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**Datasheet for the decision
of 17 January 2019**

Case Number: T 1895/13 - 3.5.01

Application Number: 08850811.4

Publication Number: 2212850

IPC: G06Q40/00

Language of the proceedings: EN

Title of invention:

TECHNIQUES FOR REDUCING DELTA VALUES OF CREDIT RISK POSITIONS
IN ONLINE TRADING OF CREDIT DERIVATIVES

Applicant:

Creditex Group, Inc.

Headword:

Reducing delta values of credit risk positions/CREDITEX

Relevant legal provisions:

EPC Art. 56, 106(1), 111(1), 113(1)
EPC R. 4(1), 4(5), 63(1), 63(2)
Rules Relating to Fees Art. 9(1)

Keyword:

Inventive step - improved risk-hedging approach in credit derivative trading (no - non-technical, implementation common general knowledge)

Refund of search fee upon no-search declaration - (no)

Remittal to the department of first instance - (no)

Decisions cited:

J 0014/87, T 1194/97, T 0641/00, T 0258/03, T 1411/08,
T 2249/13

Catchword:

See Reasons for the Decision, points 7 and 8.



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Case Number: T 1895/13 - 3.5.01

D E C I S I O N
of Technical Board of Appeal 3.5.01
of 17 January 2019

Appellant: Creditex Group, Inc.
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Representative: Epping - Hermann - Fischer
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Decision under appeal: Decision of the Examining Division of the
European Patent Office posted on 26 March 2013
refusing European patent application No.
08850811.4 pursuant to Article 97(2) EPC.

Composition of the Board:

Chairman W. Chandler
Members: M. Höhn
C. Schmidt

Summary of Facts and Submissions

- I. This appeal is against the decision of the examining division, posted on 26 March 2013 refusing European patent application No. 08850811.4 pursuant to Article 97(2) EPC on the ground of lack of inventive step (Article 56 EPC). The assessment of inventive step in the decision under appeal considered a general purpose data processing system as described in the description of the present application to be the closest prior art (see para. [0010] of the description as well as points 3.2 and 3.5 of the contested decision).
- II. In the statement setting out the grounds of appeal, the appellant requested that the appealed decision be set aside and that a patent be granted on the basis of the refused main or auxiliary request filed with letter dated 16 November 2011 and during the oral proceedings before the examining division on 14 March 2013, respectively. Oral proceedings were requested as an auxiliary measure.

The appellant also alleged two substantial procedural violations by the examining division and requested that the case be remitted to the department of first instance, in particular to a differently composed examining division.

Furthermore, a refund of the European search fee was requested.

- III. In the annex to the summons to oral proceedings, the Board expressed its preliminary opinion that the main request lacked inventive step (Article 56 EPC). The Board noted that it did not see a substantial procedural violation. Furthermore, the Rules Relating

to Fees did not provide for a refund of the search fee in case of a no-search declaration under Rule 63 EPC.

IV. In a reply, the appellant withdrew the request for oral proceedings and announced that nobody would participate in the oral proceedings.

V. Oral proceedings were held on 17 January 2019 *in absentia*. After due consideration of the appellant's written requests and arguments the Chairman announced the decision.

VI. Independent claim 1 of the main request reads as follows:

"1. An electronic trading system of credit derivatives, the system comprising:

a processor;

at least one storage device coupled to the processor;

a user interface coupled to the processor via one or more communication networks;

wherein the processor is adapted to communicate with the at least one storage device and the user interface to execute instructions to perform the following tasks: receiving, in the online trading system of credit derivatives, a plurality of credit risk positions submitted by a plurality of trader clients, each credit risk position having a delta value and a maturity date, wherein each trader client's submission is unknown to other trader clients;

automatically identifying, from the plurality of trader clients, at least two trader clients who hold offsetting credit risk positions on at least two maturity dates;

determining delta offsets to be applied to delta values of the credit risk positions held by the at least two

trader clients and having the at least two maturity dates, such that an overall delta of each of the at least two trader clients' credit risk positions remains substantially unchanged after the application of the delta offsets;
calculating, based on the determined delta offsets, notional amounts of credit derivative trades needed to realize the delta offsets; and
executing the credit derivative trades among the at least two trader clients."

Claim 1 of the auxiliary request essentially adds to the main request that the plurality of trader clients are invited to upload the plurality of credit risk positions to the electronic trading system of credit derivatives, wherein the plurality of credit risk positions are uploaded to the electronic trading system of credit derivatives in a spreadsheet format.

VII. The appellant argued that the examining division erroneously denied inventive step, contested that no search was performed and therefore argued that the search fee be refunded. Finally, the appellant argued that the examining division violated its right to be heard by refusing to provide interpretation during oral proceedings before the first instance. The appellant's detailed arguments are dealt with in the reasons for the decision (see in particular points 1.4, 1.5, 2 and 7).

