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**Datasheet for the decision
of 11 October 2007**

Case Number: T 0336/07 - 3.2.04

Application Number: 03029415.1

Publication Number: 1421979

IPC: A63F 3/00

Language of the proceedings: EN

Title of invention:

Electronic multi-play poker with face-up hand in bottom row

Patentee:

IGT

Opponent:

-

Headword:

-

Relevant legal provisions:

EPC Art. 52 (1), 52(2)(c), 56

Keyword:

"Inventive step - all requests (no)"
"Mixture of technical and non-technical features"
"Rules for playing games"

Decisions cited:

T 0935/97, T 1173/97, T 0641/00, T 1212/01, T 0258/03,
T 0928/03

Catchword:

1.The mere fact that subject-matter, which is excluded per se under Article 52(2) (c) EPC, is technically implemented cannot form the basis for inventive step. Inventive step can be based only on the particular manner of implementation of such subject-matter. To this end it is therefore necessary to ask

how the per se excluded subject-matter (e.g. a game or business method) is implemented (reasons 2.4)

2.A consideration of the particular manner of implementation must focus on any further technical advantages or effects associated with the specific features of implementation over and above the effects and advantages inherent in the excluded subject-matter (reasons 2.5)

3.A set of game rules defines a regulatory framework agreed between players and concerning conduct, conventions and conditions that are meaningful only in a gaming context. It is perceived as such by players involved, and as serving the explicit purpose of playing a game. As such an agreed framework it is a purely abstract, mental construct, though the method and means for carrying out game play in accordance with such a set may well be technical in nature (reasons 3.3.1).



Case Number: T 03336/07 - 3.2.04

DECISION
of the Technical Board of Appeal 3.2.04
of 11 October 2007

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

Representative: Körber, Martin Hans
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Decision under appeal: Decision of the Examining Division of the
European Patent Office posted 28 September 2006
refusing European application No. 03029415.1
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 (Applicant) lodged an appeal, received 8 December 2006, against the decision of the Examining Division of 28 September 2006 to refuse European Application No. 03 029 415.1, and simultaneously paid the appeal fee. The statement setting out the grounds was received 26 January 2007.

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.

II. Following a communication from the Board oral proceedings were duly held on 11 October 2007.

III. During the appeal proceedings the Board considered the following document:

D2: US-A-5 356 140

IV. The Appellant requested that the decision under appeal be set aside and a patent be granted on the basis of a main request, or, in the alternative, on the basis of first to fifth auxiliary requests all filed with letter of 25 June 2007.

V. 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 bottom 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, whereby the face-up playing card images of the first poker hand are dealt from a first deck of cards;
- 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, whereby the face-up playing card images of the second poker hand are dealt from a second deck of cards with the initially displayed at least five face-up playing card images of the first poker hand removed therefrom;

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 bottom 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, whereby the face-up playing card images of the first poker hand are dealt from a first deck of cards;
- 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, whereby the face-up playing card images of the second poker hand are dealt from a second deck of cards with

the initially displayed at least five face-up playing card images of the first poker hand removed therefrom;
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 bottom 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 top 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, whereby the face-up playing card images of the first poker hand are dealt from a first deck of cards;

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, whereby the face-up playing card images of the second poker hand are dealt from a second deck of cards with the initially displayed at least five face-up playing card images of the first poker hand removed therefrom; 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, whereby the face-up playing card images of the third poker hand are dealt from a third deck of cards with the initially displayed at least five face-up playing card images of the first poker hand removed therefrom; 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."

Third to Fifth Auxiliary Requests

Claim 1 in accordance with the third, fourth and fifth auxiliary request corresponds to claim 1 of the main and first and second auxiliary request, respectively,

but for the indication in steps d) (third to fifth auxiliary request), e) (third and fourth auxiliary request) and e1) (fifth auxiliary request) that "the face-up playing card images are dealt from a ... deck of 52 cards".

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

The central difference with respect to prior art video poker games is the duplication of the initially drawn cards between multiple hands.

Duplication as in step c) is not a rule of a game in the sense of Article 52(2)(c) EPC. That article does not give a definition of what a game or a game rule is, but it is clear from the intentions of the framers of the EPC, that such matter is excluded in as far as it relates to abstract or intellectual activity. Games or game rules as meant in Article 52(2)(c) EPC must be understood in this sense; they define an abstract framework for a player's conduct and actions.

