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**Datasheet for the decision
of 13 July 2017**

Case Number: T 0630/11 - 3.5.01

Application Number: 07018142.5

Publication Number: 1879141

IPC: G06Q20/00, A63F9/24, G07F17/32

Language of the proceedings: EN

Title of invention:
System for playing a game

Applicant:
Waterleaf Limited

Headword:
Gaming Server / Waterleaf

Relevant legal provisions:
EPC Art. 56

Keyword:
Inventive step - pooling players from casinos to reduce waiting time to join a game (no - part of non-technical requirement) - common gaming server and portals for players (no - obvious implementation)

Decisions cited:

T 0641/00, T 1463/11



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Case Number: T 0630/11 - 3.5.01

D E C I S I O N
of Technical Board of Appeal 3.5.01
of 13 July 2017

Appellant: Waterleaf Limited
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Douglas, Isle of Man IM1 2LE (GB)

Representative: D Young & Co LLP
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Decision under appeal: **Decision of the Examining Division of the European Patent Office posted on 26 October 2010 refusing European patent application No. 07018142.5 pursuant to Article 97(2) EPC.**

Composition of the Board:

Chairman W. Chandler
Members: P. Scriven
Y. Podbielski

Summary of Facts and Submissions

- I. The Examining Division refused European patent application 07018142.5 for lack of inventive step in the light of D1 (US 6264560). The applicant, Waterleaf Limited, appeals that decision.
- II. With the statement setting out the grounds of appeal, the appellant filed a main and two auxiliary requests, and requested oral proceedings before any adverse decision.
- III. In response to the appellant's enquiry in March 2016, the Board, in consideration of its workload and severe understaffing, stated that the examination of the appeal was unlikely to start before 2017.
- IV. With a letter dated 15 December 2016, the appellant filed further written submissions and a new main request. The previous requests were maintained as auxiliary requests 1 - 3.
- V. The Board arranged to hold oral proceedings on 6 July 2017. With the summons dated 31 March 2017, the Board sent a communication setting out its provisional view of the case.
- VI. The appellant responded by letter dated 24 May 2017 and filed a new auxiliary request 1. The previous auxiliary requests were renumbered 2 - 4.
- VII. By letter dated 4 July 2017, the Board was informed that the appellant's representative would be unable to attend the proceedings scheduled for 6 July. A medical certificate was submitted and a request for

postponement was made. The Board acceded to this request and rescheduled the proceedings for 13 July 2017.

VIII. During oral proceedings, the appellant formulated its requests as: that the decision under appeal be set aside and that a patent be granted on the basis of the main request filed with the letter dated 15 December 2016, or on the basis of auxiliary request 1 filed with the letter dated 24 May 2017, or on the basis of one of auxiliary requests 2 - 4 filed with the statement of grounds of appeal as main and auxiliary requests 1 and 2.

IX. Claim 1 according to the main request reads:

*A system for playing a multiplayer zero-sum game, comprising:
a gaming server operable under program control to regulate the progress of at least one instance of the zero-sum game, the gaming server enabling participation in the at least one instance of the zero-sum game by a predetermined plurality of players and to initiate a further instance of the zero-sum game when all prior instances of the game have the predetermined plurality of participating players;
a number of portals communicable with the gaming server by means of a communication network;
a user access facility corresponding to each player, each user access facility being operable by a player to access the gaming server along the communication network*

through a selectable one of the number of portals;
a register of players participating in the at least one instance of the game, the register including, for each participating player, data representative of a corresponding portal through which the player accessed the gaming server;
a wagering means operable by each player to place a wager on the at least one instance of the zero-sum game;
discrimination means responsive to progress of the at least one instance of the zero-sum game to determine whether a wager placed thereon by any one of the participating players is successful or unsuccessful;
an administration facility operable to legislate access at any time to any instance of the game by any would-be player requesting participation in the game, as a function of a number of players currently participating in that instance of the game;
and
a clearing account facility having a clearing account corresponding to each one of the number of portals.

