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Datasheet for the decision of 1 July 2016

Case Number: T 1884/13 - 3.2.04

Application Number: 06836201.1

Publication Number: 1968720

IPC: A63F13/00

Language of the proceedings: EN

Title of invention:
COMPUTER GAMING DEVICE AND METHOD FOR COMPUTER GAMING

Applicant:
Rational Intellectual Holdings Limited

Headword:

Relevant legal provisions:
EPC Art. 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

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It can be changed at any time and without notice.

Catchword:

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

Case Number: T 1884/13 - 3.2.04

D E C I S I O N
of Technical Board of Appeal 3.2.04
of 1 July 2016

Appellant: (Applicant)	Rational Intellectual Holdings Limited Douglas Bay Complex King Edward Road Onchan Isle of Man IM3 1DZ (GB)
Representative:	Dixon, Philip Matthew HGF Limited 140 London Wall London EC2Y 5DN (GB)
Decision under appeal:	**Decision of the Examining Division of the European Patent Office posted on 26 March 2013 refusing European patent application No. 06836201.1 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 24 May 2013 the appellant lodged an appeal against the examining division's decision of 26 March 2013 refusing the European patent application No. 06836201.1 and paid the prescribed fee. The statement of grounds of appeal was received on 5 August 2013.

II. The division held that the subject matter of claim 1 of the only request did not involve an inventive step. In its decision the examining division considered as closest prior art a notorious online poker game system. The examining division considered that the claimed subject matter was a mixture of technical and non-technical features and that all the technical features claimed were either known from or rendered obvious by the notorious prior art.

III. The following documents played a role in the appeal:

D1: WO 2005/033825 A2;
D6: "Multi-tabling in online poker" Online Article archived 25 February 2010 by Internet Archive WaybackMachine, First Time Poker Player, pages 1 to 3;
D7: "Fast-Fold Poker: What the Industry has to Offer", Online Article undated , Pokerfuse.com, pages 1 to 9.

D6 and D7 were filed with the appellant's letter of 1 June 2016.

IV. Oral proceedings were duly held on 1 July 2016.

V. The appellant requests that the decision be set aside and a patent be granted on the basis of claims according to a sole request, filed on 4 January 2013.

VI. Claim 1 of the sole request reads as follows:

"A computerised method of computer gaming operating in a gaming network comprising a gaming system connectable via a communications network to a plurality of player access elements that provide communication services to a player, comprising:
providing a first virtual table of a first group of players grouped together to play a first hand;
providing to each of the first group of players one or more cards for the first hand;
receiving from a first player of the first group of players a request to fold the one or more cards of the first hand, wherein the request to fold the one or more cards of the first player is made out of turn;
without waiting for the first player's turn in the first hand, automatically moving the first player to a second virtual table of a second group of players grouped together to play a second hand;
maintaining the first virtual table such that the first player appears to the other players of the first group to remain active at that virtual table, waiting his turn; and
at the first player's turn in the first hand, automatically folding his hand".

VII. The appellant argued as follows:

The last features of claim 1 starting from the fold request receiving step are all technical.

These features define that a first player can request folding out of turn, and is automatically moved to another table, whilst players at the first table are not aware of this having happened until the first player's hand is folded automatically at their turn. This increases player activity or throughput and therefore increases rake revenues and has the technical effect that the the computer system is more efficiently used than is possible with conventional online poker. The fold request and the automatic move to another table constitute a "single trigger" which reduces data transfer and so generally enhances operational aspects of the gaming system.

The rules and etiquette of conventional poker require a player to only fold when it is their turn. Requesting folding out of turn as claimed can only be made in online poker. The same goes for the claim feature defining that the first player is automatically moved to a new table, whilst appearing to other players to remain at the first table. In the real world this would require being in two places at the same time. These features can only be implemented in on-line poker, so are technical.

The problem to be solved is to increase throughput of poker hands per player. The technical solution as claimed is to provide a computerised environment in which, in effect the player is continuously active and allowing them to appear to be in two places at once. Rather than the rules of the poker game changing, the technical data communication environment is changed. D6 shows that there are different ways of increasing player throughput, namely multi-tabling. D7 shows that the claimed solution enjoys commercial success, pointing to its non-obviousness.

Reasons for the Decision

1. The appeal is admissible.

2. Background, and "mixed" inventions

2.1 The present invention concerns an online poker game. One of the problems with a conventional online poker is boredom (see published application, page 2, third paragraph). Active players must await their turn, even if they have decided to resign from the particular round of the game, that is "to fold". Then they must wait until the round comes to an end before joining a fresh round at the same table. To reduce the time players are inactive it is known for players to play at two or more different tables simultaneously. This reduces their boredom, but it is not seamless in that they may be active at more than one table simultaneously. Furthermore, they may still get bored because the player may be inactive at both tables (see published application, paragraph bridging pages 2 and 3).

