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Datasheet for the decision
of 20 September 2012

Case Number: T 1883/09 - 3.2.04

Application Number: 96936267.2

Publication Number: 956118

IPC: A63F 9/24

Language of the proceedings: EN

Title of invention:
Method of participating in a live casino game from a remote
location

Patentee:
Molnick, Melvin

Opponents:
MICROGAMING SOFTWARE SYSTEMS LIMITED
Sharrock, Daniel John

Headword:
-

Relevant legal provisions:
EPC Art. 52(2)(c), 56

Relevant legal provisions (EPC 1973):
-

Keyword:
"Inventive step - mixture of technical and non-technical
features - (no)"

Decisions cited:
T 0258/03, T 0336/07, T 0641/00

Catchword:
-

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                      It can be changed at any time and without notice.
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Case Number: T 1883/09 - 3.2.04

D E C I S I O N
of the Technical Board of Appeal 3.2.04
of 20 September 2012

Appellant: (Patent Proprietor)	Molnick, Melvin 280 Via Contata Henderson, NV 89014 (US)
Representative:	Siegert, Georg HOFFMANN EITLE Patent- und Rechtsanwälte Arabellastraße 4 D-81925 München (DE)
Respondent I: (Opponent 1)	MICROGAMING SOFTWARE SYSTEMS LIMITED MGS House Circular Road Douglas Isle of Man IM1 1BL (GB)
Representative:	Evens, Paul Jonathan Maguire Boss 24 East Street St. Ives Cambridgeshire PE27 5PD (GB)
Respondent II: (Opponent 2)	Sharrock, Daniel John Nash Matthews 90-92 Regent Street Cambridge CB2 1DP (GB)
Representative:	Walaski, Jan Filip Venner Shipley LLP 200 Aldersgate London EC1A 4HD (GB)
Decision under appeal:	**Decision of the Opposition Division of the European Patent Office posted 18 August 2009 revoking European patent No. 956118 pursuant to Article 101(3)(b) EPC.**

Composition of the Board:

Chairman: C. Heath
Members: A. de Vries
            C. Scheibling

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Summary of Facts and Submissions

I.   On 1 September 2009 the Appellant (Proprietor) lodged
       an appeal against the Opposition Division's decision of
       18 August 2009 to revoke European patent No. 956 118
       and simultaneously paid the prescribed appeal fee. The
       grounds of appeal were received on 28 December 2009.

       Two oppositions had been filed against the patent each
       based among others on Article 100(a) EPC in combination
       with Article 56 EPC for lack of inventive step.

       The Opposition Division held that this ground
       prejudiced maintenance of the patent in view of the
       following documents
       D1: EP-A-0 620 688

II.   The Appellant (Proprietor) requests that the decision
       under appeal be set aside and the patent be maintained
       in amended form according to the sole, main request
       filed with the grounds of appeal.

       The Respondents (Opponents I and II) both request that
       the appeal be dismissed.

III.   Oral proceedings before the Board were duly held on
       20 September 2012.

IV.   The wording of independent claims 1 and 6 of the main
       request is as follows:

       1. "A method by which a player remote from a casino may
       participate in a live game at that casino comprising
       the steps of:

establishing an open first information line (101)
between said player at an interface station (20)
located remote from a casino and the casino;
transmitting a player's financial account information
at a third party financial institution from said
interface station (20) to said casino over said open
first information line (101);
establishing an open second information line (102)
between said casino and the player's financial
institution;
transmitting from said interface station (20) to said
casino bet information over said open first information
line (101), and verifying said bet information by
utilizing said open second information line (102)
between said casino and said third party financial
institution to have a central processing unit at the
third party verify that the player's account contains a
balance greater than the bet;
transmitting from the casino to the interface station
(20) the visual image of a live game at said casino;
determining whether the casino or player won the game,
and transmitting from the casino to the third party
financial institution over said open second information
line either instructions to credit said player's
financial account if said player wins, or instructions
to debit said player's financial account if said casino
wins; the method comprising the step of maintaining the
second information line (102) in an open condition at
least as long as said first information line (101) is
open."