X. Auxiliary request 1 replaces

*... enabling participation in the at least one instance of the zero-sum game by a **predetermined plurality of players** and to initiate a further instance of the zero-sum game when all prior instances of the game have **the predetermined plurality of***

participating players...

with

*... enabling participation in each of the at least one instance of the zero-sum game by a [sic] **up to a predetermined maximum number of players** and to initiate a further instance of the zero-sum game when all prior active instances of the game have **the predetermined maximum number of participating players...***

and changes the definition of the portals from

*...
a number of portals communicable ...
...*

to

*...
a number of portals, **in the form of online casino websites**, communicable ...
...*

XI. Claim 1 according to auxiliary request 2 reads:

*A system (1) for playing a multiplayer zero-sum game, comprising:
a gaming server (2) operable under program control to regulate the progress of instances of the game, the gaming server enabling participation in an instance of the game by a plurality of players, there being*

a predetermined maximum number of players in an instance of the game;
a user access facility (4) corresponding to each player, each user access facility being operable by a player to access the gaming server via a communication network (6,7);
a register (16) of players participating in an instance of the game;
a wagering means (17) operable by each player to place a wager on an instance of the game; and
discrimination means (15) responsive to progress of an instance of the game to determine whether a wager placed thereon by any one of the participating players is successful or unsuccessful;
characterised in that there is a plurality of portals (3a, 3b) each of which is a respective online casino website hosted on a respective casino web server, and each of which is communicable with the gaming server (2) by means of the communication network (6), different players accessing the gaming server through different selectable ones of the plurality of portals;
and in that the register is maintained by the gaming server and includes, for each participating player in an instance of the game, data representative of the corresponding portal (3a, 3b) through which the player accessed the gaming server.

XII. Auxiliary request 3 adds (in comparison to auxiliary request 2):

...; wherein:

the gaming server (2) is provided with a clearing account facility (13) having a clearing account corresponding to each one of the number of portals (3a, 3b); each portal (3a, 3b) includes a corresponding sub-register of players participating in any instance of the game through that portal; each portal (3a, 3b) has a corresponding credit account facility (14a, 14b) having a credit account corresponding to each player in its sub-register of players; the clearing account facility is controllable by the discrimination means (15) to debit the clearing account of a portal associated with each player who has made an unsuccessful wager on the turn of an instance of the game by an amount equivalent to the magnitude of that player's wager; and the credit account facility (14a, 14b) of each portal (3a, 3b) debits the credit account of any player who has made a wager on the turn of an instance of the game through that portal by an amount equivalent to the magnitude of the wager.

XIII. Auxiliary request 4 further adds:

*... ;
the gaming server (2) is operable under program control to initiate a further instance of the zero sum game when all prior instances of the game have the predetermined maximum number of participating players; and the gaming server (2) is provided with an administration facility (12) operable to*

legislate access at any time to any instance of the game by any would-be player requesting participation in the game, as a function of a number of players currently participating in that instance of the game, the administration facility enabling participation in any instance of the game by players requesting participation through any one of the plurality of portals (3a, 3b).

XIV. The appellant's arguments can be summarised as follows.

The starting point for the skilled person was an online casino hosting zero-sum games such as poker. A user could play alone against a dealer or could play in a group who were all in the same casino. There was, as acknowledged in the description, a problem with players waiting. That problem was solved by finding more players, which was a not a technical matter but was an important part of the context and a requirement the business person could give to the technically-skilled person.

It was possible to get more players in various ways, for example by advertising. The invention did it by sharing players between casinos. Having decided to share players, there came the question of how it should be done. One way would be for one casino to refer a player to another casino. The invention did it by altering the structure to include more casinos and a gaming server, which was a novel device to which a casino, modified to act as a portal, could direct players who were waiting. The novelty did not lie in how it performed the functions of spawning and running games, which was the same as in the casino, but rather in the service it provided to the casino.

