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**Datasheet for the decision
of 10 April 2013**

Case Number: T 1331/12 - 3.2.04

Application Number: 05741231.4

Publication Number: 1755754

IPC: A63F 13/00

Language of the proceedings: EN

Title of invention:

System and method for wagering based on financial market indicators

Applicant:

CFPH, L.L.C.

Headword:

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Relevant legal provisions:

EPC Art. 52(2)(c), 56

Keyword:

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

Decisions cited:

T 0258/03, T 1543/06, T 0641/00, T 0336/07, T 0012/08

Catchword:

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Case Number: T 1331/12 - 3.2.04

D E C I S I O N
of the Technical Board of Appeal 3.2.04
of 10 April 2013

Appellant: CFPH, L.L.C.
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Decision under appeal: Decision of the Examining Division of the
European Patent Office posted 18 January 2012
refusing European patent application
No. 05741231.4 pursuant to Article 97(2) EPC.

Composition of the Board:

Chairman: A. de Vries
Members: J. Wright
T. Bokor

Summary of Facts and Submissions

- I. On 23 March 2012, the applicant-appellant lodged an appeal against the decision of the examining division posted 18 January 2012, refusing the European patent application No. 05741231.4 and paid the prescribed fee. The statement of grounds of appeal was received on 28 May 2012.
- II. The examining division held that the claimed subject matter of the applicant's sole request did not involve an inventive step because it was a straightforward implementation, in an electronic server/client network of a non-technical method for playing games.
- III. Oral proceedings were duly held on 10 April 2013. The proceedings were consolidated with appeal T 0414/12 in accordance with Article 10(2) RPBA.
- IV. The appellant requests that the decision under appeal be set aside and the patent be granted on the basis of a main request, or in the alternative, on the basis of an auxiliary request corresponding to a first auxiliary request and a second auxiliary request respectively, both filed by fax on 08 March 2013.
- V. Claim 1 of the main request reads as follows:
"A slot machine system, comprising:
(a) a client apparatus (20) operable to communicate a bet regarding a spin of the reels of a slot machine; and
(b) a controller apparatus (40) communicably coupled to the client apparatus (20) and operable to

determine values for said reels and to determine the output of a bet based upon said values; characterised in that the controller apparatus (40) is operable to:

- (i) determine a first value for a first reel of the slot machine based at least in part upon the value of a digit of a first financial market indicator, in which said value of said digit is the value thereof that occurs at the moment when a predetermined period of time has passed after receiving the bet;
- (ii) determine a second value for a second reel of the slot machine;
- (iii) determine a third value for a third reel of the slot machine; and
- (iv) determine the outcome of the bet based at least in part upon the first value, the second value, and the third value."

Claim 1 of the auxiliary request is the same as claim 1 of the main request except that feature (i) has an additional sub-feature so that the feature reads as follows (with italics added by the Board to indicate the addition):

"(i) determine a first value for a first reel of the slot machine based at least in part upon the value of a digit of a first financial market indicator, in which said value of said digit is the value thereof that occurs at the moment when a predetermined period of time has passed after receiving the bet, *said predetermined period of time being identified by the bet;*"

VI. The appellant's arguments, which apply to the main and auxiliary requests, may be summarised as follows:

Inventive step vis-à-vis a notorious slot machine system having a client and control apparatus rests on feature (i) of claim 1 of the requests.

According to feature (i) of the claim, a financial indicator digit interacts with the slot machine system to cause a reel to adopt a value which is unpredictable. The financial information, which is non-technical as such, thus interacts with technical features which has the technical effect of determining the value of a slot machine reel in an unpredictable way. The claimed slot machine system therefore overcomes the problem of tampering associated with the notorious prior art slot machine system.

Feature (i) does not implement a game rule but generates an unpredictable value for use in the system. It performs the same role as a random number generator used in the notorious slot machine system, which is technical, much like a mechanical card shuffler that can be used in different card games with different rules.

Reasons for the Decision

1. The appeal is admissible.

2. Background

2.1 The present invention concerns a slot machine system which allows a user to play a betting game by placing a bet on a spin of reels of a slot machine. The idea of placing a bet on a spin of reels of a slot machine concerns a game rule. Thus the system of claim 1 includes aspects of schemes, rules or methods for playing games, which are per se excluded from patentability under Article 52(2)(c) EPC. However, the claimed system also includes technical aspects, in particular the client apparatus and controller apparatus comprised in the slot machine system. The claimed system therefore possesses overall technical character (following T 0258/03 OJ EPO 2004, 575), even if it is "mixed" (with both technical and non-technical aspects).

2.2 In dealing with such "mixed" inventions, the Board adopts the approach as set out in T 1543/06 (Gameaccount), reasons 2.1-2.9, which is based foremost on T 0641/00 (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 it may be. The mere technical implementation of something excluded cannot therefore form the basis for inventive step. A consideration of the particular manner of implementation must focus on any further technical advantages or effects associated with the specific features of implementation over and above the effects and advantages inherent in the excluded subject-matter. In the present case it is necessary to consider what

claimed aspects are non-technical, how they have been technically implemented, and whether such implementation is inventive over the prior art.

2.3 "Game rules" form part of "...a regulatory framework agreed between [or with] players and concerning conduct, conventions and conditions that are meaningful only in a gaming context. It is important to note that it is normally so perceived by the players involved, and as serving the explicit purpose of playing a game. As such an agreed framework it is a purely abstract, mental construct, though the means for carrying out the game play in accordance with such a set may well be technical in nature". See T 0336/07, reasons 3.3.1. As noted in T 0012/08, reasons 4.6, game rules "form the abstract formal structure of a game describing the interplay between player actions and the choices offered within the game." A set of game rules thus determines inter alia how game-play evolves from beginning to end in response to player actions and decisions and the goals to be achieved to conclude game-play.

