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Datasheet for the decision of 21 March 2013

Case Number: T 1261/08 - 3.5.01

Application Number: 03736747.1

Publication Number: 1550062

IPC: G06F 17/60

Language of the proceedings: EN

Title of invention:
System for settling over the counter trades

Applicant:
IntercontinentalExchange Inc.

Headword:
Electronic trading / INTERCONTINENTALEXCHANGE

Relevant legal provisions (EPC 1973):
EPC Art. 56

Keyword:
"Inventive technical contribution - no"

Decisions cited:
T 0939/92, T 0641/00, T 1242/04, T 1784/06

Catchword:
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Case Number: T 1261/08 - 3.5.01

D E C I S I O N
of the Technical Board of Appeal 3.5.01
of 21 March 2013

Appellant: (Applicant)
IntercontinentalExchange Inc.
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Representative:
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Decision under appeal:
Decision of the Examining Division of the European Patent Office posted 15 January 2008 refusing European patent application No. 03736747.1 pursuant to Article 97(2) EPC.

Composition of the Board:

Chairman: S. Wibergh
Members: K. Bumes
A. Pignatelli

Summary of Facts and Submissions

I. This appeal is against the decision of the examining division to refuse European patent application No. 03736747.1, entitled "*System for settling over the counter trades*", published as

A2: WO-A2-03/102729 (11 December 2003).

II. The examining division refused the application for lack of inventive step (Article 56 EPC 1973) over a pre-existing exchange system acknowledged by the appellant in the description of the application (A2, page 5, line 19 to page 6, line 11) and in a letter dated 9 October 2007. According to the examining division, a business person would pass both the business rules of an electronic exchange and pertinent implementation details to the skilled person. The examining division considered not only the business rules underlying a "bilateral" or "clearing" trade as non-technical. They also held that the choice of how to present pertinent information to the user was a matter of the user's cognitive perception rather than a technical one. Therefore, the examining division considered a colour-coding scheme on a graphic user interface as a mere presentation of information which could not be considered for the assessment of inventive step.

III. The appellant requests that the claims on file (main request and auxiliary request as set out in the decision under appeal) be accepted as patentable subject-matter and, if necessary, remitted to the examining division for substantive examination.

(a) Claim 1 according to the main request (received 13 December 2006) reads:

"1. An electronic exchange system comprising a network of data processing terminals, said data processing terminals including at least one exchange server, at least two such terminals being respectively operated by first and second participants and at least one other such terminal being operated by a clearing party,

wherein said system is used for trading over the counter instruments, said trading involves bilateral and cleared trading, and said system of networked terminals is configured for:

receiving data indicative of respective trading preferences from said participant-operated data processing terminals relative to each other, wherein said trading preferences comprise bilateral only, cleared only, preferred bilateral, preferred cleared, or closed;

receiving data indicative of respective bilateral credit limits from said participant-operated data processing terminals relative to each other if bilateral trading is possible between the first and second participants, the bilateral credit limits comprising daily dollar limits and tenor limits;

at said at least one clearing party data-processing terminal, establishing a first and second clearing account between each of the first and second participants, respectively, if cleared trading is possible,

wherein each clearing account has a clearing account setting of open or closed for each of the first and second participants relative to each other;

characterized in that each of said participant-

operated data processing terminals comprises a user display for displaying data indicative of the parties' respective trading preferences and clearing account settings and is configured for colour-coding the indicative data as an indication of whether trading is possible."

(b) Claim 1 according to the auxiliary request (received 9 October 2007) reads:

