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**Datasheet for the decision
of 22 June 2018**

Case Number: T 0657/12 - 3.5.01

Application Number: 04255492.3

Publication Number: 1515258

IPC: G06F17/60

Language of the proceedings: EN

Title of invention:

Trading application program interface

Applicant:

eSpeed, Inc.

Headword:

Electronic training / ESPEED

Relevant legal provisions:

EPC Art. 56

Keyword:

Inventive step - trading rules (no - not technical) - effect of reduction in number of messages (no - not credible)

Decisions cited:

T 0641/00, T 0012/08



Beschwerdekammern
Boards of Appeal
Chambres de recours

Boards of Appeal of the
European Patent Office
Richard-Reitzner-Allee 8
85540 Haar
GERMANY
Tel. +49 (0)89 2399-0
Fax +49 (0)89 2399-4465

Case Number: T 0657/12 - 3.5.01

D E C I S I O N
of Technical Board of Appeal 3.5.01
of 22 June 2018

Appellant: eSpeed, Inc.
(Applicant) 135 East 57th Street
New York, NY 10022 (US)

Representative: Beresford, Keith Denis Lewis
Beresford Crump LLP
16 High Holborn
London WC1V 6BX (GB)

Decision under appeal: **Decision of the Examining Division of the
European Patent Office posted on 24 October 2011
refusing European patent application No.
04255492.3 pursuant to Article 97(2) EPC.**

Composition of the Board:

Chairman W. Chandler
Members: N. Glaser
P. Schmitz

Summary of Facts and Submissions

- I. The appeal is against the decision of the examining division to refuse the European patent application Nr. 04255492.3 for a lack of inventive step (Article 56 EPC), because it was an obvious computer-implementation of a non-technical trading scheme on an interactive computer system comprising one or more programmed computers, known for example from D1 (US6560580), a document cited in the application.
- II. In the statement of grounds of appeal, dated 5 March 2012, the appellant requested that the examining division's decision to refuse the application be set aside, and that the case be remitted for search and further examination on the basis of the single request submitted with the statement setting out the grounds of appeal and which is identical to that underlying the impugned decision. Otherwise, oral proceedings were requested.
- III. In a communication accompanying a summons to oral proceedings, the Board set out its preliminary observations agreeing with the examining division's conclusion that the claimed invention appeared to lack an inventive step over a standard interactive computer system with one or more programmed computers.
- IV. In a reply, the appellant informed the Board that it would not attend the oral proceedings. No further submissions were received. The Board held oral proceedings in the appellant's absence.
- V. Claim 1 of the main request reads as follows :

1. An interactive electronic trading system for trading an item between participants, the system comprising one or more programmed computers configured to:

enable a first participant to enter a bid, offer, buy or sell for the item at a selected price;

receive a bid, offer, buy or sell entered by a second participant to trade the item at the selected price;
and

execute a trade in accordance with the bid, offer, buy or sell;

characterised by said one or more computers being further configured to:

(i) queue a bid, offer, buy or sell to trade at a price other than the selected price;

(ii) hold an order which is contra to the queued bid, offer, buy or sell and which is at a price no worse than the price of the queued bid, offer, buy or sell for a defined period of time; and

(iii) during said period of time, automatically determine availability of a contra order in the system at a price better than the price of said held contra order and:

(a) on occurrence of the determination of the availability of a said contra order at a said better price, automatically match the queued bid, offer, buy or sell with said available contra order at said better price;

(b) on the occurrence of the determination of no availability of a said contra order at a said better price, automatically match the queued bid, offer, buy or sell with said held contra order.

VI. In summary, the appellant argued that the queuing of a bid at a price other than the selected price and the holding of contra orders solved a technical problem: there was a reduction in the number of messages passed over the network.

Reasons for the Decision

1. Background

1.1 The invention concerns quantitative analysis trading. This trading is referred to in the application as a trading strategy that makes use of information technology to substantially *remove the human element* from the decision-making process involved in trading.

1.2 This is achieved by a trading application program with an application program interface (API) that conforms to a set of preferably real-time trading rules. The trading system guarantees certain prices of the traded items. It is implemented on one or more programmed computers, e.g. workstations, which are connected over a computer network to a server.

2. Article 56 EPC

2.1 The examining division considered that claim 1 contained a mixture of technical and non-technical features. The established approach for dealing with such mixed-type inventions is the "COMVIK

approach" (see T 641/00 - Two identities / COMVIK, OJ 2003, 352). In the COMVIK approach, the non-technical features do not contribute to inventive step. Instead, they are part of the problem in the form of a non-technical requirement specification given to the skilled person to implement.