In contrast hereto the claimed duplication is purely technical. It is performed automatically on a video poker machine and is only feasible in that context. It has clear technical effects, namely reducing the number of necessary player inputs for several hands, allowing him to play more games per unit time. In combination with dealing from separate decks this allows the continued use of a single random number generator. Additionally, it improves readability of the results.

Nor does duplication result in a new or different poker game. Each of the several hands is still played

according to the normal rules of poker from a single deck. Each hand is thus a game in the proper sense of the word. The particular betting scheme, which need not be different for the individual games, is unimportant in this respect and does not somehow mean that the several hands together constitute a single game. The claimed method thus allows a player to play several separate games, made possible technically in particular by automatic transfer of held cards to other hands.

Moreover, such technical duplication is not even remotely similar to the sharing as game rule in the poker variant commonly known as "Texas Hold'em". In any case, at the priority date Texas Hold'em was not known to be played on a video poker machine.

In conclusion, the duplication step does not possess any game rule aspect but is purely technical. It addresses the problem of 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. It is apparent that the prior art does not provide any hint at the claimed duplication, and goes beyond the obvious play and display of several hands on a single machine from separate hands. The claimed method's conception has required true ingenuity, as is corroborated by its documented commercial success and acclaim.

Reasons for the Decision

1. The appeal complies with Articles 106 to 108 and Rule 64 EPC and is therefore admissible.
2. *Assessing inventive step of "mixed" inventions*
 - 2.1 Before considering the present case in detail, the Board wishes to review briefly the methodology applied by the Boards of Appeal of the EPO in dealing with "mixed" inventions, which are inventions having both technical and non-technical features. Technicality is a fundamental requirement of a patentable invention implicit in Article 52(1) EPC, and the matter listed in Article 52(2) EPC is generally understood as failing to meet this implicit requirement, see the Case Law of the Boards of Appeal of the EPO, 5th edition, 2006 ("CLBA" hereinafter), I.A.1 and the decisions cited therein. It is also generally recognized, that an invention may legitimately be so "mixed", as long as it possesses technical character as a whole, cf. CLBA, I.D.8.1.1, see in particular T 641/00 (OJ EPO, 2003, 352).
 - 2.2 The inventive step requirement of Articles 52(1) and 56 EPC is assessed using the well-established problem-solution approach, which is fundamentally technical in nature. When applied to "mixed" inventions as above, such an approach must necessarily differentiate between an invention's technical and non-technical features, cf. CLBA, I.D.8.1.2. In the approach adopted by T 641/00, head-note I, 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". This principle is recognized also by the present Board.

2.3 The Board adds that the principle as expressed in T 641/00 may also reformulated as follows: an invention which as a whole falls outside the exclusion zone of Article 52(2) EPC (i.e. is technical in character) cannot rely on excluded subject matter *alone*, even if novel and non-obvious (in the colloquial sense of the word), for it to be considered to meet the requirement of inventive step. The Board is of the firm belief, that it cannot have been the legislator's purpose and intent on the one hand to exclude from patent protection such subject matter, while on the other hand awarding protection to a technical implementation thereof, where the only identifiable contribution of the claimed technical implementation to the state of the art is the excluded subject-matter itself. It is noted that here the term "contribution" encompasses both means (i.e. tangible features of the implementation) and effects resulting from the implementation. In that case Article 52(2) EPC would be reduced to a mere requirement as to form, rather than of substance, and thus easily circumvented.

2.4 It follows from the above that the mere fact that excluded subject-matter is technically implemented cannot *per se* form the basis for inventive step. The Board concludes that inventive step can be based only on the *particular manner* of technical implementation. To this end it is therefore necessary to ask *how the*

per se excluded subject-matter (e.g. a game or business method) is implemented. In the context of the problem-solution approach this can be rephrased as a fictional technical problem in which the *per se* excluded subject matter appears as an aim to be achieved, cf. T 641/00 head-note II.

