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**Datasheet for the decision
of 8 April 2016**

Case Number: T 2184/12 - 3.2.04

Application Number: 07815223.8

Publication Number: 2091620

IPC: A63F13/10

Language of the proceedings: EN

Title of invention:

FEATURE GAME PLAYED ON A GAMING SYSTEM

Applicant:

Nextgen Gaming Pty Ltd

Headword:

Relevant legal provisions:

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

Keyword:

Inventive step - (no)

Decisions cited:

T 0336/07, T 1543/06, T 0641/00

Catchword:



Beschwerdekammern
Boards of Appeal
Chambres de recours

European Patent Office
D-80298 MUNICH
GERMANY
Tel. +49 (0) 89 2399-0
Fax +49 (0) 89 2399-4465

Case Number: T 2184/12 - 3.2.04

D E C I S I O N
of Technical Board of Appeal 3.2.04
of 8 April 2016

Appellant: Nextgen Gaming Pty Ltd
(Applicant) Level 8
121 Walker Street
North Sydney, NSW 2060 (AU)

Representative: Schumacher & Willsau
Patentanwalts-gesellschaft mbH
Nymphenburger Straße 42
80335 München (DE)

Decision under appeal: **Decision of the Examining Division of the European Patent Office posted on 12 April 2012 refusing European patent application No. 07815223.8 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 11 June 2012 the appellant lodged an appeal against the examining division's decision of 12 April 2012 refusing the European patent application No. 07815223.8 and paid the prescribed fee simultaneously. The statement of grounds of appeal was received on 2 August 2012.

II. The division held, inter alia, that the claimed subject matter of the applicant's main request did not involve an inventive step. In its decision the examining division considered the following document, amongst others:

D2: US 20060040728 A

III. In a communication from the board in preparation for oral proceedings the board expressed its provisional opinion regarding inventive step in which it also cited the following further document cited in the search report: D3: AU 2003100656 A.

Oral proceedings were duly held before the Board on 8 April 2016.

IV. The appellant requests that the decision be set aside and a patent be granted on the basis of claims 1 to 9 according to a main request, filed 13 July 2011, or in the alternative according to auxiliary requests 1 or 2, both filed on 7 March 2016.

V. Independent claim 1 of the requests reads as follows:

Main request

"A gaming system for playing a game comprising a base game and a feature game, said base game being a

spinning reel game comprising a plurality of spinning reels, said gaming system comprising:
a processor for controlling the play of the base game and the feature game; at least one display device connected to the processor for displaying one or more screens of the game; and
input means connected to the processor and the display device, for use by a player in controlling one or more aspects of the game, wherein the processor controls the game such that each symbol in a reel of the base game has a corresponding feature symbol corresponding to the feature game, and wherein feature strips comprising one or more of the feature symbols are displayed between the reels or below a corresponding row of base symbols, wherein during one or more reel spins of the base game the feature symbols within the feature strips are also spun so as to affect the result of the base game depending on where the feature symbols stop with respect to the base symbols of the reels, wherein each of the feature symbols has a corresponding further feature symbol which is displayed over a base symbol".

Claim 1 of the *first auxiliary request* adds at the end of claim 1 of the main request the wording (italics added by the board to indicate added text) "*and wherein each ...over a base symbol adjacent to the corresponding feature symbol*".

Claim 1 of the *second auxiliary request* adds to the end of claim 1 of the *first auxiliary request* the wording "*, and wherein each of the corresponding further feature symbols being spun with the feature symbols of the feature strips during the one or more reel spins of the base game*".

VI. The appellant argued as follows:

Main request

The subject matter of claim 1 differs from D3 at least by the technical feature of feature symbols on feature strips displayed between base game reels. Furthermore the frame 33 as feature symbol does not overlay the base symbol but its surrounding frame.

The subject matter of claim 1 differs from D2 by the technical feature of feature symbols being displayed over corresponding base game symbols.

Whether starting from D3 or D2, informing players of game outcome by having correlated feature and base game symbols adjacent as well as superposed, improves the accuracy with which the player perceives this game status determining correlation. In particular it allows the adjacency of feature and base symbols to be ascertained without error. The problem to solve in both cases is therefore to improve accuracy with which the player can visualise game status. Neither document, nor the skilled person's general knowledge offers a solution to this problem.

