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**Datasheet for the decision
of 26 June 2014**

Case Number: T 1602/09 - 3.5.01

Application Number: 04819040.9

Publication Number: 1690227

IPC: G06Q10/00

Language of the proceedings: EN

Title of invention:

SYSTEM AND METHOD FOR MANAGING RELATIONSHIPS BETWEEN BROKERS
AND TRADERS

Applicant:

eSpeed, Inc.

Headword:

Active traders

Relevant legal provisions:

EPC 1973 Art. 56

Keyword:

Inventive step - (no)

Decisions cited:

T 0641/00

Catchword:



**Beschwerdekammern
Boards of Appeal
Chambres de recours**

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Case Number: T 1602/09 - 3.5.01

**D E C I S I O N
of Technical Board of Appeal 3.5.01
of 26 June 2014**

Appellant: eSpeed, Inc.
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New York, NY 10022 (US)

Representative: Beresford, Keith Denis Lewis
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Decision under appeal: **Decision of the Examining Division of the European Patent Office posted on 23 February 2009 refusing European patent application No. 04819040.9 pursuant to Article 97(2) EPC.**

Composition of the Board:

Chairman S. Wibergh
Members: R.R.K. Zimmermann
P. Schmitz

Summary of Facts and Submissions

- I. Euro-PCT application number 04 819 040.9 published as WO 2005/050350 A2 claims a priority date from a national filing in 2003 related to a computer system for managing relationships between brokers and traders in a trading network.

- II. The examining division refused the application on the basis of a decision according to the state of the file, referring in the decision to its latest communication in which objections of lack of inventive step had been raised. The examining division explained in that communication that the claimed invention was merely an obvious adaption of a specific administrative business scheme for managing the commercial relationship between brokers and traders. Some prior art documents were cited as examples for electronic trading systems common at the date of priority of the present application.

- III. The appellant (applicant) lodged an appeal against the decision and filed a statement setting out the grounds of appeal, including as sole request an amended set of claims. Claim 1 had the following wording:

"A computer system comprising
first computer apparatus (26) constituting a trading system and operable for executing trading commands;
a plurality of second computer apparatus (14) operable as trader terminals and enabling traders to log on to the computer system for accessing said first computer apparatus (26);
a plurality of third computer apparatus (16) operable as broker terminals for generating trading commands for execution by said first computer apparatus (26), for

enabling brokers to perform trading activity in said trading system on behalf of said traders; and a communication network (30) interconnecting said first, second and third computer apparatus (16); characterised by:
storage means (50) arranged for storing profile data (54) identifying said traders as an active trader or a passive trader and for storing relationship data (56) indicating, for the brokers, the traders on behalf of which the brokers are permitted to provide trading commands to said first computer apparatus (26) utilising said third computer apparatus;
log-on status means (66) for identifying whether traders (38) are logged-on to the system for accessing said first computer apparatus (26); and means (20, 24) responsive to said profile data, said relationship data and said log-on status means (66), to permit transmission, via said communication network (30), of trading commands from the third computer apparatus (16) to the first computer apparatus (26)
(a) on behalf of said active traders only if the respective active trader is logged on to the system, and
(b) on behalf of said passive traders regardless of whether the respective passive trader is logged onto the system."

- IV. The Board summoned the appellant to oral proceedings. In a communication pursuant to Article 15 (1) RPBA annexed to the summons the Board explained its provisional view that the examining division was essentially right in denying inventive step.
- V. In the oral proceedings held on 26 June 2014, inventive step was discussed with the appellant. The appellant requested that the decision under appeal be set aside

and a patent be granted based on claim 1 filed with the statement setting out the grounds of appeal.

VI. The arguments submitted by the appellant may be summarised as follows: Electronic trading systems allowing brokers to trade, via a communication network, in a trading system on behalf of traders were known in the prior art. The invention solved a technical problem which arose in such systems, namely that a trader could not simply and easily control, i.e. prevent or permit, a computer terminal operated by a broker to send trading commands on behalf of the trader from the computer terminal via the network to the trading system. Behind that problem there was the arguably non-technical wish that some traders - referred to in the application as "active" traders - might like to keep control over the broker's trading on their behalf.