"1. A graphical user interface for participant-operated data processing terminals of an electronic exchange system comprising a network of participant-operated data processing terminals, at least one exchange server and at least one terminal being operated by a clearing party,

wherein said system is used for trading over the counter instruments, said trading involves bilateral and cleared trading, and said system is configured for:

receiving data indicative of respective trading preferences from said participant-operated data processing terminals relative to each other, wherein said trading preferences comprise bilateral only, cleared only, preferred bilateral, preferred cleared, or closed;

receiving data indicative of respective bilateral credit limits from said participant-operated data processing terminals relative to each other if bilateral trading is possible between the first and second participants, the bilateral credit limits comprising daily dollar limits and tenor limits;

at said at least one clearing party data-processing terminal, establishing first and second electronic clearing accounts between each of the

participants-operated data processing terminals, respectively, if cleared trading is possible, each electronic clearing account having a setting of open or closed for each of the participants-operated data processing terminals relative to each other;

wherein each of said participant-operated data processing terminals comprises a user display on which the graphical user interface is output,

said graphical user interface being characterized by automatically determining a trade settlement pathway between the participants-operated data processing terminals in the electronic exchange system by displaying data indicative of the participants-operated data processing terminals' respective trading preferences and clearing account settings and colour-coding the indicative data as an indication of whether trading is possible."

(c) The appellant rejects the suggestion by the examining division that a business person would provide technical requirements to the skilled person (a programmer). The objective technical problem at hand is not "how to implement a set of business rules in an electronic exchange system" as suggested by the examining division, but "how to improve user interaction with the existing technical implementation" in relation to efficiency, accuracy and cost effectiveness.

The examining division is said to have used hindsight to infer that the skilled person might opt to implement a technical solution based upon displayed information. The implementation of a colour-coding scheme in the counterpart filter is said to be particularly advantageous as it introduces several further technical

effects:

- colour-coding permits users to easily decide in respect of which trade to input data in their terminal, for instance in the context of the particular embodiment described, by automatically ignoring entries coded in the colour red and concentrating solely on entries coded in the colour white;

- consequently, colour-coding permits users to avoid unnecessarily inputting and communicating data with some of the counterparties identified by the counterparty filter, for instance in order to acquire knowledge of a potential counterparty's trading preferences, and which communication of preference data would always be redundant in case of a mismatch;

- the time-saving inherently realised through the above two further technical effects is a further, unambiguous technical effect;

- moreover, only the colour-coding scheme permits the implementation of the desirable "anonymous" embodiment of the electronic trading system, since only the colour-coding feature allows a user to determine whether electronic trading is possible with another user

(i) without having any previous knowledge about the said another user and their trading preferences, and

(ii) without having to acquire data indicative of such knowledge which would remove the anonymous character of the electronic trade.

(d) The appellant argues that "imprecise standards" are apparently applied, as European patents (e.g. EP-B1-0 791 202 to Paypal) have been granted in the particular field of transaction data processing. The

appellant queries to what extent the "financial information" and "transaction request" integers, "payment authorization" and "payment processing" steps and the like in the claims of EP-B1-0 791 202 differ or exhibit more technical character than similar integers of the present application.

IV. The Board summoned the appellant to oral proceedings, as requested on an auxiliary basis. In a preliminary opinion annexed to the summons, the Board doubted that the system of claim 1 (main and auxiliary requests) involved an inventive technical step. Business aspects of an electronic exchange, such as parties' trading preferences, did not constitute a technical contribution, whereas the arguably technical feature of displaying the availability of a computer-assisted (trading) function seemed to rely on conventional colour coding.

V. In response to the summons, the appellant disputed that colour coding was a conventional technique in the field in question. Therefore, evidence of the alleged common general knowledge was considered necessary (T 939/92, OJ EPO 1996, 309).

Moreover, a significant feature of the invention was that the availability of a function was determined in a manner that facilitated a binary display without further user input. While business aspects such as trading preferences did not constitute a technical contribution, the manner in which those preferences were processed, aggregated and displayed in a user-friendly graphical user interface (GUI) might well make a technical contribution.

The invention provided a logic to process a set of business rules into a single binary output for display in the GUI, the logic being sufficiently economical to be run multiple times without undue burden on computing resources. The algorithm was a highly complex, multi-factorial calculation involving a range of business parameters pertaining to a range of business rules. It would not be apparent to a skilled person presented with a list of these business rules and their constituent parameters that the rules might be aggregated into a single overarching algorithm capable of expressing the possibility of a trade in binary terms without further input from one or both trading parties.