Reasons for the Decision

Main request

1. Article 56 EPC - Inventive step

The Board agrees with the decision under appeal that the subject-matter of independent claim 1 lacks an inventive step for essentially the same reasons.

1.1 The claim is directed to a mix of technical and non-technical features. The Board does not dispute that the system according to claim 1 appears in a technical context. The system involves technical means such as a processor, a user interface and a communication network 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").

1.2 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).

1.3 The Board agrees with the contested decision at point 3.3 that the following features "per se" pertain to an administrative business related method, i.e. to the non-technical part of claim 1:

- receiving, in the online trading system of credit derivatives, a plurality of credit risk positions submitted by a plurality of trader clients, each credit

risk position having a delta value and a maturity date, wherein each trader client's submission is unknown to other trader clients;

- automatically identifying, from the plurality of trader clients, at least two trader clients who hold offsetting credit risk positions on at least two maturity dates;

- determining delta offsets to be applied to delta values of the credit risk positions held by the at least two trader clients and having the at least two maturity dates, such that an overall delta of each of the at least two trader clients' credit risk positions remains substantially unchanged after the application of the delta offsets;

- calculating, based on the determined delta offsets, notional amounts of credit derivative trades needed to realize the delta offsets; and

- executing the credit derivative trades among the at least two trader clients.

1.4 The contribution of the invention does not lie in a faster and more efficient information processing as argued by the appellant (see point 1 of the statement setting out the grounds of appeal). The technical infrastructure and the user interface used according to claim 1 are that of a general purpose computer which was notorious knowledge before the priority date (see for example US 2006/0036535 A1 (D1) cited in the International Search Report: figures 1, 5A, 5B, 6 and 7; para. [0036] to [0041]).

The contribution lies rather in the way of associating information with trade related data (namely trader, credit risk positions, maturity dates, delta offsets). 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). Storage, selection, transmission and processing of such data are merely implementations of administrative measures following a financial concept, such as would be performed by a human trader, when mitigating credit risk positions, making use of general purpose computer functions (e.g. storing and retrieving information in electronic form) without creating a further technical effect.

The present invention may provide for an improved risk-hedging approach in credit derivative trading (e.g. reducing or eliminating individual delta values, optimisation using notional amounts of original trades etc.) and therefore an improved financial concept. Those measures, however, do not appear to have any technical implication for the functioning of the data processing system and its interactive graphical user interface (GUI), since the underlying operations are carried out by a conventional networked data processing system (such as exemplified in D1, see above).

1.5 In contrast to the appellant, the Board does not consider the feature that each client's submission is unknown to the other trader clients to be technical since such a limitation of data flow is not achieved by technical measures, but is a constraint of the underlying administrative/financial concept.

1.6 The fact that the steps of receiving, identifying, selecting and calculating complementary offsetting

credit risk positions are performed automatically and are scalable is an obvious consequence of using a computer system with commonly known database and network technology.

- 1.7 The description does not disclose the hardware and programming details of the technical implementation of desired functions of the financial concept, which are thus left to the skilled person. This leads to the well known situation that the features must be either not enabled, or part of the skilled person's common knowledge and therefore obvious. The Board considers that the latter applies.

No-Search declaration

2. While the International Search Report cited several prior art publications, neither the Supplementary Search Report nor the Search Opinion cited any further prior art publication. Instead, the Supplementary Search Report gave a declaration under Rule 63 EPC with Rule 164(2) and (3) EPC (referred to as the "no-search declaration" by the Board).
3. Regarding the examining division's reliance on a general purpose data processing system and in contrast to the appellant's arguments, the Board accepts such prior art as notorious, i.e. no documentary evidence had to be adduced by the examining division in this respect (T 1411/08, points 4.1, 4.2). In particular, the examining division was not required to prove the pre-existence of features which even the application itself fails to disclose (such as technical details of a processor, communication networks or a user interface).

Even if written prior art had been available and the appellant had offered to provide other written prior art, the Board notes that the examining division was not obliged to rely on written publications. Since notorious prior art can be the basis for assessing the requirement of inventive step (closest prior art) and the examining division was convinced that this prior art rendered the claimed subject-matter obvious, it was sufficient to start from one prior art starting point for concluding lack of inventive step, irrespective of other prior art available or on file.

In addition, and as the request for remittal is based *inter alia* on the search division's no-search declaration, the Board notes that according to Article 106(1) EPC it is competent only for revising decisions of the Receiving Section, Examining Division, Opposition Division and the Legal Division, and thus not for acts of the search division.

4. The Board therefore agrees with the decision under appeal that:
 - the closest prior art can be considered a general purpose data processing system (see points 3.2 and 3.5 of the decision), which was generally known before the priority date as exemplified by D1;
 - the problem to be solved is the implementation of the claimed business related administrative concept (see point 3.7 of the decision) on such a general purpose data processing system;
 - 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 do not convince for the aforementioned reasons.
- 4.2 In the absence of any technical contribution beyond the straight-forward computer-implementation, the Board judges that the subject-matter of claim 1 does not involve an inventive step (Article 56 EPC) in view of the skilled person's common general knowledge or in view of D1.