- 2.5 A consideration of the particular manner of implementation - from the point of view of the relevant skilled person under Article 56 EPC, who may be identified on the basis of the invention's technical character - must focus on any *further* technical advantages or effects associated with the specific features of implementation over and above the effects and advantages inherent in the excluded subject-matter. The latter are at best to be regarded as incidental to that implementation. The explicit requirement of a "further" technical effect has been first formulated for computer-related inventions in decisions T 1173/97 (OJ 1999, 609), see head-note and point 9.4 of the reasons, and see also T 935/97, but the same principle holds also for other categories of excluded subject-matter which may inherently possess some "technical" effect. In fact, inherent and arguably technical effects may be easily identified for practically all excluded subject-matter, for example such a simple one as time savings due to a more efficient order or scheme of actions. This is why it needs to be stressed that the "further" technical effect can not be the same one which is inherent in the excluded subject-matter itself.

- 2.6 This is analogous to the approach of T 928/03, which considers the actual contribution of each feature to the technical character by, for each feature, stripping

away its non-technical content leaving its technical residue so to speak. 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.

3. *The invention (main request)*

3.1 The present invention relates to a method of operating an electronic video poker machine in a sequence of display, detection and determination steps. In particular, two rows of cards or hands are displayed on a display screen, one face-up, the other face-down. Player selection of cards to be held (kept) from the face-up hand is detected, and the detected cards, if any, are then duplicated on the display into the other hands; the display of any remaining (non-selected) cards is terminated. Each hand is then completed by dealing new cards, using different decks for different hands, and displaying these. The resultant hands are ranked and a payout determined.

The central feature is that of duplication. This requires a player to make only a single selection for multiple hands, from the face-up hand, any selected cards being copied into the other hands. As a result the player can play several hands quicker.

3.2 Following the approach of T 258/03, OJ EPO 2004, 575, see points 4.1 to 4.4 of the reasons, the use of an electronic video poker machine as technical means, in a number of technical steps pertaining to its operation, in terms of display, detection and determination,

bestows a clear technical character on the claimed method.

3.3 However, the claim also includes non-technical aspects, in that the various steps of operation of the video poker machine are carried out in accordance with rules of playing a video poker game, where rules for playing games are explicitly mentioned in Article 52(2)(c) EPC as excluded from patentability.

3.3.1 The Board reads "game" in its general sense as meaning "a diversion of the nature of a contest, played according to rules, and displaying in the result the superiority either in skill, strength, or good fortune of the winner or winners" (from the Oxford English Dictionary or OED). A game in the usual sense of the word is characterized by a goal or goals (either final or intermediate), and its rules of play which govern the conduct and actions of the players during game play. Here, "rule" in the context of a game, is read as "a regulation determining the methods or course of a game" (OED). The set of game rules thus determines how game play evolves from beginning to end in response to player actions and decisions. It specifies initial setup; how a player may or must act as the game unfolds from one game situation to another; and finally the goals to be achieved to conclude game play. A set of rules thus defines a regulatory framework agreed between players and concerning conduct, conventions and conditions that are meaningful only in a gaming context. It is important to note that it is normally so perceived by the players involved, and as serving the explicit purpose of playing a game. As such an agreed framework it is a purely abstract, mental construct,

though the method and means for carrying out game play in accordance with such a set may well be technical in nature.

3.3.2 Such an agreed framework is readily recognizable in claim 1. For example, steps a), b), and d) to h) relate to the individual stages of game play of initial deal, holding cards, completion, ranking and payout as determined by the rules of play. Their correspondence with the scheme of play of classical draw poker games - which (see for example in D2, see column 1, lines 22 to 24) also involve initial deal, hold, completion and ranking and payout - is evident. In fact the stages of game play encompassed by steps a), b), d), f) are identical to those of a classic draw poker game for the *first* hand, those of e) and g) to the endplay of classical draw poker for the *second* hand, all followed by a standard ranking as in step h).

3.3.3 What sets the method of claim 1 apart is duplication step c). By requiring cards held from the first hand to be duplicated into a second hand, this step in effect prescribes that *the player use the same held cards for that second hand* (which is subsequently played according to classical draw poker). The two hands are thus linked by a single initial deal of face-up cards that are *shared* or *common* between them. This notion of shared or common cards pertains to how further hands are established or initiated, and thus represents an agreed convention in game play. In the Board's opinion it is thus to be considered as a game rule.

