an uninitiated user, meet the claim's requirements, while a novel such device ceases to fall within the ambit of the claim, once a user gains knowledge of the interaction rules. In that this feature is immaterial to the questions of novelty and inventive step, the Board shall nevertheless include this feature in its further deliberations.

- 3.1.3 In conclusion, the Board construes claim 1 (main request) as defining an interactive gaming device, which may, but need not, be configured to award a prize or, alternatively, which may store information regarding the conditions for awarding a prize. This device includes means for interacting with the user (i.e. for responding to user input) and stores information as to the user input required by the device to award a form of reward or encouragement. That information shall be presumed to be not known by the nominal user.

#### 4. *Main Request*

- 4.1 Interpreting claim 1 in its broadest sense, the Board reads its features onto those of any computer based interactive gaming device for playing games of the

role-playing game or adventure game type, which were manifestly known at the priority date of the present application. Examples of such games are Dungeon Master (1987) or Tomb Raider (1996). In such games a player faces a series of challenges each of which must be successfully met before the player can proceed. Each challenge requires some predefined response or input by the player via the interaction means (a keyboard or a joystick), which is stored in the device but is unknown to the player the first time he faces this challenge. The device is configured to award a prize, most commonly in the form of a score of points awarded, for every challenge successfully met.

- 4.2 The Board also identifies the features of claim 1 with those of the interactive gaming devices disclosed in the documents D1 to D3.

D1, see figures 1 and 3, and page 3, line 15, to page 56, discloses an interactive device for facilitating game play in television or radio based quizzes or lotteries. User interaction via the keyboard is accepted only in set time slots. If the correct input has been entered in each time slot, the player receives as reward, the display of information necessary for claiming a prize. In the case of a lottery game the user input required for a prize is not known in advance, though it may be stored in the device.

In the device of D2 a user interacts via a touch panel 9 comprising plural touch sensors. If he touches the correct sensor he wins a prize. The "winning" sensor is set randomly - and corresponding information stored in the device - so that the user cannot know in advance



which sensor to activate, i.e. how he is to interact with the device for it to award a prize.

D3, see column 6, lines 26- 65, details an electronic lotto ticket apparatus in which the user inputs numbers of his choice, via input means. This input, which represents his interaction with the device, is compared to broadcast win numbers received and contained in the device, but not known in advance to the user.

In each of the above cases, the device is configured to award a prize for the correct user response, i.e. it contains information in the sense indicated under section 3.1.1 above.

4.3 All the features of claim 1 are thus known in combination from either the manifestly known prior art, or that of documents D1 to D3, and the Board concludes that the device of claim 1 lacks novelty. Claim 1 of the main request thus fails to meet the requirements of Article 52(1) in combination with Article 54 EPC.

5. 1st Auxiliary Request

Claim 1 of the 1st auxiliary request additionally specifies that the interaction means comprises sensors which detect at least one parameter from a list of optional parameters. This list includes the parameter "touch". Computer based interactive gaming devices standardly include, as interaction means a keyboard or a joystick each with touch-sensitive keys or buttons, i.e. sensors which sense touch (in on/off manner). This feature is thus present in any of such manifestly known gaming devices as mentioned above under section 4.2.

Moreover, touch sensors are also explicitly shown in D1 (figure 2, keyboard 22) and D2 (see abstract). As this further feature is also known in combination from the prior art, claim 1 of this request also fails to define novel subject-matter and thus also does not meet the requirements of Article 52(1) in combination with Article 54 EPC.

6. 2nd Auxiliary Request

6.1 Claim 1 incorporates further features from the description, in particular from page 9, lines 31 to 34, relating to information contained in the device on ranges and time periods within which interaction is to occur for each of the device's sensed parameters. The preceding paragraphs define such interaction as "correct", such "correct" interaction with all senses resulting in the device awarding a prize, see further page 10, lines 24 to 35, read in conjunction with page 6, lines 1-9, of the description. Within this particular context, this feature thus sets out the interaction necessary for awarding a prize.

6.2 This scheme, which in addition to the storage of the relevant information also requires the device to be *adapted to allow award of a prize if "correct" interaction has occurred for all of a plurality of senses*, is distinct from the prior art discussed above. None of the cited documents discloses or suggests awarding a prize based on interaction falling within a (sensing parameter) range. In these known devices the touch sensors act as switches, and are not associated with a sensing "range" as such.

- 6.3 In comparison with the above prior art, this scheme represents a different type of interactivity, which contributes to player involvement and excitement. It thus offers a solution to the technical problem of modifying the interactivity with the aim of increasing a player's excitement. Though this problem includes a non-technical aim, it is technical in nature, following T 0641/00 (OJ EPO, 2003, 352). The solution is also technical in nature, involving storage in the device of the range information and further adaptations of the device as indicated above.
- 6.4 The Board does not consider the idea of associating a particular range of allowable player interactions for a given sensed parameter to be obvious in the light of the presently available prior art, or to be trivially obvious in its own right based on the skilled person's common general knowledge.
- 6.5 However, the above concept (which is unified with that expressed in the original claims) is not included in the original claims, nor has it been considered by the Examining Division. So as not to deprive the Appellant of a first instance consideration of this subject-matter the Board decides to remit the case for further prosecution on the basis of this set of claims. The Board observes that in his reply to the Board's communication dated 24 April 2007, the Appellant has not objected to the proposed remittal to the first instance.
- 6.6 In remitting the case to the first instance, the Board draws attention to the following points:

- The international search report cites only documents of "A" category, i.e. which the International Search Authority did not consider prejudicial to novelty or inventive step, so that, having regard to the Guidelines for Examination in the EPO ("the Guidelines" hereinafter), June 2005, B-II, 4.3(ii) and B-III, 3.7, only claim 1 will have been searched. A conclusive examination with regards to inventive step in particular may require an additional search as provided for in the Guidelines, B-II, 4.2.
  
- It may also be necessary to consider the requirements of Article 123(2) EPC (added subject-matter) and Article 84 EPC (clarity). The features added from the description appear to be extracted in isolation from other features, e.g. those mentioned in section 6.2 above, which moreover appear necessary for a complete solution of the problem identified in section 6.3 above.

**Order**

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

1. The decision under appeal is set aside.
2. The case is remitted to the first instance for further prosecution on the basis of the claims of the 2nd auxiliary request.

The Registrar

The Chairman

G. Magouliotis

M. Ceyte