Auxiliary request

- 5. Claim 1 of this request additionally incorporates features of dependent claims 2 and 3 of the main request by further specifying that the plurality of trader clients are invited to upload the plurality of credit risk positions to the electronic trading system of credit derivatives in a spreadsheet format.
- 5.1 The Board concurs with the contested decision that an unspecified data format *per se* does not contribute to the technical character of the claim and that organisation of data in the form of a table or a spreadsheet was commonly known in the art (see point 8 of the decision under appeal).
- 5.2 In addition, a trading system comprising a standardized interface that allows processing of credit derivatives in a compact and uniform format was known in the art, including the use of tables (see e.g. D1, para. [0013], [0045] or [0046], [0069] to [0071] with figures 11, 14, and 15A to 15D).

- 5.3 The additional features therefore do not involve an inventive technical contribution.
6. Thus, neither request fulfils the requirements of the EPC.

Refund of the Search Fee

7. Regarding the request for a refund of the European search fee in the absence of any cited document, the Board can only apply the EPC and associated provisions as they are. Article 9(1) Rules Relating to Fees provides for a refund of the search fee only in the case that the European patent application is withdrawn at a time when the Office has not yet begun to draw up the Search Report, but not in the case of a no-search declaration under Rule 63 EPC.

Furthermore, the search division can be assumed to have analysed the set of claims before taking the decision to issue a no-search declaration, and, hence, it cannot be argued that the EPO has been unjustly enriched. The Board is also not competent to decide on claims for compensation in respect of a loss or damage allegedly caused by the EPO in the course of patent grant proceedings (J 14/87, OJ EPO 1988, 295).

Reference is made to decision T 2249/13, which concerned a similar situation (see in particular points 24 to 29 of the reasons). The Board concurs with the reasoning in this decision.

Therefore, the request for a refund of the search fee is inadmissible.

Language of the oral proceedings before the first instance

8. Oral proceedings before the first instance were held in the absence of interpreters although the appellant's representative had informed the examining division that he intended to speak and hear in the German language and had requested simultaneous translation. The examining division saw no good reason to depart from the language of the proceedings (English), but offered to clarify its comments in German where necessary while declining to act officially as interpreters.

8.1 The appellant argued that Rule 4(1) EPC unambiguously allowed a party to both speak and hear an official language chosen by the party and announced in good time. The examining division had no discretion to refuse interpretation in such a situation. By refusing to provide interpretation, the examining division also infringed the appellant's right to be heard according to Article 113(1) EPC which reflects the principle of procedural fairness. Discussing the invention in a common language served procedural economy and prevented misunderstandings. By dismissing the appellant's request for interpretation, the examining division accepted the possibility of a misdirected discussion. The dismissal limited the appellant's right to present its arguments in a desired manner in accordance with procedural regulations of the EPC. Despite a specific complaint by the appellant, the examining division was not willing to conform to those provisions, which suggested that the division was biased at least with respect to the language issue.

8.2 Again reference is made to decision T 2249/13, which concerned a comparable situation (see in particular

point VII c)). In that case, the Board stated that in effect, the appellant's allegation was that the examining division infringed Rule 4(1)(5) EPC by declining to provide official interpretation when the appellant's representative had filed a timely request to speak and hear an official language other than the language of the proceedings.

The Board, however, indicated that even if a procedural violation might have occurred, it did not appear to have substantially affected the appellant's right to be heard (Article 113(1) EPC). The appellant had not set out any actual communication problem caused by the lack of official interpretation, neither at the oral proceedings before the examining division nor with its statement setting out the grounds of appeal. Instead, the appellant addressed only hypothetical problems that might occur in general if the right to exchange arguments in a desired language was restricted.

Indicating a potential problem does not mean that the problem actually occurred. The burden of proof lies with the appellant, who has not satisfied its obligation to submit facts, which allows an assessment of whether there was a substantial violation of rights.

9. For the aforementioned reasons, the Board cannot identify any substantial procedural violation by the examining division. Furthermore, the Board is not competent to revise acts (including a potential procedural violation) of the search division or to remit a case to it (Article 106(1) EPC). The Board does not need to remit the case to the department of first instance, but is able to exercise its power within the competence of the examining division (Article 111(1) EPC), in particular to assess inventive-step and to

take a corresponding decision on the substance of the present case.

Order

For these reasons it is decided that:

- 1) The appeal is dismissed.
- 2) The request to remit the case to the department of first instance and the request to refund the European search fee are rejected.

The Registrar:

The Chairman:



C. Rodríguez Rodríguez

W. Chandler

Decision electronically authenticated