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

Datasheet for the decision
of 15 May 2013

Case Number: T 1894/09 - 3.4.03

Application Number: 00200655.9

Publication Number: 1004997

IPC: G07F 17/32

Language of the proceedings: EN

Title of invention:
Interactive wagering system and processes

Applicant:
ODS Properties, Inc.

Headword:
-

Relevant legal provisions:
EPC Art. 123(2)

Relevant legal provisions (EPC 1973):
EPC Art. 76(1)

Keyword:
"Amendments - added subject-matter (yes)"

Decisions cited:
T 0003/90

Catchword:
-

C9623.D
EPA Form 3030   This datasheet is not part of the Decision.
                       It can be changed at any time and without notice.

Case Number: T 1894/09 - 3.4.03

D E C I S I O N
of the Technical Board of Appeal 3.4.03
of 15 May 2013

Appellant: (Applicant)	ODS Properties, Inc. 6701 Center Drive West Los Angeles CA 90045 (US)
Representative:	Hibbert, Juliet Jane Grace Kilburn & Strode LLP 20 Red Lion Street London WC1R 4PJ (GB)
Decision under appeal:	**Decision of the Examining Division of the European Patent Office posted 18 March 2009 refusing European patent application No. 00200655.9 pursuant to Article 97(2) EPC.**

Composition of the Board:

Chairman: G. Eliasson
Members: T. M. Häusser
                  T. Bokor

Summary of Facts and Submissions

I.   The appeal concerns the decision of the examining
        division to refuse European patent application
        No. 00 200 655 for lack of inventive step, Article 56
        EPC 1973, and extension beyond the content of the
        parent application, Article 76(1) EPC 1973 (main
        request, first and second auxiliary requests).

II.   The appellant requested in writing that the decision
        under appeal be set aside and that a patent be granted
        on the basis of the main request, first auxiliary
        request or second auxiliary request, all filed with the
        letter setting out the grounds of appeal.

III.   The appellant was summoned by the board to attend oral
        proceedings, which had been requested by the appellant.
        In an annex to the summons objections were raised by
        the board, *inter alia*, under Article 123(2) EPC and
        Article 76(1) EPC 1973.

IV.   With letter dated 5 February 2013 the appellant
        informed the board that it would not attend the oral
        proceedings scheduled for 7 and 8 May 2013.
        Consequently, these oral proceedings were cancelled
        with communication of the board dated 19 April 2013.

V.   The wording of the respective independent claims 1 of
        the main request and the first and second auxiliary
        requests reads as follows (labelling "$(1)_m$", "$(2)_m$",
        "$(3)_m$"; "$(1)_1$", "$(2)_1$", "$(3)_1$"; "$(1)_2$", "$(2)_2$", "$(3)_2$" by
        the board):

Main request:

"1. A method of using an off-track wagering system
(366) to interactively wager on races, using a user
terminal (370) connected to communicate with a wagering
facility (380) and a video and data distribution
facility (368) remote of the user terminal (370), the
method comprising:

$(1)_m$ causing the user terminal (370) to generate,
on a display (378), an interface (458, 602) providing
an opportunity to interact with the interface (458,
602) thereby to place a wager on a given race that has
not been run,

              wherein the given race is subsequently
recorded to create a race video clip,

$(2)_m$ wherein the interface (458, 602) is
configured to provide an opportunity to interact with
the interface (458, 602) to transmit to the video and
data distribution facility (368) a request for the race
video clip,

              whereupon the video and data distribution
facility (368) is configured to deliver the race video
clip to the user terminal (370) via a video and data
link (376); and

$(3)_m$ displaying the requested race video clip in
a box (472) of the display (378) showing the interface
(458, 602), in response to the request for the race
video clip."

First auxiliary request:

"1. A method of using an off-track wagering system
(366) to interactively wager on races, using a user
terminal (370) connected to communicate with a wagering

facility (380) and a video and data distribution
facility (368) remote of the user terminal (370), the
method comprising:

causing the user terminal (370) to generate,
on a display (378), an interface (458, 602);

$(1)_1$ interacting with the interface (458, 602)
thereby to place a wager on a given race that has not
been run;

subsequently recording the given race to
create a race video clip;

$(2)_1$ interacting with the interface (458, 602) to
transmit to the video and data distribution facility
(368) a request for the race video clip;

delivering the race video clip from the
video and data distribution facility (368) to the user
terminal (370) via a video and data link (376) in
response to the request for the race video clip; and

$(3)_1$ displaying on the display (378) the
requested race video clip in a box (472) in the
interface (458, 602), in response to the request for
the race video clip."