There were many ways to bring such a wish into effect, for example, by means of an appropriate agreement or commercial contract. This would be a completely non-technical solution. A simple technical solution, for example, would be a piece of software which allowed the active trader to send a message from his terminal to a complementary piece of software on the broker's terminal permitting or preventing the generation of trading commands on his behalf. Such a solution, although simple, was disadvantageous in that it always required an active involvement of the trader.

The present invention proposed another technical, but fully automated solution. The technical key feature of the present inventive solution was the control of one computer, the broker terminal, through the log-on status of another computer, the trader terminal. This clearly technical control function was implemented by

technical means shown in figure 1 of the application as authentication manager 20 and broker proxy server 24. As defined in the claims, those technical means responsive to data indicating the (trader) profile and the (broker-trader) relationship and the log-on status permitted a transmission of trading commands on behalf of an active trader only if the trader was logged into the trading system.

Although two searches had been carried out, not a single piece of prior art had been found which disclosed the technical solution of the present invention. This circumstance and the fact that at least the two novel steps, detecting the log-on status and controlling the transmission of trading commands, were necessary to put the invention into effect were strong indications for the presence of an inventive step.

Reasons for the Decision

1. The admissible appeal is not allowable since the objections of lack of inventive step raised by the examining division are not unfounded and remain valid for claim 1 of the only request pursued in the present appeal.

2. It is undisputed that a computer system as defined by the first part of claim 1, i.e. essentially a communication network interconnecting a trading system, trader terminals and broker terminals, forms part of the prior art. It is further undisputed that the claimed system differs from such a common trading system by the profile and relationship data identifying the traders as "active traders" or "passive traders" and indicating the traders on behalf of whom the

brokers are permitted to trade, further by the means identifying the log-on status, and by the means that permit transmission of trading commands on behalf of active traders only if the respective active trader is logged on to the system (see the claim wording, point III above).

3. The appellant has formulated the technical problem solved by the invention in the following way: "to provide a computer system in which execution of commands generated by one computer in a network can be prevented simply and easily by users of different computers in the network." The appellant has stressed, and the Board agrees, that the control on the basis of the log-on status should be regarded as part of the solution, not of the problem.

4. The appellant's problem formulation, however, says nothing about why or when commands should be prevented, or what the commands are or who the operators are. These restrictions are however essential since the invention as disclosed only makes sense under the particular (non-technical) conditions that the operators are "active" traders who wish to be able to supervise trading orders given by their brokers. According to T 641/00 "Two identities/COMVIK", OJ EPO 2003,352, "where the claim refers to an aim to be achieved in a non-technical field, this aim may legitimately appear in the formulation of the problem as part of the framework of the technical problem that is to be solved, in particular as a constraint that has to be met" (headnote 2). The aim may be novel (cf the reasons, points 12-14). This means in the present case that the active trader's wish to prevent the broker from trading unless the trader is able to monitor the broker's actions in real time cannot simply be ignored

in the problem formulation.

5. Starting from the appellant's technical problem, but at the same time having been informed of and considering the above non-technical constraints, the skilled person would realise that any means that permitted the trader to monitor the broker's actions would serve his purpose. As the appellant has pointed out, many solutions would have offered themselves (cf point VI above). In particular, since the trading was computer-based the active trader would need to have access to the broker's trading system. The skilled person was certainly aware that this made a log-on necessary. Equivalently, if the active trader for some reason was not logged on, the broker should not be allowed to trade. Ideally, the check should be automatic. These straight-forward considerations lead directly to the subject-matter of claim 1.

6. The appellant has made the point that the available prior art does not disclose the control of one computer by another computer, let alone the use of a log-on status for this purpose. In the Board's view, however, this does not suggest that the invention was non-obvious. As explained above, the reason for the control is a business requirement. The ultimate aim is not to prevent a computer from issuing (any kind of) commands, but to prevent a certain broker from trading on the behalf of a certain trader. The "control" of the computer - which could also be regarded as a kind of message filter - is merely the means for achieving this. The searches for prior art have been carried out in databases containing technical documents. These documents are likely to mention the log-on procedure, which is arguably a technical feature. But they cannot be expected to describe "log-on detectors" whose sole

purpose is to find out whether a certain person has logged on to a certain system or not. The technical relevance of such a detector could at most lie in its implementation, which in the present case is however of no concern.

7. It follows that the subject-matter of claim 1 does not involve an inventive step (Article 56 EPC).

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:



T. Buschek

S. Wibergh

Decision electronically authenticated