3. Inventive step.

3.1 It is undisputed that a notorious slot machine system comprising a client apparatus and a controller apparatus, whereby the controller apparatus is communicably coupled to the client apparatus, can be considered as the closest prior art. For the skilled person, a game system developer with software engineering skills, such a notorious system thus represents a good starting point for assessing inventive step.

3.2 With respect to such a notorious prior art system, the system of claim 1 differs only in the way in which the first value for the first reel of the slot machine is determined, as defined in feature (i) of the claim according to the main request concerning the determination of the first reel value based on a future financial market indicator. Claim 1 of the auxiliary request differs by the further specification that the time at which the future indicator is determined is identified in the bet.

The further features (ii) to (iv) of the characterizing part of either version of claim 1 - determining spin reel values for second and third reels, determining the bet outcome on the basis of the three values - are standard if not implicit features of a notorious client controller slot machine system. Naturally such systems determine reel values and bet outcomes. None of these features, including the specific number of reel values, is of any particular significance, either in their own right or in relation to feature (i), nor has this been argued. Features (ii) to (iv), if novel, are thus obvious.

3.3 In accordance with the application as published, one of the objects of the invention is to increase player appeal by providing a new playing experience to the user, see for example page 2, lines 28-30. This is achieved because, from the player's perspective, he is not playing a conventional slot machine game but one which involves betting on a digit of a financial market indicator at a point of time in the future he determines by placing his bet. He does so knowingly by

specifying, when he places his bet, "the period of time used to determine the appropriate financial market indicator", as well as "a particular digit of [the]... indicator" and "one or more financial instruments used to determine [the]... indicator" as bet parameters, see page 10, lines 10 to 16 of the published application. He may also specify the relevant financial market indices, e.g. DJIA, S&P 500 or NASDAQ, see the following lines 17 to 20 on page 10 of the published application. He thus knowingly bets against a financial market indicator (or rather digit thereof) at a time in the future that he chooses via the intermediary of a (simulated) spin reel of a slot machine. In the Board's view this constitutes a new betting scheme or game. A set of betting rules and conventions of this new betting game can be formulated as follows:

- place a bet by indicating a particular digit of a selected financial market indicator and a period of time (after the bet is placed) when the indicator should be determined
- determine the value of the financial market indicator at the time indicated in the bet and display it as the value of the first spin reel of the slot machine
- determine the outcome of the bet based on this value.

Adopting the approach outlined above, inventive step can reside only in the way these betting rules are implemented. The technical aspects of the feature (i) reflect the implementation of the game rules, namely that they are implemented by operating the controller apparatus.

The objective technical problem can therefore be formulated as how to implement the above game rules on a notorious slot machine game system comprising a client apparatus and a controller apparatus.

- 3.4 The Board holds that it would be obvious for the skilled person to use the controller apparatus available in the notorious slot machine system to implement the above game rules. Indeed, in an electronic gaming system such as a notorious slot machine with client and controller, it is standard that the controller - usually in the form of a programmable central processor - regulates game play, ensuring game inputs and outputs are as dictated by the game rules. In this case, the game rules and conventions dictate that the specified digit of the selected financial market indicator is determined at expiry of the chosen period of time and that the value is then displayed on the spin reel and this is exactly what the controller is configured to do. It is then obvious that the skilled person, tasked with implementing the new betting game on a notorious slot machine, would assign that particular task to the controller. The Board adds that the claim offers no further details as to how the implementation is carried out. Feature(i) is thus also obvious for the skilled person. As it is unrelated to the features (ii) to (iv) also held to be obvious, if novel, the Board concludes that the claimed subject matter lacks an inventive step and thus fails to meet the requirements of Article 52(1) EPC in combination with Article 56 EPC.

- 3.5 The fact that this new betting system may be less susceptible to tampering than a slot machine system

using a random number generator to generate the spin reel numbers is immaterial. This effect can neither form the basis for formulating the objective technical problem addressed by the invention, nor does it represent a further technical effect in the sense of T 1543/06, reasons 2.8.

In particular, the claimed system is less susceptible to tampering because it changes the betting scheme so that bets are not placed against randomly generated numbers but against a future financial market indicator. This is not a technical effect that results from the particular way in which the game rule is implemented, it is rather a direct and inevitable consequence of the betting game having been changed. The rules are changed and the random number generator can be dispensed with. The claimed invention therefore does not address the problem of tampering in random number generators in an inherently technical way - for example by modifying its mechanism to be less susceptible to tampering. Rather, it offers a non-technical gaming solution which effectively circumvents the technical problem by changing the rules, thereby obviating the need for the random number generator, similar to T 258/03, reasons 5.7. However ingenious this gaming idea may be, it cannot contribute to inventive step in the sense of Article 56 EPC. That requirement is a technical requirement to be assessed from the point of view of the skilled person in the relevant technical field. Here that is the software engineer or designer specialising in gaming software who is tasked by the games designer with implementing the new game. From his point of view the way the game rules are implemented in claim 1 of either request,

namely by having the game controller carry out the tasks of the betting authority in such a betting scheme, is obvious.

For the same reasons the Board does not consider the claimed invention to offer an alternative "simulated randomizing device" to the random number generators commonly used in client controller based slot machine systems. This argument might have held if the betting scheme operated by the system remained the same, i.e. the player placed the same bet as before. This is not the case, as the bet parameters above indicate. It is thus the betting scheme which has changed, necessitating a different operation of the controller.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar

The Chairman

G. Magouliotis

A. de Vries