6. "A system for permitting a player to wager with
funds from the player's account maintained at a third

party financial institution and concerning a live
casino game taking place at a remote gaming
establishment, the system comprising:
a player interface station (20) including a video
screen (22), a central processing unit (28) and means
for the central processing unit to receive and transmit
data including data corresponding to the player's
selection of a wager on said game;
a host computer to receive and process information
transmitted from the player interface station (20);
an open first information line (101) to transmit data
between the player interface station (20) and the host
computer;
an open second information line (102) to transmit data
between the host computer and the third party financial
institution;
means for a player from his interface station (20) and
over the open first information line (101) to establish
communication with the host computer and to transmit
player's account and wager data to the host computer,
means for said host computer, in response to said wager
data to establish communication with the third party
financial institution for checking that the player's
account contains funds necessary for the wager, by
having a CPU at the third party financial institution
verify that the player's account contains a balance
greater than the bet, and for electronically debiting
the player's account for losses and crediting the
players account for wins;
means for the host computer to transmit over said open
first information line (101) live images of said game
to the player interface station (20) for display at
said video screen (22), said player transmitting data
through the interface station (20) to said host

computer to participate in the live game to the extent
permitted by the rules of the live game, said interface
station (20) receiving over the first information line
(101) live images of the game until the outcome thereof
for the player to confirm the outcome;
means for inputting into the host processor the game
outcome; and
means for determining whether the player's wager is won
or lost and transmitting over the open first
information line (101) to said interface station (20)
data indicative of whether the player has won or lost;
the system further comprising means for maintaining the
second information line (102) in an open condition at
least as long as said first information line (101) is
open.

The invention is defined in alternative terms in
further independent claims 8 (method) and 9 (system).

V.   The Appellant argued as follows:

The invention is concerned with practical aspects of
how to realize value transfer in machine supported
gambling, and is thus technical. Game control and value
transfer are normally separate concepts. Within gaming
credit represents an internal control parameter, but
this is divorced of actual payment, the transfer of
value that ultimately must take place. Gaming control
is thus separate and closed from that of subsequent
payment. The invention's central idea is to break
through this paradigm of a separate and closed gaming
system and bring the external value transfer and
internal crediting together. This is achieved by having
the player's bank, rather than the casino, perform the

step of credit verification. Credit as gaming control parameter is so externalized.

There is no hint in the prior art at such a solution. D1 is not concerned with actual transfer, which is not described in any detail. It does not disclose transmission of a player's account information to the casino, verification by the bank of a player's account, transmission of account information to the bank or the use of open lines. In fact it does not mention player credit as a game control parameter.

Nor is there any incentive to depart from the separate, closed game control of D1 by opening it up as claimed.

Even if the skilled person would consider an alternative value transfer scheme, there is no prior art that suggests separating verification and actual debiting and crediting.

This opening up has clear technical benefits, in that it shifts the computational burden of verification away from the casino, allowing for software and hardware simplification. This burden is easily absorbed by the capacity of a bank's CPU, which is much larger than that at the casino. The use of open lines on the other hand takes into account rapidly changing gaming conditions, such as are prevalent in a game such as Blackjack, and thus allow faster, continuous gameplay. Overall the claimed invention results in a simplified game control system that operates faster and is better adapted to other games.

VI.   The Respondent-Opponent I argued as follows:

The patent is effectively about establishing a remote
player's solvency before extending credit to him. This
is inherently a non-technical, business concept. It may
be that the use of the bank's CPU confers technicality,
the balance check at the player's bank itself is a non-
technical aspect of the solution. A bank is in fact not
permitted to transmit confidential account information,
such as a balance, without consent. This is why it is
standard practice in electronic debit/credit card
transactions to balance check at the financial
institution and only issue an authorization code
without balance information.

The claims also do not exclude that the balance check
and funds transfer are carried out together. Claims 8
and 9 suggest as much, when they have the casino
retaining the wager.

The open information lines could refer to information
exchange with a bank manager over a telephone line and
this feature is thus also not necessarily technical. In
any case it reflects the obvious desire to maintain
continuity during game play. As for it allowing more
stream-lined gameplay, this is not a technical
objective.

Transmission of account information to a bank via open
lines is also already suggested in D1, which mentions
payment via credit card, even if the exact mechanism is
not expressly described.

VII.   The Respondent-Opponent II added the following
         arguments:

         The key features of the invention are non-technical and
         cannot contribute to inventive step. It relies on the
         simple choice between two alternatives for checking
         balance. That choice is a purely business consideration.
         Using the bank's CPU may then be technical per se, but
         the way it is used to balance check solves the purely
         administrative problem of how to use the player's bank
         account rather than a casino account to place bets. The
         very idea of externalizing the credit check is non-
         technical and cannot form the basis for inventive step.
         The way that non-technical idea is then implemented is
         straightforward and obvious.

         Maintaining open lines does not in itself secure funds.
         Technically, it is an arbitrary feature. It corresponds
         to the well-known use of a modem.

