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**Datasheet for the decision  
of 30 January 2018**

**Case Number:** T 1936/12 - 3.5.01

**Application Number:** 04796831.8

**Publication Number:** 1690224

**IPC:** G06Q10/00

**Language of the proceedings:** EN

**Title of invention:**

SYSTEM AND METHOD FOR MANAGING RELATIONSHIPS BETWEEN BROKERS  
AND TRADERS USING A MESSAGING FORMAT

**Applicant:**

eSpeed, Inc.

**Headword:**

MANAGING RELATIONSHIPS BETWEEN BROKERS AND TRADERS/ESPEED

**Relevant legal provisions:**

RPBA Art. 15(3)

EPC Art. 56

**Keyword:**

Inventive step - consolidating commands to arrive at a trading system via the same connection (no - part of non-technical requirements) - implementation using proxy-server multiplexing commands (no - common general knowledge)  
Claims - functional features (yes)  
Summons to oral proceedings - non-attendance of party

**Decisions cited:**

T 0361/88, T 1194/97, T 0641/00, T 0258/03



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Case Number: T 1936/12 - 3.5.01

**D E C I S I O N**  
**of Technical Board of Appeal 3.5.01**  
**of 30 January 2018**

**Appellant:** eSpeed, Inc.  
(Applicant) 110 E. 59th St., Fl. 25  
New York, NY 10022-1304 (US)

**Representative:** Beresford, Keith Denis Lewis  
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**Decision under appeal:** **Decision of the Examining Division of the  
European Patent Office posted on 2 April 2012  
refusing European patent application No.  
04796831.8 pursuant to Article 97(2) EPC.**

**Composition of the Board:**

**Chairman** W. Chandler  
**Members:** M. Höhn  
P. Schmitz

## **Summary of Facts and Submissions**

- I. This appeal is against the decision of the examining division refusing European patent application No. 04796831.8 according to the state of the file based on its communication dated 17 January 2012 on the ground of lack of inventive step (Article 56 EPC).
- II. In the statement setting out the grounds of appeal dated 13 August 2012 the appellant filed a new main request with an auxiliary request for oral proceedings.
- III. The Board issued a summons to oral proceedings with an annex, wherein the Board expressed its preliminary opinion that the request did not fulfill the requirements of Article 123(2) EPC, and lacked inventive step (Article 56 EPC).
- IV. In a reply dated 15 January 2018, the appellant submitted amendments together with further arguments supporting inventive step. The appellant furthermore withdrew the request for oral proceedings and requested that the proceedings should continue in writing.
- V. The appellant requested in writing that the decision under appeal be set aside and that a patent be granted on the basis of the claims, description and drawings filed with the statement setting out the grounds of appeal, except for page 27 which was filed with letter of 15 January 2018, amending claim 1 by replacing "simultaneously" by "collectively".
- VI. The Board maintained the date for oral proceedings, which were held on 30 January 2018 in absentia. After due consideration of the appellant's arguments the Chair announced the decision.

VII. Independent claim 1 reads as follows:

"An **electronic trading network** comprising a **plurality of computers and a communications network interconnecting said computers, said computers** including at least one trading system (26), a plurality of trader **terminals** (14) operable by traders, and a plurality of broker **terminals** (16) operable by brokers for enabling brokers to effect trading in said trading system (26) on behalf of said traders;  
characterised by a **proxy server (24) for managing messages in the trading network, the proxy server (24) being connectable to the trading system (26) via a plurality of connections (30g),**  
and characterised in that:  
(a) said broker **terminals (16) are operable for generating and transmitting to said proxy server (24) via said communication network (30)**  
i) attachment **requests** for conditioning the proxy server (24) for trading by the broker on behalf of traders identified in the attachment requests respectively, and  
ii) carrier **messages** comprising trading commands for effecting trading by the broker on behalf of traders identified in the carrier messages respectively;  
(b) said **proxy server (24) is operable, in response to a said attachment request, to perform an attachment process** comprising  
i) **storing relationship data (62) identifying the broker from which said attachment request is received and the trader identified in said attachment request,** and  
ii) **assigning to said relationship data (62) a said connection (30g) between the proxy server (24) and the trading system (26) for the communication therebetween**

of data relating to the trader, wherein if any previously stored relationship data (62) identifies the same trader, the **same connection (30g) as assigned to the previously stored relationship data (62) is assigned to the new relationship data (62)**, thereby to assign the same connection (30g) to all relationship data (62) identifying the same trader and **different connections (30g)** to relationship data (62) identifying different traders;