First and second auxiliary request

The adjacency of feature symbols as claimed in claim 1 of the first auxiliary request further improves game status visualisation. Spinning feature symbols at the same time gives an improved optical effect.

Reasons for the Decision

1. Background

- 1.1 The present invention (see published application, page 1, line 6 to page 2, line 11 and claim 1 in all its versions) concerns a spinning reel game. Such a game may have a basic game, a so called base game and a variant of this game with innovative features for maintaining a player's interest, called a feature game. The outcome of a feature game may for example be to double a player's credits.

In particular the invention relates to a gaming system for playing a game comprising a base game and a feature game, wherein the results of the base game depends on where symbols of base game reels stop relative to where feature game symbols stop after both are spun.

- 1.2 In the context of inventions concerned with games, Article 52 (2) (c) with Article 52 (3) EPC explicitly mentions schemes, rules and methods for playing games as being excluded from patentability as such.

As explained in T 0336/07, reasons 3.3.1. "a game in the usual sense of the word is characterized by ... its rules of play which govern the conduct and actions of the players during game play...[A] set of game rules thus determines how game play evolves from beginning to end in response to player actions and decisions...". That decision went on to emphasise that such a set of rules is "normally so perceived by the players involved, and as serving the explicit purpose of playing a game".

1.3 It is common ground that, in all its versions, claim 1 includes aspects relating to rules for playing games. For example the concept of a feature game is based on game rules, such as one defining winnings. However it also contains technical features. For example the gaming system claimed comprises a display device, so it has overall technical character. Therefore all versions of claim 1 contain a mix of technical and non technical subject matter, a so called "mixed" invention.

1.4 In dealing with such "mixed" inventions, the Board adopts the approach as set out in T1543/06 (Gameaccount), reasons 2.1-2.9, 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 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.

2. Inventive step, starting from D3

In the following, the page numbers of D3 referred to are those at the top of each page.

2.1 In the Board's view, D3, disclosing as it does a spinning reel game system with additional indicator symbols (see abstract and figure 4), is a good starting point for assessing inventive step.

D3 discloses a gaming system for playing a base game and a feature game (page 5, third paragraph, first sentence). The base game comprises a plurality of spinning reels 36a to e with symbols 32 (page 9, last paragraph, page 10 first paragraph, figures 1 and 2). The system has a game controller 12, that is a processor, a display device 30 for displaying screens of the game and an operating panel 20, in other words an input means, allowing the player to control aspects of the game.

A symbol 34 of a reel of the base game has a feature symbol in the form of indicator symbol 33 displayed over the base symbol (frame symbol 33 in figures 3 to 7, see also page 10, lines 22 to 23, "special symbol ... has stopped *under* the indicator symbol 33", and page 11, third paragraph, figure 8, where the indicator symbol may be in the form of a transparent Ferris wheel symbol clearly shown overlaying the underlying respective base symbol), wherein there may be a plurality of such symbols 33 displayed over symbols on different reels of the base game (figure 7). Furthermore, the indicator symbol moves in the game as the base game reels are spun. The location of the indicator symbol acts as as a "trigger condition" in D3 for a second (feature game), page 3, bottom paragraph. Thus this correlation between base and further superposed game symbols and the idea that it should effect game result, is already known from D3.

2.2 Following on from the above, the Board considers that the subject matter of claim 1 differs from D3 in that the processor controls the game such that

each symbol in a reel of a base game has a corresponding further feature symbol, each of these

symbols having a corresponding feature symbol displayed over;
that feature strips comprising the feature symbols are displayed between or below the corresponding row of base symbols;
and that when the reels of the base game are spun the feature strips are also spun to effect the result of the base game.

In that these features pertain to the process control they are all technical.

- 2.3 However, in the Board's opinion, this modified process control in part constitutes the straightforward technical implementation of what is essentially a gaming scheme.