         Also, there are no clear benefits in computation or
         encryption. Any gains in computational burden are
         offset by that involved in communication with the bank.

Reasons for the Decision

1.   The appeal is admissible.

2.   *Background & Mixed Inventions*

2.1   The patent concerns a remote betting scheme in which a
         player can place bets on a game at a casino from a
         remote interface station via an information line during

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live transmission of the game to the player. Along with
betting information the player transmits financial
account information with a third party financial
institution, i.e. the player's bank. The casino relays
the betting and account information to the bank over
another open information line so as to verify the
player's balance in a CPU. After game play the casino
instructs the bank to credit or debit the player's
account depending on game outcome.

This scheme is described as being immune to
communications being lost between player and the casino
(once he has placed his bet), see patent specification
paragraphs [0053] and [0054]. Claim 1 is to the method
by which the scheme operates and claim 6 to the
corresponding, functionally defined system.

2.2   Following the established approach of T 258/03
        regarding technicality, the claimed method and system,
        which include technical means in the form of inter alia
        information lines, a CPU and an interface station, have
        technical character and therefore are not statutorily
        excluded from patent protection. In fact all parties
        acknowledge the technical character of the invention
        and this is no longer in debate.

        However, the claimed method and system also have non-
        technical aspects, in that they relate to games as well
        as the way the game is financially accounted, i.e. a
        method of doing business. Games and business schemes
        fall under the statutory exclusion from patentability
        of Article 52(2)(c) EPC, essentially because they are
        not considered to be technical per se.

2.3   The claimed method and system thus include both
        technical and non-technical aspects. In assessing
        inventive step for such "mixed" inventions the Board
        adopts the approach set out in T 336/07, see in
        particular reasons 2, which is based primarily on
        T 641/00 (OJ EPO 2003, 352). Thus, only those features
        that contribute to technical character are to be taken
        into account when assessing inventive step. This means
        that for subject-matter to be considered inventive in a
        technical sense it cannot rely on excluded (non-
        technical) subject-matter *alone,* however original it
        may be. The mere fact that excluded subject-matter has
        been given a technical implementation cannot therefore
        form the basis for inventive step. Rather, it is
        necessary to consider in detail *how* that matter has
        been technically implemented.

3.   *Inventive Step*

3.1   It is undisputed that D1 represents the closest prior
        art. Figure 4 in particular shows a scheme in which a
        subscriber to a CATV (i.e. cable) network can
        participate in live or real-time gaming from his
        subscriber unit at 58 including TV 56 over the CATV
        network 10 which includes a computer system shown
        within dashed box 10. This computer system comprises an
        accounting apparatus 24, see also column 8, lines 44 to
        57, which administers financial transactions to the
        subscriber's CATV account and which may include a
        credit card interface 102, see further figure 5. The
        various transactions are described in connection with
        the flowchart of figures 31A-C, see column 33, lines 24
        onwards. Column 33, lines 43 to 44 in particular
        describes the subscriber wagering a sum which is

checked against available credit. Additional gaming
selections may be made, after which the accumulated
cost is subtracted from the subscriber's credit. The
subscriber must then confirm and authorize payment, as
in figure 29, before gaming data is finally transmitted,
see column 34, lines 28 to 41. Payment options include
credit card, smart card or payment by instalment,
column 31, lines 25 to 33. After the game is played any
wins are credited to a smart card or cable interface,
or, if above a limit, to the subscriber's bank or
credit card account, column 35, lines 6 to 15.

3.2   The method of claim 1 differs from this known scheme in
        the bet verifying step, in which the casino relays the
        bet over an open information line between the casino
        and the player's third party financial institution (his
        bank) and a CPU at the institution checks the bet
        against the balance on the player's account at the
        institution, and in the transmitting step, in which the
        casino instructs the institution over the open line to
        credit or debit the account with any wins or losses in
        the game, and in the final step of keeping the two
        lines between casino and player on the one hand and the
        casino and the institution on the other open at the
        same time. In the system of claim 6 the main (host)
        computer has correspondingly configured means with
        additional means for keeping the lines from player to
        casino and casino to third party financial institution
        open at the same time.

3.3   Underlying the above differences is a different scheme
        of credit administration. Whereas in D1 a subscriber
        plays his bets off a credit account held with the
        gaming authority and administered by it, the present

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scheme allows the gaming authority to operate directly
from the subscriber's bank account. In this way these
financial tasks are delegated to the external financial
institution. Importantly, any financial risk is also
shifted onto the financial institution, see also the
patent specification paragraph [0056].

