

**US Bar - EPO Liaison Council  
29th Annual Meeting  
Munich, 18 October 2013**

**5. EPO practice issues**

**A. Patenting of digital gaming**

18 October 2013



**Overview**

- Article 52(2) and (3) EPC
- History of the legal practice
- Landmark decisions
- Enlarged Board of Appeal Opinion (G03/08)
- COMVIK approach
- Patentability of Digital Gaming
- Case Law in Digital Gaming

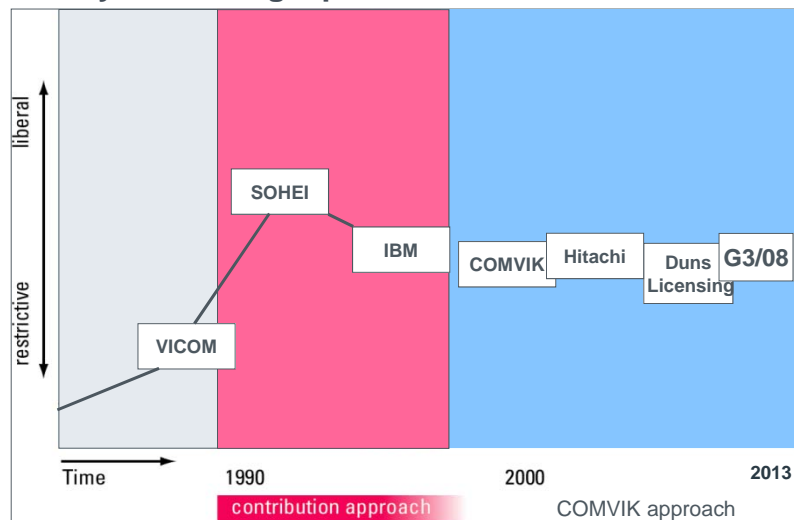
## Article 52 (2) and (3) EPC

The following, in particular, shall ***not*** be regarded as inventions

- discoveries, scientific theories, mathematical methods
- aesthetic creations
- **schemes, rules and methods for performing mental acts, playing games** or doing business
- **programs for computers**
- presentations of information.

Only to the extent to which a European patent application relates to such subject matter or activities ***as such***.

## History of EPO legal practise with landmark decisions



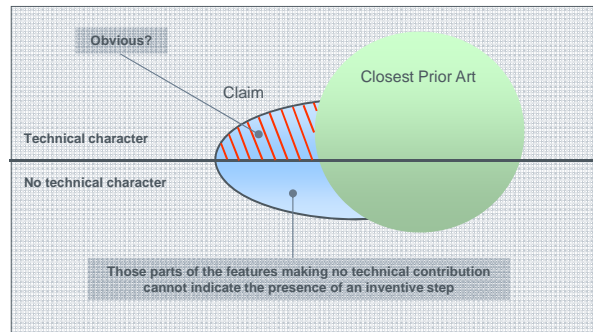
## Landmark decisions

- T 1173/97 (IBM): Focus on any *further technical effects* associated with the specific implementation over the effects inherent in the excluded subject-matter.
- T 641/00 (COMVIK): Features making no technical contribution cannot support the presence of inventive step. Objective problem can be rephrased as a fictional technical problem in which the per se excluded subject matter appears as an aim to be achieved.
- T 0258/03 (HITACHI): A method involving technical means is an invention within the meaning of Article 52(1) EPC.

## Opinion of the Enlarged Board of Appeal (G03/08):

- Confirmation of the established case law and practice.
- The mere use of a computer or computer-readable storage medium suffices to avoid the exclusion of patentability, provided other EPC requirements are fulfilled.

## COMVIK approach



A non-obvious technical contribution over the prior art in the technical field is necessary

## Patentability of Digital Gaming

- Digital gaming claimed as an apparatus, method or computer program involves technical means (i.e. memory device, processor) and is therefore an invention within the meaning of Article 52 (1) EPC.
- In the objective problem the *scheme, rule or method for playing a game* may appear as an aim to be achieved. This implies that such aim may be regarded as a given in the assessment of inventive step (Article 56 EPC).
- The mere technical implementation of a *scheme, rule or method for playing a game* per se cannot form the basis for inventive step. The inventive step can be based only on the particular manner of implementation.

## Digital Gaming - Case Law

- T 1543/06 (GAMEACCOUNT): Adoption of the COMVIK approach for digital gaming.
- T 0012/08 (Nintendo): The invention concerns a gaming machine of the type wherein a player object is moved on a map and encounters game characters. Varying the probability by which a game character is made to appear on time is innately technical.
- T 1782/09 (Bandai): Features do not become inevitably technical merely because such features may only be put into practice in a digital game.
- T 0042/10 (Microsoft): The aim of keeping players interested and of assessing and comparing playing performance is not technical.
- T 1281/10 (Microsoft): The representation of player's performance by the means and variances of a probability distributions, the updating of the values, and the prediction of future outcomes are non-technical mathematical methods which cannot support the presence of inventive step.
- T 0414/12 (CFPH): The formulation of game rules is within the game designer's responsibility. The particular implementation will be apparent to the software engineer when he is tasked by the games designer to implement the betting scheme and he is given the various sets of specific mapping rules.