The idea of a feature game played by means of additional reels or feature strips with features symbols that are spun with the base game reels and which affect the result of the base game depending on their stop position is a typical gaming scheme, prescribing the mechanics or rules of game play. In itself such a scheme cannot provide the basis for inventive step, because it is excluded subject-matter, Article 52(2)(c) EPC. Nor, as explained above, can inventive step in the technical sense rely on the mere fact that such per se excluded subject-matter is technically implemented. Only the particular manner of technical implementation might possibly provide a basis for inventive step in the sense of Article 52(1) and 56 EPC. In the present case, implementation is merely by means of a processor which is adapted to carry out the various functions and steps prescribed by the gaming scheme. Such a purely functionally defined implementation is obvious for the skilled person, in

this case a software programmer, when given the task of realizing the spin reel game concept with base and feature game reels on a computer controlled gaming console as in D3. He would naturally and without any ado configure the controller to emulate on the display the necessary spin reels (base and feature game) in the required configuration and operation.

- 2.4 The remaining part of the above differences over D3 which does not arise from game rules, concerns the feature of the control displaying feature symbols of the feature strip reel so as to have a corresponding further feature symbol displayed over a base symbol. In this manner the game play condition of the feature game is in effect communicated twice to the player as can be inferred from page 19, line 16, to page 20, line 2 of the application as published. This duplicates game status information, because the player can see the same correlation from a copy of the feature symbol displayed over the base symbol (see for example published application, figure 8, cross-hairs 806 and 811).

In D3 game status based on symbol correlation is presented to the player only once, namely by having a further-game symbol displayed over a base symbol (see for example D3, figure 8). Therefore the Board sees the technical effect of this difference as providing a supplementary way of communicating game status to the player.

- 2.5 The appellant, however, has argued that the effect of differing feature (c), is not merely a duplication of game status information, but improves accuracy of visualisation of base/feature symbol correlation and thus also of the associated game status, in that the

user can better ascertain adjacency of the relevant base and feature game symbols without error.

- 2.6 The Board is not convinced that such an effect is derivable from the application when considered in the light of the prior art. Moreover, if at all, such a hypothetical effect would appear not to rely on the simple fact that there is such an overlying symbol, rather it may reside in the positional relationship, and the similarity of the symbols (both cross-hairs). But even if it were, as it is in fact in claim 1 of the auxiliary requests 1 and 2, the board is unconvinced that the supplementary display of adjacency information by means of a feature strip reel involves an inventive step.

In spinning reel games, game results are classically communicated to a player by presenting them with juxtaposed symbols, for example along pay lines. Indeed this is also the case in the base game of D3, see page 1, third paragraph. Furthermore, D3 suggests just two general ways of drawing the player's attention to concurrence of a base game symbol and a special symbol (indicator symbol) effecting game status: presenting the indicator symbol over or in close proximity to the base game symbol (page 5, third paragraph, first sentence). Starting from a special indicator symbol 33 displayed over a base symbol and tasked with finding a supplementary way of communicating game status, the skilled person would, as a matter of obviousness, choose the remaining way of doing so which is already suggested in D3 but which is moreover standard in spin reel games. They would therefore choose to display a further-game symbol (or feature symbol as the rules dictate), in other words a feature symbol copy, adjacent to the corresponding base game symbol, in

addition to the one displayed over that base game symbol (cf. figure 8). In so doing they would arrive at the feature of displaying feature strips between base reels as claimed, in an obvious manner.

2.7 Therefore, the Board finds that the subject matter of claim 1 of the main request lacks inventive step vis-à-vis D3 with the skilled person's general knowledge.

2.8 As regards the auxiliary requests, the particular positional relationship between the overlaying feature symbols and those of the feature strip reel is also not seen to contribute to inventive step. Given that the two symbols are meant to communicate the same information, namely the correspondence of symbols of adjacent reels, adjacency of the two follows directly from the game rules, once the obvious choice has been made to also use a classical spin reel display for the trigger condition (auxiliary request 1). That, additionally, the overlaying feature symbols are also spun together with the feature strip reel symbols is a typical game design choice which is devoid of inventive step in the technical sense (auxiliary request 2). Neither of these alternative forms of claim 1 define inventive subject-matter, contrary to Article 52(1) with 56 EPC.

3. Inventive step starting from D2

In an alternative approach, the Board comes to the same conclusion when assessing inventive step starting from D2.