This underlying scheme is inherently financial in
nature, as are its benefits. The scheme is indeed a
business scheme, which is per se excluded from
patentability. This follows also from the fact that the
scheme is not bound to any particular form of
implementation. In principle it could also be realized
by say a croupier who, having received a bet from a
player, contacts the player's bank manager to check
whether the bet is covered by sufficient funds in the
player's account and, once the game is played, requests
any gains to be credited to or losses to be debited
from the account.

3.4   Adopting the approach indicated earlier, inventive step
        in the technical sense of Article 56 EPC cannot be
        based on this statutorily unpatentable business scheme,
        or the mere fact that it has been technically
        implemented. What is decisive in assessing technical
        inventive step of the claimed method and system is the
        particular technical form the implementation takes.
        This is to be assessed from the point of view of the
        relevant technically skilled person, who is a systems
        developer, specialized in the development of casino
        gaming systems, and who is tasked by the gaming
        authority or its financial analyst to implement the new
        business scheme. The objective technical problem that
        he faces can be formulated accordingly as *how to*

implement in a remote live gaming system such as that
of D1 a business or financial transaction scheme
according to which bets can be played directly off a
player's bank account rather than from a credit account
held with the gaming authority.

3.5   In the Board's view the implementation as defined in
        claims 1 and 6 is entirely straightforward. The systems
        engineer asked to implement the above scheme would as a
        matter of obviousness simply transfer all those tasks
        that were hitherto performed in the accounting
        apparatus 24 in the CATV computer system shown in
        figure 4 of D1, such as checking a bet against balance
        before game play, and debit and credit transactions
        once the bet has been played, to the existing financial
        institution's CPU. Its specific purpose is to perform
        accounting computations and for the systems developer
        it is therefore a prime candidate for carrying out
        these tasks according to the scheme.

        It will also be immediately obvious to the systems
        developer that he will need to establish a
        communications link or information line to connect the
        casino gaming system with the financial institution and
        its CPU, so that all relevant information can be
        exchanged. The accounting apparatus 24 is already shown
        as connected by various communication lines in figure 4
        of D2 and all the skilled person needs to do is to
        adopt the same connection arrangement to the external
        institution CPU which, according to the business scheme
        that he must implement replaces the accounting
        apparatus. As he is implementing the scheme in a *live*,
        i.e. *real-time* gaming system it stands to reason that
        all system elements should be on-line and all lines

therefore open during game play. This is the most
obvious way of ensuring live, real-time gaming.

None of the features of this particular mode of
implementation requires skills or abilities that go
beyond those of the normally skilled systems developer
defined above. The Board can but conclude that the
particular implementation of the business scheme does
not involve an inventive step.

3.6   That this particular mode of implementation would lead
        to a reduction in computational load and corresponding
        simplification of hardware and/or software on the
        casino side is an immediate consequence of the non-
        technical idea of delegating the accounting tasks away
        from it. This effect is intrinsic to the idea and
        arises automatically in any technical implementation of
        it. It does not represent a special technical effect
        that goes beyond what can be expected from its mere
        technical implementation.

        Such a special technical effect also does not reside in
        the faster and continuous game play that is possible
        with open lines. If not a direct consequence of
        realizing the business scheme on a *live, real-time*
        gaming system it is an inevitable bonus effect, which
        cannot in itself justify inventive step.

        Nor is there any special insight involved in simply
        adopting the sequence of separate steps of balance
        checking before game play and debiting/crediting after
        game play as already practised in D1. There is no
        technical prejudice or recognized technical
        incompatibility that would bar the systems developer

from what is indeed the most obvious thing to do. Nothing prescribes the adoption of a sequence as in point-of-sale electronic transactions. These replace cash payment, and the skilled person recognizes that a different type of transaction such a placing a bet may well require a different sequence or set of steps.

Finally, it may well be that the underlying business scheme represents a paradigm shift from separate gaming and financing systems to a more unified system. Such a shift, however ingenious it may be, is not per se technical in nature and following established case law can therefore not form the basis for inventive step. For the same reason the fact that credit now acts as an external "control" parameter of the combined systems rather than an internal one of the gaming system is of no import. In either case it is nothing more than a non-technical variable within a system that it is in essence non-technical.

4.   The Board concludes that the subject-matter of claims 1 and 6 of the main request lacks an inventive step. The Board thus confirms the Opposition Division's decision to revoke the patent.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar   The Chairman

G. Magouliotis   C. Heath

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