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Datasheet for the decision
of 23 September 2011

Case Number: T 2449/10 - 3.2.04

Application Number: 06717747.7

Publication Number: 1861184

IPC: A63F 3/06

Language of the proceedings: EN

Title of invention:
Lottery game utilizing nostalgic game themes

Applicant:
Scientific Games Holdings Limited

Opponent:
-

Headword:
-

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

Relevant legal provisions (EPC 1973):
-

Keyword:
"Patentable inventions - games"
"Inventive step - no (all requests)"

Decisions cited:
T 0641/00, T 1543/06, T 0336/07, T 0012/08

Catchword:
-

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Case Number: T 2449/10 - 3.2.04

D E C I S I O N
of the Technical Board of Appeal 3.2.04
of 23 September 2011

Appellant: (Applicant)	Scientific Games Holdings Limited Athlone Road Ballymahon County Longford (IE)
Representative:	Schlief, Thomas P. Patentanwälte Canzler & Bergmeier Friedrich-Ebert-Straße 84 D-85055 Ingolstadt (DE)
Decision under appeal:	**Decision of the Examining Division of the European Patent Office posted 13 July 2010 refusing European patent application No. 06717747.7 pursuant to Article 97(2) EPC.**

Composition of the Board:

Chairman:	A. de Vries
Members:	M. Poock
	T. Bokor

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Summary of Facts and Submissions

I.   The Appellant lodged an appeal, received 27 August 2010,
        against the decision of the Examining Division posted
        13 July 2010, refusing the European patent application
        No. 06 717 747.7 and simultaneously paid the appeal fee.
        The statement setting out the grounds of appeal was
        received 23 November 2010.

        In its decision the Examining Division held that the
        application did not meet the requirements of
        Article 52(1) in combination with Articles 56 EPC for
        lack of inventive step.

II.   The Appellant requests that the decision under appeal
        be set aside and that a patent be granted on the basis
        of claims of a main request, or in the alternative,
        according to claims of an auxiliary request 1 both
        filed with the statement of the grounds of appeal.

III.   The wording of the independent claims of the requests
        is as follows:

        Main Request

        1. "A method for hosting a lottery game, comprising the
        steps of:
        designating a plurality of game player positions on a
        predetermined grid, the game player positions defining
        a pathway on the grid, said pathway including all of
        the player's designated positions and being linear and
        continuous from a first grid position to a second grid
        position wherein:

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a controller of a standalone gaming device or a game
server of the lottery authority randomly selecting a
plurality of positions on said grid; and
determining an outcome of the game based on the
intersection of the pathway and at least one of the
plurality of the randomly selected positions on the
grid, wherein
the step of randomly selecting a plurality of positions
on the grid further comprising the step of randomly
selecting a plurality of positions from a plurality of
separate subsets of positions defined on said grid,
wherein the number of subsets is equal to the number of
randomly selected positions, and only one position is
selected from each of the subsets."

2."A system for hosting a lottery game, comprising:
either a communication network; at least one gaming
machine in communication with the communication network;
and a server in communication with the at least one
gaming machine through the communication network, or a
standalone gaming device,
wherein said server or said standalone gaming device
are capable of:
receiving a path from a player, the path being defined
on a predetermined grid,
placing a plurality of player indicia on the path,
randomly placing a plurality of symbols on a plurality
of separate subsets of predetermined positions on the
predetermined grid, wherein the number of subsets is
equal to the number of randomly placed symbols, and
only one symbol is placed on each of the subsets of the
predetermined positions,
determining a set of player indicia based on the
interception of the path of the plurality of player

indicia with any of the plurality of symbols on the grid,

generating a set of winning indicia,

comparing the set of player indicia and the set of winning indicia, and

awarding a prize to the player based on comparison between the set of player indicia and the set of winning indicia."

Auxiliary Request 1

The auxiliary request 1 includes only a claim to the system which is identical to claim 2 of the main request.

IV.   The Appellant's arguments, presented in the statement of the grounds of appeal, are as follows:

Not only is the feature of claim 1 of the controller randomly selecting positions technical but so are the final two features of claim 1. Thus, comparing data to determine game outcome is technical. The particular way the positions are randomly selected from grid subsets, an important aspect of the invention, is a technical approach that influences the outcome scenario. The subset selection allows the host to limit the range of outcomes and better predict them. This gives him a better control of outcome and return, and so enhances the efficiency of the game hosting operation. It is not a game rule providing a guideline as to how to play, as it does not influence the player's behaviour and in fact the player need not know it. Nor is it a scheme for playing a game in the sense of being a plan for human beings.