VI. In a further letter (received 11 March 2013), the appellant informed the Board that it would not be represented at the oral proceedings and requested a decision based on the pending requests taking into account the appellant's response to the summons.

VII. The Board held oral proceedings in the appellant's absence on the appointed date (21 March 2013) based on the main request and auxiliary request underlying the decision under appeal.

Reasons for the decision

1. *The application*

The application, filed as international application PCT/US03/16893, is directed at a system for trading financial instruments on an electronic exchange (A2, page 1, paragraph 1). The introductory portion of the description states a need for an electronic exchange system in which participants may set preferences to trade either "bilaterally" or "cleared" depending upon circumstances (A2, page 2, paragraph 1).

Whether a trade will be settled bilaterally or through clearing depends on the preferences of the party to accept the offer. If the party making the offer has bilateral trading closed with a particular counterparty and the counterparty does not permit cleared trading of the product, the product will show up as red on the trading screen. If trading is possible, the product offer will show up as white. The colour coding acts as a means for indicating whether trading is possible while preserving the parties' anonymity (A2, page 14, line 16 to page 15, line 7; original claims 4, 6, 16 and 18).

Main Request

2. *Article 56 EPC 1973 - Inventive step*

In the light of Article 52(1)(2)(3) EPC, an inventive step according to Article 56 EPC 1973 requires a non-obvious technical contribution (T 641/00-*Two identities/COMVIK*, Headnote 1, OJ EPO 2003, 352;

T 1784/06-*Classification method/COMPTEL*).

2.1 Business aspects of an electronic exchange, such as parties' trading preferences, do not constitute a technical contribution and, thus, do not enter into the examination for an inventive step.

2.2 Conversely, displaying on a user display data indicative of the availability or unavailability of a computer-implemented function may be considered as a technical feature independent of any cognitive or aesthetic aspect of its presentation and independent of any business aspect of the underlying computer-implemented function. The technical character of the implementation of such an indication is not wiped out by its commercial goal.

However, a binary colour code - which is arguably in itself a presentation of information - is in the technical context of user terminals a notorious way of indicating the availability or unavailability of a computer-implemented function. Since the advent of menu-driven software (such as omnipresent text processors), available items of a menu have been presented in black letters while unavailable items have been greyed out. Notorious knowledge may be used to support a prior art objection without citing a document (T 1242/04-*Provision of product specific data/MAN,* OJ EPO 2007, 421, point 9.2 of the reasons).

2.3 The ability of an algorithm to handle complex criteria might only be relevant to the extent that it serves a technical purpose, which the Board does not recognise in a set of trading preferences. Moreover, the context-

sensitive binary colour coding used in conventional text processing implies that sufficiently efficient algorithms existed and did not require an inventive step at the priority date of the present application.

2.4 On the implementation (e.g. programming) level, the application does not suggest any inventive technical contribution, either. It rather relies on pre-existing skills.

2.5 In the Board's conclusion, the system of claim 1 lacks an inventive step over a conventional computer-implemented networked trading system acknowledged as known by the appellant and reflected by the preamble of claim 1.

2.6 The appellant argues that the European Patent Office has granted patents on similar applications in the field of transaction data processing and cites EP-B1-0 791 202 as an example.

As the granted patent is not a case law precedent, the Board refrains from commenting on it and from comparing it with the present application.

Auxiliary Request

3. According to the auxiliary request, claim 1 is directed at a "*graphical user interface*" for participant-operated data processing terminals of an electronic exchange system.

While the application as filed does not use the word "*graphical*", the interface for displaying user

preferences in the electronic exchange system is based on original disclosure at page 14 (paragraph 1) of A2 and in relation to Figures 4A...4C.

4. *Article 56 EPC 1973 - Inventive step*

4.1 The function and purpose of the graphical user interface correspond to the function and purpose of the user display specified in the characterising portion of claim 1 according to the main request.

4.2 Therefore, the Board assesses the subject-matter of claim 1 in the same (negative) way as in the main request.

Order

For these reasons, it is decided that:

The appeal is dismissed.

The Registrar: The Chairman:

T. Buschek S. Wibergh