- 2.2 In the present case, the decisive point is which features of the invention are non-technical, i.e. that go in the non-technical requirement specification, and which are technical.
- 2.3 The examining division argued that the following features in claim 1 were non-technical and related to a business method :

"An interactive trading [system] for trading an item between participants, configured to

enable a first participant to enter a bid, offer, buy or sell for the item at a selected price;

receive a bid, offer, buy or sell entered by a second participant to trade the item at the selected price; and execute a trade in accordance with the bid, offer, buy or sell;

queue a bid, offer, buy or sell to trade at a price other than the selected price;

hold an order which is contra to the queued bid, offer, buy or sell and which is at a price no worse than the price of the queued bid, offer, buy or sell for a defined period of time; and

during said period of time, determine availability of a contra order in the system at a price better than the price of said held contra order and:

(a) on occurrence of the determination of the availability of a said contra order at a said better price, match the queued bid, offer, buy or sell with said available contra order at said better price;

(b) on the occurrence of the determination of no availability of a said contra order at a said better price, match the queued bid, offer, buy or sell with said held contra order."

- 2.4 The examining division considered that the technical character of claim 1 resided in the technical means used for implementing the trading scheme, that is, the feature *"interactive electronic system comprising one or more programmed computers"* and the related automation of the above interactive trading concept.
- 2.5 The appellant argued that all features of claim 1 were technical, because they all interacted and achieved a reduction in the number of messages passed over the network. The appellant referred to page 18, lines 14 to 20, of the application as filed in support of this argument.
- 2.6 The Board is of the view that the appellant cannot rely on a reduction in the number of messages. The Board notes that page 18, lines 14 to 20, of the application ascribes this advantage to "some embodiments" set out in the preceding paragraphs, but those embodiments do not include any configuration to "hold an order ... at a price no worse ... for a defined period of time" or "automatically determine availability of a contra

order...". Even if there was any advantage in terms of the number of messages, it does not depend in any way on the technical infrastructure. If the same trading rules were implemented by word of mouth, the same number of messages would be passed, and the same advantage (if there is one) would be obtained.

2.7 Therefore the Board cannot see any technical effect beyond the provision of a "notorious" computer system suitable for implementing the trading system. Thus, irrespective of whether the invention is viewed as a development of D1, a computer-based data processing system for managing select trading, comprising a plurality of trading workstation linked with a server, see column 4, line 63, to column 5, line 15, or as the provision of a suitable technical infrastructure for a trading system, there is no inventive step.

The Board further notes that the application itself refers on pages 11 to 12 to any suitable server, processor or computer, any suitable equipment and standard personal computers for the implementation of the disclosed interactive trading concept.

2.8 The appellant argued that the feature to hold an order for "a defined period of time" during which the availability of contra orders is automatically determined, would have technical character, because it involved the use of a (albeit software-implemented) clock, a feature which was recognised in T 12/08 to have technical character. The appellant further pointed out that the remaining features of the characterising portion of claim 1 were technical, because they interacted with the technical element of "a clock" so as to produce a technical effect.

While an albeit software-implemented clock may have technical character, the Board considers the setting of "a period of time" during which contra orders are determined to belong to the business concept of the invention, as mentioned on page 13, lines 12 to 21, of the application. The idea of setting a period of time is non-technical and the interaction with this non-technical feature cannot not lead to a technical effect.

- 2.9 The appellant further argued that the feature of queuing computer commands (bids or offers) was technical because it involved a storing of commands in memory rather than simply causing them to be executed.

The Board does not agree. The feature "queuing a bid, offer, buy or sell" to trade at a certain price belongs to the underlying business concept rather than to a computer-implementation. This business concept requests holding back these bids or offers until a certain price can be obtained. Furthermore, as part of automating the underlying business concept on an interactive electronic computer system, these features may lead to a storage of data in memory, but this feature is then part of a straight-forward computer-implementation which is obvious for the person skilled in the art based on common-general knowledge.

- 2.10 For these reasons, the subject-matter of claim 1 does not involve an inventive step (Article 56 EPC).

3. *Remittal*

Since the subject matter of claim 1 is not inventive based on a notorious standard computer network, there is no need to carry out a search for further prior art.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:



T. Buschek

W. Chandler

Decision electronically authenticated