V.   With the annex to a summons to oral proceeding before
       the Board pursuant to Article 15(1) RPBA, dated 6 July
       2011, the Board made preliminary observations
       concerning inventive step.

VI.   The Appellant without further comment or observations
       informed the Board per fax of 16 September 2011 that he
       would not attend the oral proceedings scheduled for
       23 September 2011. These were held in his absence.

Reasons for the Decision

1.   The appeal is admissible.

2.   Background

       The invention concerns a method and system for hosting
       a new lottery game in which a player must select a path
       or sequence of adjacent positions from a grid. A game
       controller then checks whether the chosen path includes
       one of a number of randomly selected positions on the
       grid to determine a game outcome. The random selection
       of positions is effected by randomly selecting one
       position from each of a number of predefined separate
       subsets of the grid.

       The idea of the invention is to utilize a nostalgic
       electronic game theme in a lottery game and so give the
       game more appeal, see paragraphs [0005] and [0007] of
       the as filed description.

3.   Inventive Step

3.1   In the annex to the summons to oral proceedings issued
        6 July 2011, the Board made the following preliminary
        observations regarding inventive step:

        "1. The present application concerns a method and
        system for hosting what is undoubtedly a new type of
        lottery game. Game rules are per se excluded from
        patentability under Article 52(2)(c) EPC as they are
        considered inherently non-technical. However, the
        claimed hosting method and system also include
        technical features so that they are of "mixed"
        character, i.e. they include both technical and non-
        technical aspects."

        "2. In dealing with such "mixed" inventions the Board
        adopts the approach as set out in T1543/06
        (Gameaccount), reasons 2, which is based foremost on
        T0641/00 (OJ EPO 2003, 352). Thus, only those features
        that contribute to technical character are to be taken
        into account when assessing inventive step. That
        requirement cannot rely on excluded (non-technical)
        subject-matter alone, however original that matter
        might be. The mere technical implementation of
        something excluded cannot then form the basis for
        inventive step. Decisive for inventive step is the
        question how excluded subject-matter has been
        technically implemented, and whether such
        implementation is obvious in the light of the prior art.
        As explained in reasons 2.7 to 2.9 of T1543/06, such a
        consideration focuses on any further technical effects
        associated with implementation of the excluded subject-

matter over and above those inherent in the excluded
subject-matter itself."

"Inventive step can therefore not be based on the game
rules themselves or the mere fact that they are
implemented. What is decisive is how they are
implemented and whether this involves any further
technical effect over and above effects that follow
directly from the game rules. This is to be considered
from the point of view of the skilled person, who is a
software engineer or programmer and who is asked to
automate game play of the game rules given him by the
games designer."

"3. In the present case it will therefore be necessary
to consider to what extent the claimed method and
system concern game rules, how exactly they have been
implemented, and whether technical effects can be
associated with the way they have been implemented."

"3.1. The new lottery game involves a player choosing
a path of adjacent positions on a grid, comparing the
path against a set of randomly selected positions, and
determining a game outcome if there is a match
("intersection"). This basic scheme of conditions and
conventions form part of the game's regulatory
framework, cf. T0336/07, reasons 3.3.1., and the Board
is in no doubt that these are game rules."

"The main focus of debate is the nature of the way grid
points are selected for comparison. This limits
possible game outcomes. Do the conditions that
determine possible outcomes, i.e. control game response
to a player's actions, rather than those actions, form

part of a game's overall regulatory framework, even if hidden to a player? See e.g. T0012/08, reasons 4.6.2. Of interest is also whether the prescribed selection is inherently linked to the use of the controller of a gaming device or server. Are there other conceivable ways of carrying it out that do not involve a game controller, say with pen or paper?"

"In this context it may also need to be considered whether the effect of limiting outcomes and so improving return is technical, or, say, a typical gaming business concern."

"3.2. Insofar as the selection of random positions from separate grid subsets turns out to be a game rule in its wider sense, the implementation of the set of game rules as in the claimed method or the claimed system then appears to be straightforward. The relevant claims define only the tasks that need to be performed by the gaming controller (claim 1) or the gaming device or gaming network server (claim 2), either of which are notoriously known, but give no detail as to how those tasks should be carried out. The tasks that are defined appear to be as expected, if a programmer were asked to automate game play of the new lottery game."

3.2   The above can be summarized as follows: inventive step ultimately depends on whether or not the way grid points are selected for comparison is technical in nature. In so far as it is *not* and forms part of a set of game rules in a wider sense, that set is implemented in straightforward manner.