Second auxiliary request:
"1. A method of using an off-track wagering system
(366) to interactively wager on races, using a
plurality of user terminals (370) connected to
communicate with a wagering facility (380) and a video
and data distribution facility (368), the method
comprising:

causing the user terminals (370) to
generate, on their respective displays (378), an
interface (458, 602);

(1)$_2$ interacting with the interfaces (458, 602)
thereby to place wagers on a given race that has not
been run;

subsequently recording the given race to
create a race video clip;

(2)$_2$ interacting with the interfaces (458, 602)
to transmit to the video and data distribution facility
(368) requests for the race video clip;

delivering the race video clip from the video and
data distribution facility (368) to the user terminals
(370) via respective video and data links (376); and

(3)$_2$ displaying on the displays (378) of the user
terminals (370) the requested race video clip in a box
(472) in the interfaces (458, 602), in response to the
requests for the race video clip."

VI.   With respect to the basis of the amendments the
       appellant argued essentially as follows:

The feature in claim 1 of the main request related to
using a user terminal connected to communicate with a
wagering facility and a video and data distribution
facility remote of the user terminal was based for
example on Figure 29. Furthermore, the feature in
claim 1 of the main request concerning the opportunity
to interact with the interface to transmit to the video
and data distribution facility a request for a race
video clip, whereupon the video and data distribution
facility was configured to deliver the race video clip
to the user terminal via a video and data link, was
based for example on page 6, lines 8-12 and page 63,
line 10 – page 64, line 23. The corresponding features
in the respective claims 1 of the first and second

auxiliary requests were also based on these passages of the description.

The claims therefore met the requirements of Articles 76(1) and 123(2) EPC.

Reasons for the Decision

1.   Admissibility

The appeal is admissible.

2.   Procedural matters

According to the established case law of the Boards of Appeal (T 3/90, OJ EPO 1992, 737, and "Case Law of the Boards of Appeal of the EPO", 6th edition 2010, VI.C.2.2) the appellant's statement in its letter of 5 February 2013 that it would not be represented at the oral proceedings is to be treated as equivalent to a withdrawal of the request for oral proceedings. Therefore, the board cancelled the oral proceedings and decided to continue the proceedings in writing and to issue a decision based on the written proceedings.

3.   Main request – Article 123(2) EPC

3.1   Features $(1)_m$ and $(2)_m$ of claim 1

3.1.1 In claim 1 of the main request it is specified that the claimed method comprises causing the user terminal to generate, on a display, an interface providing an opportunity to interact with the interface thereby to

place a wager on a given race that has not been run (feature (1)$_m$). Furthermore, it is specified in claim 1 of the main request that the interface is configured to provide an opportunity to interact with the interface to transmit to the video and data distribution facility a request for the race video clip (feature (2)$_m$).

3.1.2   In the claims as originally filed there is no mention of an interface generated on a display and providing an opportunity to interact with the interface to place a wager on a race or to transmit to the video and data distribution facility a request for the race video clip.

3.1.3   With respect to the question whether there is a basis for features (1)$_m$ and (2)$_m$ in the description and drawings as originally filed, a first consideration concerns the overall subject-matter of claim 1 of the main request. That claim relates to a method of using an off-track wagering system to wager on races involving the use of a user terminal connected to communicate with a video and data distribution facility. The claimed method relates therefore to the second embodiment, which is described with reference to Figure 29 of the application and comprises a video and data distribution system 368. Figures 30-50 and the corresponding parts of the description relate to further aspects of that second embodiment (see the description of the application, page 11, lines 9-19).

3.1.4   In respect of the second embodiment the only interface generated on a display and providing an opportunity to place a wager on a race is shown in Figure 39 (see the description of the application, page 55, lines 5-22). Figure 39 shows a screen 494 comprising a menu option

488 named "PLACE WAGER". If that option is selected
wager transaction data corresponding to the selected
wager is transmitted from the user terminal 370 to the
wagering data management facility 380, both shown in
Figure 29. The menu option 488 provides therefore an
opportunity to place a wager on a race.

3.1.5   On the other hand, regarding the second embodiment the
        only interface generated on a display and providing an
        opportunity to transmit to the video and data
        distribution facility a request for a race video clip
        is shown in Figure 50 (see the description of the
        application, page 62, lines 14 - page 64, line 18).
        Figure 50 shows the menu option "WATCH THE RACE"
        (correcting the typographic error in "WACTH") provided
        with a button labelled "99¢". If that option is
        selected a video of the concerned race is displayed. In
        particular, the order for a race video may be
        transmitted from user terminal 370 via communication
        line 390, transaction data interface 394 and wagering
        data management facility 380 to the video and data
        distribution system 368. The latter may contain a high
        capacity storage medium for recording races received
        from racing video source 374. The requested race video
        is then delivered from the video and data distribution
        system 368 to the user terminal 370. Therefore, the
        menu option "WATCH THE RACE" provides an opportunity to
        transmit to the video and data distribution facility a
        request for a race video clip.

3.1.6   In the description and drawings as filed it is
        therefore only disclosed that the opportunities to
        place a wager on a race and the opportunity to transmit
        a request for a race video clip are provided in

different interfaces, namely the ones shown in
Figures 39 and 50, respectively. Claim 1 of the main
request states however that both opportunities are
provided in the same interface.