The user would not know whether the game was played in the home casino or on the gaming server. In particular, he did not need to have an account with the gaming server, did not need to log in there or send any information. There were trust relationships between the users and their home casinos, and between the casinos and the gaming server. The casinos did not send information to one another, which was an advantage in terms of security. Nor did the casinos send information to the gaming server by which the latter could identify the user. The gaming server, rather, identified users as, for example, user 1 of portal 1, user 351 of portal 17, and so on. These questions of security involved technical considerations, and so the business person could not give them as a requirement to the technically-skilled person. That went, too, for the issue of who the users paid their stakes to and received their winnings from. The user was in a contractual relationship with the portal casino, but not with the gaming server. It was the portal casino that had a contractual relationship with the gaming server. It was not possible to separate security from the architecture of the system. In the assessment of inventive step, in line with T 1463/11, the business person could not specify technical requirements. He could not, therefore, specify requirements that imply a change in technology.

Even if the business person could specify that payments were to be between users and the portal casinos, the skilled person would still have had other options. He could, for example, have created not a gaming server but a "super-casino", with which the user would have an account. That would have been the obvious solution, because the super-casino would have dealt with users

just as the portal casinos did.

The gaming server was not known in the prior art. As far as running games was concerned, it did the same things as the prior art casinos did; but it had other functions and interacted with the rest of the system in ways that were not known in the prior art. The gaming server kept a register that indicated which portals players were associated with. That allowed the gaming server to charge and to make payments to the correct portal. It was not excluded that the gaming server have some further identifying information about the user, but there would be no point in registering it, because the register was only stored while games were active.

Once the decision had been taken to share users between casinos, one of two things had to be done. Either a super-casino would have to be created (which would have been the obvious way because the device linking casinos would then be the same as the prior art casinos) or an entirely new structure would have to be created, with new overheads. It would, therefore, be incorrect to say that the invention flows simply from the decision to share users.

Reasons for the Decision

Introduction

1. The invention is about online gambling. It is described in terms of poker, but it could be any zero-sum game with (monetary) winnings and losses. In the variant considered, a game requires at least four players and has a maximum of eight. If there are only three players, they will have to wait for a fourth. If there are nine, one will be left waiting. The description explains that the principal aim of the invention is to reduce the time players spend waiting.
2. This aim is achieved by pooling players from a plurality of online casinos. That is based on a number of assumptions. A player in a running game is not removed and placed in another game with other players. Poker players probably do not like that sort of thing. As a result, if the total number of players leaves a remainder of 1, 2, or 3 on division by 8, then there will be 1, 2, or 3 players left to wait. The likelihood of that happening does not decrease as the number of players increases, but players do tend to arrive more frequently, and so the waiting time does decrease.
3. The invention provides a "gaming server" with which various online casinos communicate. The players access their online casino as usual, but may join a game on the gaming server. They pay their stakes to, and receive any winnings from their home casino. Thus, the gaming server has to coordinate the collection of stakes from and payments of winnings to the various online casinos.

4. The invention involves technical and non-technical considerations. The COMVIK approach (T 0641/00, Two identities/COMVIK, OJ 2003, 352), especially in the form discussed in T 1463/11, Universal merchant platform/Cardinalcommerce, raises the issue of how the non-technical aim of reducing waiting time is translated to a (technical) invention and whether there comes a point at which technological issues so predominate that further non-technical considerations are no longer separable from them.

The admission of the main request and of auxiliary request 1

5. The statement setting out the grounds of appeal should set out the appellant's complete case (Article 12(2) RPBA). Amendments to the case may be admitted at the Board's discretion, in view (inter alia) of the complexity of the new subject matter, the state of proceedings, and the need for procedural economy (Article 13(1) RPBA). Amendments filed after oral proceedings have been arranged shall not be admitted if the Board cannot reasonably be expected to deal with them without adjournment.