2.2 An aim of the invention is to reduce the time a player is inactive (published application, page 4, second complete paragraph). To this end, one idea of the invention is to allow players to decide to fold before their turn arrives and immediately move them to a new table so that they can seamlessly continue playing (page 5, middle paragraph, page 9, first full paragraph, page 20, lines 6 to 11 and claim 1).

2.3 It is not disputed that the method of claim 1 includes subject matter related to schemes, rules or methods for

playing games. For example, the method step of providing players with one or more cards is anchored in the rules of all poker games. This subject matter, as such, is excluded from patentability under Articles 52(2)(c) and 52(3) EPC. However, claim 1 also includes technical features: it is, inter alia, a computerised method of computer gaming operating in a communications network. Therefore, claim 1 possesses overall technical character (following T0258/03 OJ EPO 2004, 575), even if it is "mixed" (with both technical and non-technical aspects).

2.4 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. 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.

2.5 The Board considers game rules to form part of "...a regulatory framework agreed between 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 T0336/07, reasons 3.3.1. As noted in T0012/08, 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. It is not in dispute that computer/Internet-based poker games, and their associated computerised method of gaming, belong to the prior art. D1, for example, mentions such games (see page 4, lines 10 to 20). Implicitly such arrangements have a gaming system connectable via a communication network (Internet) to a plurality of player access points that provide communication services to a player. Such games group players at virtual tables (D1, page 4, line 14 "poker room"). As with any poker game, each member of a group of players at a table is provided with one or more cards for the first hand.

In such a conventional online poker game, players decide, in turn, whether to continue participating in the game or terminate, that is to fold (page 1, line 35 to page 2, line 7). In other words players can only decide to fold when their turn comes around in the game.

Thus the method of claim 1 differs from the conventional online poker game method in the following features, with feature labels added by the Board:

(a) receiving from a first player of the first group of players a request to fold the one or more cards of the first hand, wherein the request to fold the one or more cards of the first player is made out of turn;
(b) without waiting for the first player's turn in the first hand, automatically moving the first player to a second virtual table of a second group of players grouped together to play a second hand;
(c) maintaining the first virtual table such that the first player appears to the other players of the first group to remain active at that virtual table, waiting his turn; and
(d) at the first player's turn in the first hand, automatically folding his hand.

These features are technical by virtue of the fact that they are steps of the computerised method operating in the gaming network.

3.1 However, even if they are technical in nature the Board is of the opinion that game rules underpin all of the differing features (a) to (d).

According to feature (a), a player can decide to fold their hand at any time by making a request, that is without having to wait for their turn in the game. Players will be aware of this possibility when playing the game. They will know that, whereas the rules of conventional poker games forbid folding out of turn, this is not the case in the game they are playing. In particular, implementation on a gaming system provides for an access element, such as a button, that the

player can operate even when it is not their turn in the game to request folding (cf. published application, page 33, lines 1 to 6). Thus, in the Board's opinion, feature (a) expresses a first game rule: (1) *At any time in the game, a player 1, playing at a first virtual table, may decide to fold their hand by making a request*.

The player will also be aware of how their fold request influences game play. According to feature (b) they are automatically moved to a new (second) table. Whether or not they decide to play at that new table, the player will be aware that they cease playing at their original table as soon as they have made their request and are immediately moved to a different table, even if it is not their turn. They thus perceive the move as being a direct result of having requested folding out of turn. Players will be aware that, having pressed the fold request button, they cannot choose not to move to a different table: it inevitably happens whether they like it or not. After requesting to fold, the player also knows they no longer need to, nor indeed can, take any further action in the orignal (first) game they were playing, that folding will be done for them when their turn comes round (feature (d)). Thus the Board considers a second game rule underlying features (b) and (d) can be formulated as: (2) *Upon making the fold request, even if it is not their turn, player 1 immediately ceases to play at the first virtual table and is moved to a second virtual table.*

All players will also be aware that, whilst they have the option of requesting folding early, actual folding always takes place at the relevant player's turn in the first game (feature c). Thus, the game story gives the appearance that players are still active at the table

when in fact they may have ceased playing at that table and been moved to a different one. Put differently, the remaining players first know of the player's decision to request folding at that player's turn. Thus, the Board considers that a third game rule underpins this feature, and can be formulated as: (3) *Other players at player 1's table will be informed of player 1's decision when player 1's next turn at the first virtual table comes around*.