(c) said **proxy server (24) is operable, in response to a said carrier message**, to separate the trading command from the carrier message and **route the trading command to the trading system (26) via the connection (30g) assigned to the relationship data (62)** associated with the trader identified in the respective carrier message and the broker from which the respective carrier message is received, whereby a **plurality** of said brokers may **collectively act** on behalf of the same trader **utilising the same connection (30g) between the proxy server (24) and the trading system (26)**; and (d) said trading **system (26)** is operable for **executing trading commands received from the proxy server (24) via said assigned connections (30g)**" (emphasis added).

VIII. The appellant argued essentially that the invention addressed the technical problem of avoiding additional processing in an electronic trading network caused by commands related to the same trader and transmitted at the same time from a number of different user terminals (see page 3, fourth paragraph of the statement setting out the grounds of appeal).

The solution was to include in the network a proxy-server which received the commands from the brokers and trader and which sent them on to the trading system through a common connection. Instead of trading

commands for trading on behalf of the same trader originating from multiple different terminals, those commands all arrived at the trading system via the same connection on behalf of the same trader from a single source. Hence, modification of the trading system to achieve this possibility was not necessary.

## **Reasons for the Decision**

Non-attendance at oral proceedings

1. By letter dated 15 January 2018 the appellant withdrew its request for oral proceedings. The board nonetheless considered it expedient to maintain the date set for oral proceedings. Nobody attended on behalf of the appellant.

Article 15(3) RPBA stipulates that the board is not obliged to delay any step in the proceedings, including its decision, by reason only of the absence at the oral proceedings of any party duly summoned who may then be treated as relying only on its written case.

Hence, the board was in a position to announce a decision at the end of the oral proceedings.

Article 56 EPC - Inventive step

2. The Board essentially concurs with the reasoning in the communication of the examining division that the subject-matter of independent claim 1 lacks an inventive step.

- 2.1 The claim is directed to a mix of technical and non-technical features. The Board does not dispute that the invention according to claim 1 appears in a technical context. The claimed electronic trading network comprises technical means, because it involves terminals and computers as a server with means for storing data, means for processing data and means for transmitting and receiving data, and, therefore, has technical character. Accordingly, the claimed subject-matter is an invention in the sense of Article 52(1) EPC (see T 258/03 "Auction method/HITACHI").
- 2.2 However, the question of inventive step requires an assessment of whether the invention makes a technical contribution over the prior art. Features which do not make such a contribution cannot support the presence of an inventive step (see T 641/00 "Two identities/COMVIK", Headnote I).
- 2.3 In the Board's view the features of claim 1 which are not highlighted in point V. above "per se" are considered to pertain to an administrative method, i.e. to the non-technological part of claim 1.
- 2.4 The Board particularly agrees with the examining division's view that the technical infrastructure of claim 1 (highlighted in point V. above) corresponds to any well known general purpose networked computer system. By way of example reference is made to US 2002/0133448 A1 (cited in the European Search Report), which also serves the purpose of consolidating different trading commands captured by a computer. Captured trade data is then passed to a trading system using a communication channel (see e.g. abstract).



2.5 The way connections are assigned and trading commands are routed according to claim 1, despite involving technical implementation, is rather driven by an aim in a non-technical field, and can therefore be considered to be part of the administrative business related concept. The basic idea of consolidating commands to arrive at the trading system via the same connection can therefore be included in the formulation of the objective technical problem as a requirement for the technical skilled person.

2.6 In the annex to the summons for oral proceedings, the Board expressed doubts that the alleged effect (see point VI. above) was actually achieved by the subject-matter of claim 1. The wording of claim 1 lacks technical details as to why and how data received from multiple terminals can be processed at the same time and collectively via the same connection. Claim 1 fails to explicitly specify the technical features for achieving this effect. It was well known that the trading of e.g. shares in real time is critical regarding the processing of commands. Using only a single connection collectively requires technical measures like parallel to serial conversion or multiplexing techniques, which however are neither claimed nor disclosed. Such a conversion requires processing capacity. An alleged reduction of processing required at the trading system therefore would require a pre-processing, i.e. processing would have to be shifted from the trading system to another (not specified) preprocessing unit. This trade-off situation would not achieve an overall reduction of processing of the electronic trading network.