6. Auxiliary request 1 was submitted after oral proceedings had been arranged. In the communication sent with the summons, the Board had indicated a number of issues of clarity in the main request. Auxiliary request 1 addressed those issues. As a result, the Board was able to concentrate on the essential issues in assessing inventive step, leaving clarity to one side, to be addressed if the decision on inventive step were favourable to the appellant. Thus, the filing of auxiliary request 1 amounted to a separation of issues that were already known. It would not require an adjournment (there was, in fact, an adjournment, but for reasons unconnected with the substantive requests). The Board, therefore, chose to admit auxiliary request 1.
7. The appellant submitted the main request almost four years after the statement of grounds. They were, however, submitted before the earliest date on which the appellant could expect the Board to start examination of the appeal. The appellant had specifically requested that information. The state of the procedure does not, therefore, stand in the way of admitting the main request. The amendments in question served to clarify the points on which the appellant saw a technical effect and enabled the Board to concentrate on the issues essential to the question of inventive step. There were, in fact, new questions of clarity, but the Board takes the view that if the decision on clarity were unfavourable to the appellant, the remedy would be straightforward (and along the lines of auxiliary request 1). The Board, therefore, chose to admit the main request.

The approach to the assessment of inventive step

8. It is well established that non-technical elements do not contribute to inventive step. That is the basic principle of T 0641/00, *Two identities/COMVIK*, OJ 2003, 352. The Board recently reiterated this principle in T 1463/11, *Universal merchant platform/CardinalCommerce*, not published in the OJ EPO ("*CardinalCommerce*"), a case to which the appellant referred in its arguments.

9. Comvik sets out an approach to ensuring that non-technical issues do not influence the decision on inventive step. It is to include the non-technical elements in the statement of the technical problem to which the skilled person seeks a solution. Most often, this is in the form of non-technical requirements. In *CardinalCommerce*, the Board stated that the notional business person (more generally, the non-technical person) cannot normally require even notorious technical means. The reason is that the inventor may have obtained a technical effect using technical means, even notorious means, in a way that would not have been obvious to the skilled person. That is what a patent is meant to reward. To allow the notional business person to prescribe technical means would be to foreclose any discussion of whether they were used in a technically non-obvious way. This should not lead to a proliferation of patents for technically trivial inventions; they would be obvious to the skilled person.

10. The appellant submitted that, in applying the Comvik approach, particularly in the light of *CardinalCommerce*, the business person cannot make requirements that have technical implications. The Board disagrees.

11. The difference between requiring technical means on the one hand and requiring something which has technical implications on the other hand becomes clear when looking at the following example.

A reader or author or publisher might form a desire to make a second copy of a particular book. Now, a book is certainly a technical artefact, but it is also an art object. The reader who wants to give the book as a gift is not concerned with technical issues. He can think of the book and formulate his desire purely in terms of the book as art object. To fulfill the desire, something technical will have to happen. Thus, he requires something which has technical implications. That is not an impediment under the CardinalCommerce approach.

12. CardinalCommerce warns against allowing the notional business person to require technical means and thus to take technical decisions. In contrast, by requiring a second copy, the reader is not pre-empting any technical decision. The skilled person gets to make all technical decisions involved in making something that falls within the non-technical definition of "book" qua art object.

The main request and auxiliary request 1

13. It is convenient to consider these requests together, because the differences between the two versions of claim 1 do not affect the outcome in respect of inventive step. The final comments in this section explain why that is.

14. The starting point, in both cases, is an online casino in which players play games such as poker. The appellant argued that there was no evidence that there was more than one online casino at the priority data, but the Board finds that untenable. It would make no difference, however, if there had been only one. The decision to provide another online casino is not a technical one and would not change the situation in respect of an inventive step.

15. There is a problem with the online casinos in this starting configuration. It is that some players have to wait. In the poker scenario as described in the application, since a game can only start when there are at least four players, the first arriving three out of every eight players will be in that position. This is not a technical problem, but rather a problem of the player or, as presented in the application, of the casino owner. That is, it is a gambler's or business person's problem.

16. The appellant submitted that the casino owner could formulate the requirement of finding more players, but could not formulate the requirement that players in different casinos be pooled because that would have technical implications. It would require a change in the network, in the casino machines, and in the provision of a gaming server.