3.3.4 This is best demonstrated by a comparison with game play of two separate hands of classical draw poker.

There the game rules would require that a separate initial deal be made for the second hand, and that the player then hold cards from these for the second hand. In game play following the method of claim 1 these two stages in the playing of the second hand are dispensed with and replaced by duplicating the results from the first hand initial deal. From the player's viewpoint the way he plays the second hand has however changed as he no longer needs to separately "hold" cards for that hand as would have been required by the classical game rules; his choice of cards for the first hand now serves that purpose. This change pertains to the actions required of the player during game play by virtue of the game rules, and thus represents a change in the game rules themselves. The Board stresses that this change is meaningful to the player only within the agreed framework of game play, and will be perceived by the player as part of that framework.

3.3.5 The game rule underlying duplication step c) and based on the notion of shared cards can be formulated as: "the same cards held for the first hand are used as held cards of a second hand". The set of game rules contained within the steps of claim 1 may then be drawn up to read as follows:

- (i) a first hand of face-up cards is dealt to the player from a first deck (step a));
- (ii) the player selects (or holds) cards from the first hand discarding the non-held cards (step b));
- (iii) the cards held in step (ii) are also used as held cards for a second hand (step (c));

- (iv) the first hand is completed by dealing further cards from the remaining cards of the first deck (step (d));
- (v) the second hand is completed by dealing further cards from a second separate deck from which the initial face-up cards are removed (step (e));
- (vi) the completed hands are ranked (steps f) and g));
- (vii) a payout is determined on the basis of both rankings (step h)).

3.3.6 This set of rules defines a new variant of draw poker, which allows two hands to be played from a single deal. It is distinct from playing two draw poker hands as in D2 as discussed previously. It also differs from multi-player draw poker games such as Texas Hold'em, which, though showing a form of common or community cards, use these for the hands of different players.

3.3.7 Rules (iii) and (v) (removing the initial cards from the second deck) make this game particularly suitable for play as a video poker machine. However, it is by no means limited thereto, and is easily conceivable as a classical table card game. Page 1, lines 15 to 16, of the description as filed, on page 1 in fact suggests as much, albeit in a more general context ("invention ... features ... may apply to casino table games"). Rule (v) in particular could be carried out in a table card game by either removing the initial face up cards from the second deck before completing or discarding them as they are dealt during completion of the second hand.

The fact that steps (a) to (h) of claim 1 can be reformulated as rules that are playable as a classical table card game supports the Board in its conviction that they concern game rules. However, this fact is not decisive. The Board recognizes that some games may *only* be played sensibly on such a machine, just as traditional poker games were conceived originally for conventional paper-based decks of cards of various suits. What is crucial in this regard is determining which parts of the claim reflect the agreed framework of actions as part of game play and are thus meaningful only in that context.

3.4 In conclusion, the Board finds that claim 1 includes both technical and non-technical features and is thus of "mixed" nature. The central duplication step (c) in particular, even if technical in execution, is seen to incorporate a game rule.

4. *Inventive Step (main request)*

4.1 In that the method of claim 1 relates to the operation of a video poker machine as a (new) video poker game is played thereon and in accordance with its rules of play, the Board sees it as directed at the technical implementation of those rules. Following the principle of T 641/00 (see section 2.2 above) as reformulated in section 2.3, inventive step can however not be based on their mere technical implementation, but must rather reside in the particular manner of implementation. It is therefore necessary - see section 2.4 to 2.6 above - to consider more closely *how* the rules are implemented in the claimed method of operation. This question is to be considered from the point of view of the skilled

person - here a gaming software engineer - who is given the task of implementing the above set of rules on an electronic video poker machine. That the general idea of implementing this game on such a machine is trivially obvious behoves no further comment, given the explicit, known purpose of such machines.

4.2 Rules (i), (ii), and (iv) to (vi) are implemented by assigning all those actions and operations not carried out by the player (and which in a casino table card game would be carried out by the dealer) to the machine for automatic execution using its basic features of interaction, namely display and input means, as well as implied processor. These are precisely those functions that the gaming software engineer would assign as a matter of course to the machine, if he were given the task to implement the game rules thereon. Thus the machine deals the face-up non-player cards, detects the cards held, completes the two hands, ranks the completed hands and determines payout. This corresponds to steps a), b), d), e), f), g) and h). The particular way in which the hands are displayed (in vertically arranged rows) is just one of a limited number of possibilities of displaying hands that are traditionally laid out in rows, and for this reason itself obvious.