2.7 In the reply to the Board's communication the appellant admitted that claim 1 would have to be understood in a way that the proxy-server is, in effect, multiplexing the commands it receives on behalf of the same trader by sending them on to the trading system (see page 2, last paragraph).

The technical features "proxy server" and "connections (30g)" are further specified according to the wording of claim 1, however not by further technical limitations going beyond well known messages or requests following common network protocols. In contrast the technical features are merely further limited by abstract business related functions representing the administrative trading structure involving traders, brokers, trading rules, business and user relationships.

The Board understands that this multiplexing feature is meant to be implicitly specified in claim 1 by the reference to a proxy-server. Lacking technical specification in the claim and following the appellant's argumentation, since a normal proxy-server is used according to claim 1, this function of multiplexing is that of an ordinary proxy-server, which the skilled person was aware of.

2.8 The resulting technical solution does not go beyond the automation of the abstract concept of consolidating trading commands on a general purpose networked computer system. This, however, does not contribute to an inventive step in the sense of Article 56 EPC, since a skilled person (a computer specialist) would have no difficulties in implementing the abstract concept (reference is made to points 2.5 and 2.6 of the

communication) and would consider the use of a proxy-server for this purpose.

- 2.9 The contribution of the invention also does not lie in an improved communication protocol. The communication network used according to claim 1 is that of a general purpose computer network which was notorious knowledge before the priority date (for example the Internet). The contribution lies rather in the way of associating information with business related trading data. Such data, however, in the Board's view, is not technical, since it is cognitive data, not functional data (see T 1194/97 Data structure product/PHILIPS, OJ EPO 2000, 525). Attachment requests and relationship data according to claim 1 define relationships between brokers and traders, i.e. are business related. Carrier messages specify trading commands, i.e. are business related. Connections (e.g. 30g) according to the wording of claim 1 correspond to the defined relationship data. Storage, selection, transmission and processing of such data are administrative measures, such as would be performed by a group of human traders/brokers when trading financial instruments, making use of general purpose computer network functions (e.g. placing, storing and retrieving trading commands in electronic form) without creating a further technical effect.

The fact that the steps are performed automatically is an obvious consequence of using a computer system.

3. The appellant further argued that the claim's individual features were drafted broadly and made use of functional language (see page 4, first paragraph of the statement setting out the grounds of appeal).

- 3.1 The wording of claim 1 is rather drafted in a way of describing the aim to be achieved by using a computer network, but does not give the technical implementation details of how such a computer network has to be programmed in order to achieve this goal.
- 3.2 Features may be drafted as functional features if they imply at least one concrete way of reduction to practice; as a consequence they cannot be regarded as being inventive over the prior art *per se*. In the Board's view those functional features of claim 1 belong to the type of functional features consisting of measures defined by the result which is aimed at (see in particular feature c of claim 1). This is allowable as long as the person skilled in the art knows, without exceeding the normal skills and knowledge, what has to be done in order to obtain the result (see e.g. T 361/88).
- 3.3 In the Board's view, the implementation of the non-technical business related trading concept drafted in functional terms in claim 1 can be regarded as having been within the common general knowledge of the skilled person, which is regarded as a prerequisite for allowing such functional language in claim 1.
4. The Board therefore agrees with the communication (which the decision under appeal refers to) that:
- the closest prior art can be considered a general purpose networked computer, which was generally known before the priority date;
  - the problem to be solved is the implementation of the claimed business related trading concept on such a general purpose networked computer;

- the person skilled in the art within the meaning of Article 56 EPC, a computer expert provided with the complete description of the non-technical abstract administrative concept, would have considered the claimed implementation obvious in view of the normal skills and the general knowledge of computer programming.

- 4.1 The appellant's arguments to the contrary provided with the statement setting out the grounds of appeal and with letter dated 15 January 2018 do not convince for the aforementioned reasons.
- 4.2 In the absence of any technical contribution beyond the straight-forward computer-implementation, the subject-matter of claim 1 does not involve an inventive step (Article 56 EPC).

## **Order**

**For these reasons it is decided that:**

The appeal is dismissed.

The Registrar:

The Chairman:



C. Moser

W. Chandler

Decision electronically authenticated