17. It is true that, if players are to be pooled, some changes will have to be made. The casinos must be modified to allow the pooling, for example. However, the requirement itself is not a technical matter. The owner can formulate the request to allow the waiting users of several casinos to play together without any understanding of what technical issues that will involve. Equally, the appellant's proposed solutions to the non-technical problem of increasing the number of available players (advertising and referring to another casino) are not technical solutions. They are still within the domain of business.
18. When players of different casinos play together, there inevitably arises the question of collecting stakes and paying winnings. There are contractual questions. Again, these are not technical matters. It is for the casino owners to decide amongst themselves what business model they want to adopt and where contractual obligations will lie. It is then for the technically-skilled person to take the decisions on how to provide the technical infrastructure to support that, if possible.
19. The Board, therefore, considers that the skilled person, starting from a plurality of online casinos, has the task of providing means for inter-casino games, in which payments are via the players accounts in their home casinos.
20. To arrive at the invention, the skilled person would have to provide a gaming server, portals that can communicate with the gaming server via a network, user access facilities, a register of players, wagering means, discrimination means, an administration facility and a clearing account facility.

21. The gaming server runs the same games and admits players in the same way as the online casinos. That much would have been obvious. The way in which players access the gaming server is different, but follows from the non-technical requirements.
22. The portals are the previous online casinos, but with some adaptation (in auxiliary request 1, they are restricted to "online casino websites"; the main request is broader, but online casino websites are covered). They must communicate with the gaming server, and they must collect stakes and pay winnings as determined by the gaming server. But those follow naturally from the non-technical requirements. The skilled person would actually have many decisions to take regarding the means of communication and of providing secure payment, for example, but the claim is silent on such issues.
23. The user access facilities are the terminals the players use. They provide access to the gaming server via the portals. But that is just what the non-technical requirements say; the terminals need be no different from those in the starting configuration.
24. The register of players identifies the portal through which a player accesses the gaming server. As players' accounts are with their home casinos, the gaming server must have some means of informing the home casino when payments are taken or made. The Board considers that a list of players with their home casinos would have been an obvious choice.
25. The wagering system and the discrimination means follow naturally from the choice of game that the gaming server allows.

26. The administration facility allows access to games or not, depending on the number of current players. That is just what the prior art gaming machines did and it would be obvious for the gaming server to do the same. The game itself has not changed.
27. The clearing account facility follows from the non-technical choice to use the players' payment accounts with the home casinos.
28. As a result, the Board finds that the subject-matter of claim 1 according to the main request and to auxiliary request 1 does not involve an inventive step (Article 56 EPC) and cannot be allowed.
29. It is necessary to say something about the differences between the two versions of claim 1. One is that the auxiliary request restricts the portals to online casino websites. This has already been taken into account (see point 22, above).
30. The second difference lies in the definition of the conditions under which new game instances are created. The Board indicated that it saw some issues of clarity in the way the main request formulated those conditions. There is, however, no disagreement as to the appellant's intentions: when all current games are full, a new game is created. The decision on inventive step is not affected by this. It is just what the game dictates and the invention does not change the game.

Auxiliary request 2

31. Claim 1 is worded differently from the version in the main request and auxiliary request 1, but it defines a broader version of the same system. The conditions under which a new game instance is created are not defined, players' access in relation to the total number of players is not defined, and the clearing accounts are not defined.
32. However, the system defined by claim 1 according to auxiliary request 1 falls within the broader scope of claim 1 of auxiliary request 2, which, therefore, cannot be allowed for the reasons already given.

Auxiliary request 3

33. This version does have the clearing account, and additional features relating to a credit account for each portal casino.
34. As with the clearing account, the credit accounts are a matter of legal and business relationships between the various casinos and the operator of the gaming server. Those are not technical issues and do not affect the outcome in respect of inventive step.

Auxiliary request 4

35. This version has the clearing account, the credit accounts, and the conditions under which new game instances are created and players allowed access.

36. The system defined by claim 1 differs from that of auxiliary request 1 only by the credit accounts. The request, therefore, cannot be allowed for the same reasons as auxiliary request 3.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:



T. Buschek

W. Chandler

Decision electronically authenticated