Steps a), b) and d) to h) are thus the obvious result of straightforward implementation of the set of game rules of section 3.3.2.

4.3 Rule (iii) is realized by the *duplication* of step c), which, as carried out on the machine is undoubtedly of technical nature. However, for the purpose of

establishing the invention's technical contribution the Board must differentiate between the underlying purely abstract, and thus non-technical notion of sharing as game rule, and its technical expression by duplication as in step c). This enables the Board to identify any effects inherent in sharing per se, and those further effects which result purely from its technical implementation by duplication. In reference to section 2.5 above only the latter are of importance in the technical assessment of inventive step.

- 4.3.1 At this juncture the Board notes that the application is concerned only with the general idea of duplication rather than any specific implementation, for which it provides no detail. In its deliberations the Board can thus consider only effects associated with duplication in this general context.

- 4.3.2 As regards the underlying notion of sharing held cards between hands, this inherently minimizes the number of player selections to be made for first and further hands. The time required to play a hand is thus reduced, allowing more hands to be played per unit time. Applied to an electronic video poker machine it makes the machine more efficient in the sense that less user input is required and machine processing is reduced, allowing a "higher volume of play per unit time". These effects and associated problems as identified by the Appellant, though undoubtedly technical in the present context, are inherent in sharing as a *game rule*. Even if these effects and problems acquire technical character when applied in a technical context, i.e. by duplication, they can nevertheless not be dissociated from sharing as a game rule. This view finds support in

the fact that duplication **without** affecting the rules (without sharing) is nowhere disclosed in the application; hence it is not apparent from the application itself that these effects might be the result of duplication *per se*. Therefore, the board concludes that the technical effect of "higher volume of play per unit time" - even if recognized as a valid technical aim to be achieved - must be disregarded in the evaluation of inventive step, as it is attributable to the modified game rules (i.e. playing two separate hands with only one selection), and not to its technical execution by duplication.

4.3.3 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. Without visual duplication, e.g. as the game would be played as a table card game, the player must 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 049/04, 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*.

4.3.4 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 step), 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 an obvious measure. The Board concludes that the duplication step b) also follows in obvious manner from the implementation of the game rules set out under section 3.3.2.

4.3.5 As regards further arguments concerning reduced processing, the Board finds that these are based on features of video poker machines and their random generator(s) 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.

4.3.6 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. Such ingenuity however resides in a modification of the game rules, which is non-technical in nature by virtue of Article 52(2)(c) EPC and, for this reason, cannot contribute to the "technical" inventive step required by Article 56 EPC. This fundamental deficiency cannot be remedied by the claimed invention's commercial success. This factor may play a role as secondary indicia in cases of doubt where novel subject-matter rests squarely in the technical domain, as for example in T 1212/01. However, in the Board's view, it is unsuitable for demonstrating inventive step where the

contested finding of lack of inventive step is based solely on the exclusion under Article 52(2) EPC of subject-matter that may otherwise represent a genuine mental achievement. Thus, for example, a paperback novel is no more inventive in the sense of Article 56 EPC for being a bestseller.

- 4.4 In summary, the Board finds that claim 1 relates to the technical implementation of excluded matter in the form of game rules. Disregarding any effects and advantages inherent in the game rules themselves, the Board is unable to identify any further technical effects in the particular manner of technical implementation that might render it non-obvious to the skilled person. In conclusion therefore, the Board finds that the subject-matter of claim 1 of the main request does not involve an inventive step.

5. *Inventive Step: Further Requests*

- 5.1 The additional feature of the vertical alignment of the duplicated cards in the display (first and fourth auxiliary request) addresses the technical problem of improving readability of the hands on the display. 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.

- 5.2 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, which may be three as in the second and fifth auxiliary requests. Likewise, the number of cards in each deck, which in the third to fifth auxiliary requests corresponds to that of a conventional deck of cards for the initial decks (taking into account the five face-up cards removed from the first deck), is immaterial to the question of inventive step. This feature belongs within the realm of game rules. That the number of hands and number of cards in the decks are such as to allow continued use of 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.

6. In conclusion, the Board finds that the subject-matter of independent claim 1 of the main, and first to fifth auxiliary requests does 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