3.1 D2 (see abstract, paragraphs [0010] to [0013], [0016], [0070] and figures 2a, 3A to C) discloses a system for playing a base game (reels 54) and feature game (reel

106), where the base game is a spinning wheel game (figure 3A). It has processor, display device and input means, in the form of a touch screen (figure 2a). It also has a feature game reel 106 (figures 3B,C) with feature strip, having corresponding symbols to those of the base game (paragraph [0013]) and that is spun to effect the result of the game when the base game reels are spun (paragraphs [0012] and [0013]). Furthermore the feature game strips are between base game strips (see paragraph [0010] and figure 4b).

Although only one feature strip 106 is shown in the drawings, D2 also discloses a plurality of feature reel strips which may be played at the same time (paragraphs [0012] and [0070]).

3.2 It is common ground that the only differing claim feature vis-à-vis D2 is that:

- each of the feature symbols has a corresponding further feature symbol which is displayed over a base symbol.

3.3 As explained above, D2 already discloses feature game reels between base game reels, with the game rules prescribing some relationship between symbols at a certain position on adjacent reels as a game condition for a win or further (feature) game play.

The application does not explain any particular effect of communicating the correlation of the one or more feature symbols on the feature strips by placing one on top of the other, in addition to their being laterally adjacent (cf. application, sentence bridging pages 21 and 22). The appellant has argued as before that this improves accuracy of visualisation of the correlation between the base and feature game symbols and thus also

of the associated game status, as it would avoid errors when ascertaining adjacency.

As stated above, if such an effect exists it would most likely reside in the positional relationship between the relevant symbols, which is however not defined in claim 1. Otherwise, it can only be the result of the repetition of information that is already communicated.

- 3.4 In the Board's view, the objective technical problem can therefore be formulated as: how to modify the system of D2 to provide a supplementary way of communicating game status to a player.

The Board has no doubt that the skilled person would consider the teaching of document D3: it relates also to reel game systems and in particular to providing a focal point for a player to concentrate on when watching a game outcome, in other words focusing player's attention to recognise game outcomes (page 2, second paragraph).

In particular, D3 discloses arrangements for visualising correlation between an indicator symbol and a base game symbol, by positioning the indicating symbol over a symbol of the displayed matrix, in other words to a symbol on the base game reels (page 5, third paragraph, first sentence). The skilled person will immediately see that this provides a different way of communicating a reel game status, whose outcome depends on correlating symbols, to the way disclosed in D2 (adjacency of symbols). Tasked with the above problem, the skilled person will therefore, as a matter of obviousness, modify D2 to include this other way of communicating game status. In other words they will modify the gaming system of D2 to display a further

feature symbol over the corresponding base symbol as a matter of obviousness.

- 3.5 The Board is not convinced that the skilled person will dismiss the option of superimposing one symbol over another known from D3 because in the detailed embodiments of D3 the superposed symbol is used as a trigger symbol, initiating the condition for further games, rather than as a feature game symbol in a feature game.

The concepts of a feature game symbol and a trigger symbol differ only in how the symbol's presence influences game play, thus the difference, if any, lies in the realm of game rules, and is not a technical one. Looking to solve the above objective technical problem, the technically-focused skilled person sees the superposing of symbols disclosed in D3 in terms of its technical effect of drawing the player's attention to correlated symbols, not in terms of game result.

- 3.6 Nor does D3 teach away from superposing a symbol of a reel on top of another because it discloses only superposing static symbols (cf. page 6, lines 1 to 6) or symbols pointing to rows of symbols spanning several game reels (cf. page 6, second paragraph, first 4 lines). As well as these embodiments, D3 also teaches that the superposed (indicator) symbol may move from matrix location to location in a scripted manner, thus covering only a single position and moving dynamically (page 8, second paragraph and page 11, third paragraph with figures 4 and 8).

- 3.7 Therefore, in the Board's view, the subject matter of claim 1 also lacks inventive step when considered in the light of D2 combined with D3.

4. From the above, the subject matter of claim 1 of all requests lacks inventive step and so does not meet the requirements of Article 52(1) EPC in combination with Article 56 EPC. Since none of the requests on file are allowable, the Board confirms the examining division's decision to refuse the application.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:



G. Magouliotis

A. de Vries

Decision electronically authenticated