3.2 It may be that a game having the above rules could not be implemented in a real room with real people because they involve people appearing to be in two places at once and because the rules and etiquette of traditional poker would not permit it. However, this does not render its rules any less game rules. Most game rules inherently involve technical means, from rolling dice on a board to having a character carry out a prescribed task in a computerised RPG game. Recalling the above definition of a game rule (see point 2.5), a regulatory framework that sets out particular conditions causing this double appearance of a player, namely as a result of a player requesting to fold their cards before their allotted turn, is but a set of game rules, regardless of whether or not the same set of rules could function in the real world. That aspects of the game with which claim 1 is concerned would break the rules and etiquette of conventional poker merely confirms that it is a different game, one played with different rules and conventions. Whilst these new rules might to some extent mimic a conventional online poker game, with players appearing to fold in turn, each player knows that they are not playing such a game, but a different variant game of poker. Inter alia they know the game rules offer a new gaming choice, namely to request folding out of turn, and that exercising this choice

whisks them off to a different virtual table, terminating their activities at the first table.

3.3 Thus, the Board concludes that all the above differing features are underpinned by the above rules of this new game.

4. Following the problem-solution approach, the Board must now develop the problem to be solved. It may well be that the above rules have the effect of increasing the number of games a player plays or hands per unit time or play rate, and that consequently the gaming server is more active. However, any such effects are directly derived from the rules themselves. In particular, an increase in hands per unit time is a direct consequence of the second rule which has the player moved to a new table as soon as they decide to fold, rather than waiting till the end of the round. Likewise, it is the game rules that link the fold request and the compulsory move to another table, so that the former triggers the latter. This "single trigger" and concomitant reduction in data transfer are thus inherent in the game rules. Any such enhanced operational aspects of the modified gaming system are thus inevitably realized as a bonus effect of the implementation of these game rules on a gaming system.

Instead of providing a purely technical solution to increasing player throughput or more efficiently using a gaming server, the differing features offer a gaming solution which effectively circumvents the problem by changing the rules. It is these new rules that may increase player throughput and thus may make better use of the gaming server, similar to T 258/03, reasons 5.7. Therefore, adopting the approach outlined above (point

2.4), the objective technical problem cannot be derived from these effects.

Rather, inventive step is seen to lie in the particular manner of implementation of the above game rules. The technical problem is then formulated accordingly as how to implement on a known online poker gaming system the above game rules.

4.1 It is therefore necessary to consider how these rules are implemented in the method of claim 1. The question is to be considered from the point of view of the skilled person - here a gaming software engineer - who is given the problem of modifying the prior art online poker gaming method, such as that of D1, to implement the above rules.

4.2 With respect to the first of these rules (player 1 can request to fold out of turn), in the context of an online poker game, the player's request will need to be communicated to the remote game server. The skilled person will therefore necessarily include the step of *receiving* such a request from a first player as claimed.

Tasked with implementing the second rule (immediately cease at the first table and move to a second), the skilled person must provide a method step to ensure the player has no choice in moving to a different table where a second group of players play a second hand. The skilled person will therefore, as a matter of obviousness, define a method step to move the player without possibility of their intervention. Formulated differently, they will make the move *automatic*.

Finally, to implement the third rule (at player 1's turn other players informed of fold), the skilled person will inevitably have to maintain player 1's virtual presence at the first table before their turn comes round, so the method will need to do just that. When it comes to player 1's turn, they must fold their hand. Since, in reality, player 1 left the first table by requesting to fold, the skilled person must provide a step of folding that requires no player intervention, that is they will include an *automatic* folding step, when player 1's turn comes round.

In summary, claim 1 is seen to merely define the implementing features in terms of the functions that the gaming system must necessarily perform if it is to operate in accordance with the new set of game rules defining the new online poker gaming scheme. Thus the Board holds that all these differing features of claim 1 are obvious for the skilled person solving the above problem when starting from D1 and in the light of their general knowledge.

4.3 The Board does not consider that the claimed invention is not obvious because other ways of increasing player activity in online poker exist, such as multi-tabling, as evidenced by D6 (see for example D6, page 1, first two paragraphs and middle of page 2, figures and associated description, cf. published application, paragraph bridging pages 2 and 3). However ingenious the above identified rules may be in seamlessly carrying the player from one game to the next whilst keeping them active, they make no contribution to the technical character of the claim so they cannot contribute to inventive step. Thus it is irrelevant whether or not the game rules themselves are non-obvious, or whether they bring about new advantages

with respect to, for example, games allowing multi-tabling.

4.4 Nor is the Board convinced that the alleged commercial success of online poker corresponding to the method of claim 1 (see D7, section "PokerStars Zoom Poker" starting on page 4) points to the subject matter of claim 1 involving an inventive step. It may be that folding out of turn and moving that player to a new table where they can continue playing has advantages such as increasing player action and rake revenues. However, recalling again that this aspect of the invention lies firmly in the domain of game rules (see above sections 3.1 to 3.3), it cannot contribute to inventive step. Thus, whatever commercial success a game having such rules might enjoy, this cannot point to a method underpinned by these rules involving an inventive step.

5. For all of the above reasons, the Board concludes that the subject matter of independent claim 1 of the sole request does not meet the requirements of Article 52(1) in combination with Article 56 EPC. The Board therefore 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:

A. Wolinski A. de Vries

Decision electronically authenticated