3.3   The Appellant has chosen not to address the central
        questions raised in the annex regarding the nature of
        the random selection. It is thus incumbent on the Board
        to answer them.

3.3.1   Failing arguments to the contrary the Board finds that
        the central feature prescribing how to select the grid
        positions with which the player's path is to intersect
        or not reflects on the game's inner mechanics, or
        rather the constitutive rules that express its core
        logic. As part of this core logic the selection from
        subsets certainly determines and thus limits possible
        game outcomes. That, however, is the very purpose of
        game rules, namely to determine possible game outcomes
        by defining the conditions that lead to them. Here the
        particular selection from subsets of positions for
        intersection sets game conditions determining game
        outcome and so forms an integral part of the game's
        overall regulatory framework. That it might be hidden
        to the player - initially at least, for he may bring
        this selection mechanism to light by diligent
        observation over time - is immaterial to the inherently
        game conceptual nature of such conditions.

        In the decision referred to in the annex, T 12/08, see
        reasons 4.6.2, the Board, in a different composition,
        considered how to deal with game conceptual aspects in
        general, or what it referred to as "... a game rule in
        some wider sense, that is as a condition or regulation
        that governs the internal as well as the external,
        explicit workings of the game." It held that "Many of
        these aspects - such as narrative - are essentially
        conceptual in nature, relating to abstract and thus
        inherently non-technical schemes, which in their own

right fall short of the basic prerequisite of
technicality to be patentable. Such aspects and their
straightforward implementation by computer would, the
Board agrees, fail patentability requirements in the
same manner as subject-matter excluded in
Article 52(2)(c) EPC, (see e.g. T 641/00 (OJ EPO 2003,
352) or T 1543/06, reasons 2)."

3.3.2   Nor is the selection inextricably linked to the use of
        a game controller, which might thereby give it
        technical character. The underlying game scheme could
        easily be carried out with pen and paper (between two
        players), with one player making a mental selection
        from the grid subsets, the other plotting his path on
        the grid. Finally, it may well be that this measure is
        motivated by the desire to improve return. Increasing
        yield is a typical concern in the gaming business,
        which is however per se devoid of technical character.

3.3.3   In conclusion the claimed random selection of grid
        points from grid subsets is nothing more than a non-
        technical game rule in the wider sense. Together with
        the other steps of designating grid positions and
        determining game outcome it constitutes a game scheme
        or a set of game rules excluded per se from
        patentability.

3.4   In the annex to the summons, the Board had already
        expressed its preliminary view, see above, that the
        manner in which the set is implemented by a game
        programmer when given this task is straightforward. A
        game programmer or software engineer is the relevant
        skilled person from whose perspective the technical
        requirement of inventive step is to be assessed.

3.4.1   Thus, considering first the method of claim 1, the
        initial step of designating grid position in fact
        prescribes what the player must do, while the
        determining step could in principle also be carried out
        by an individual. Neither feature need be technical,
        and can be disregarded in the assessment of inventive
        step. By virtue of a controller of a standalone gaming
        device carrying out the random selection discussed
        above, those steps are necessarily technical. However,
        other than prescribing that the controller of the
        gaming device or server carries these steps out, no
        detail is given as to how these selection steps, which
        are inherently non-technical as stated above, are
        realized. Simply allocating the task to a controller is
        itself an obvious way of automating that task. The
        method of claim 1 of the *main request* lacks inventive
        step.

3.4.2   As for the claimed hosting system this merely defines
        all those tasks an otherwise notoriously known gaming
        network or a standalone gaming device would need to
        carry out if game play were to be fully automated. Such
        an automated system would need to receive the player's
        input of the chosen path and display it, then select
        and display the random grid positions, which it
        subsequently compares with the player's path to
        determine interception. Finally, it would need to
        compare the results of that determination with winning
        conditions to ultimately award a prize if there is a
        match. Other than specifying the tasks the system must
        necessarily carry out when the scheme is automated, the
        claim is silent as to the exact manner they are carried
        out. The list of tasks is entirely as would be expected

if a game programmer or software engineer were given
the task of automating game play on a gaming device or
network. The system claimed in either *main or auxiliary
request 1* also lacks the requisite inventive step.

4.   Neither request on file is allowable as each is
        directed at subject-matter that does not involve an
        inventive step, contrary to the requirements of
        Article 52(1) with Article 56 EPC. The appeal must
        therefore fail.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar   The Chairman

G. Magouliotis   A. de Vries