The board however cannot find any indication in the
application as filed that the interfaces shown in
Figures 39 and 50 could be combined or merged in any
manner.

Hence, it is not directly and unambiguously derivable
for the skilled person to combine the interfaces shown
in Figures 39 and 50.

3.1.7   In view of the above, the combination of features $(1)_m$
and $(2)_m$ of claim 1 of the main request is not directly
and unambiguously derivable for the skilled person from
the content of the application as filed.

3.2   Feature $(3)_m$ of claim 1

3.2.1   In claim 1 of the main request it is specified that the
requested race video clip is displayed in a box of the
display showing the interface (feature $(3)_m$).

3.2.2   In the claims as originally filed there is no mention
of the requested race video clip being displayed in a
box of the display showing an interface.

3.2.3   Concerning the interface shown in Figure 36, it is
stated in the description of the application (see
page 53) that in the box 472 of the interface a real
time racing video 470 is displayed. The racing video is
a simulcast from the selected racetrack corresponding

to the next scheduled race. It is furthermore stated
that, if no racing videos is available from the
selected track, the box could contain a video clip of
races at other tracks or advertising information.

It is also stated that the box 472 of the interface
shown in Figure 37 contains the same information as in
Figure 36 in order to avoid confusion of the user
(page 54, last paragraph). It can therefore be assumed
that also the box shown in the interface of Figure 39
contains the video information described above.

However, it has not been disclosed that the box shown
in the interface of Figure 39 could contain the
requested race video clip.

3.2.4   On the other hand, concerning the requested recorded
race video, it is merely specified that after the user
made the selection "WATCH THE RACE" the "user terminal
370 displays the video on monitor 378" (see page 62,
lines 22-26, and page 64, lines 19-22). It is not even
mentioned that the race video clip is shown in a box in
that case, let alone in a box of the interface, which -
- according to feature $(1)_m$ - provides an opportunity to
place a wager on a race. Rather, the video could as
well be shown in a full screen mode.

3.2.5   Figures 31-34 are logic flow diagrams illustrating the
operation of the wagering system of the second
embodiment shown in Figure 29.

The option "WATCH THE RACE" mentioned above, which is
provided in the interface of Figure 50, is indicated in
these logic flow diagrams in the box with reference

sign 600 (see Figure 34). Selection of the option
"WATCH THE RACE" leads to the display of the video of
the race indicated in the box with reference sign 602.
There is however no indication in the logic flow
diagrams that the selection of the option "WATCH THE
RACE" leads to a transfer to the interface of Figure 39
comprising the option "PLACE WAGER", which is referred
to in the box 486 (see Figure 31). Rather, the double
arrow between boxes 600 and 602 implies that after the
display of the video clip the control is transferred
back to the interface comprising the option "WATCH THE
RACE" shown in Figure 50.

3.2.6   In view of the above features (3)$_m$ of claim 1 of the
main request is not directly and unambiguously
derivable for the skilled person from the content of
the application as filed.

3.3   For these reasons claim 1 of the main request contains
subject-matter which extends beyond the content of the
application as filed contrary to the requirements of
Article 123(2) EPC.

4.   Main request – Article 76(1) EPC 1973

In the original claims of the parent application there
is no mention of an interface generated on a display
and providing an opportunity to interact with the
interface to place a wager on a race or to transmit to
the video and data distribution facility a request for
the race video clip. Furthermore, in these claims there
is no mention of the requested race video clip being
displayed in a box of the display showing an interface.

The description and drawings of the application are identical with those of the parent application. For the reasons given under point 3. above there is therefore no basis for the features $(1)_m$, $(2)_m$ and $(3)_m$ in the description and drawings of the parent application.

Consequently, claim 1 of the main request contains subject-matter which extends beyond the content of the parent application contrary to the requirements of Article 76(1) EPC 1973.

5.   First and second auxiliary requests - Article 123(2) EPC and Article 76(1) EPC 1973

Features $(1)_1$, $(2)_1$, $(3)_1$ of claim 1 of the first auxiliary request and features $(1)_2$, $(2)_2$, $(3)_2$ of claim 1 of the second auxiliary request are essentially equivalent to the corresponding features $(1)_m$, $(2)_m$ and $(3)_m$ of claim 1 of the main request.

Consequently, for the reasons given under points 3. and 4. above claim 1 of the first auxiliary request and claim 1 of the second auxiliary request contain subject-matter which extends beyond the content of the application as filed contrary to the requirements of Article 123(2) EPC and beyond the content of the parent application contrary to the requirements of Article 76(1) EPC 1973.

6.   Conclusion

Since none of the requests is allowable the appeal has to be dismissed.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar: The Chairman:

S. Sánchez Chiquero   G. Eliasson

C9623.D