

Appeal decision

Appeal No. 2017-12328

Tokyo, Japan
Appellant

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The case of appeal against the examiner's decision of refusal of Japanese Patent Application No. 2015-87579, entitled "Game Machine" (the application published on December 8, 2016, Japanese Unexamined Patent Application Publication No. 2016-202565), has resulted in the following appeal decision.

Conclusion

The appeal of the case was groundless.

Reason

No. 1 History of the procedures

The present application was filed on April 22, 2015; a notice of reasons for refusal was issued on March 1, 2017; a written opinion and a written amendment were submitted on May 2, 2017; and the examiner's decision of refusal was issued on July 4, 2017 (dispatch date: July 11, 2017). Against this, an appeal against the examiner's decision of refusal was made on August 21, 2017 and a written amendment was submitted at the same time. Against this, a reconsideration report was made on October 3, 2017.

No. 2 Decision to dismiss the amendment dated August 21, 2017

[Conclusion of Decision to Dismiss Amendment]

The amendment dated August 21, 2017 (hereinafter, referred to as "the Amendment") shall be dismissed.

[Reason]

1. Outline of the Amendment

The Amendment includes an amendment of Claim 1 according to the scope of claims for patent, and by the Amendment, the description of Claim 1 according to the scope of claims for patent was amended from

"[Claim 1]

A A game machine which performs variable display and is controllable to an advantageous state advantageous to a player, comprising:

B a reservation display means which can display a variable display that has not been started, as a reservation display;

C a mode changing means which can change a mode of the reservation display from a predetermined mode to any one of plural kinds of special modes including a first special mode and a second special mode; and

D a suggestive performance executing means which can execute a suggestive

performance suggesting that the mode of the reservation display displayed in the predetermined mode changes, the suggestive performance executing means being capable of executing

D1 a first suggestive performance suggesting that the mode of the reservation display displayed in the predetermined mode changes to the first special mode,

D2 a second suggestive performance suggesting that the mode of the reservation display displayed in the predetermined mode changes to the second special mode, and

D4 a specified suggestive performance suggesting that the plurality of modes of reservation displays displayed in the predetermined mode change to the special modes by one performance." before amendment (the written amendment dated May 2, 2017) to "[Claim 1]

A A game machine which performs variable display and is controllable to an advantageous state advantageous to a player, comprising:

B a reservation display means which can display a variable display that has not been started, as a reservation display;

C a mode changing means which can change a mode of the reservation display from a predetermined mode to any one of plural kinds of special modes including a first special mode and a second special mode; and

D a suggestive performance executing means which can execute a suggestive performance suggesting that the mode of the reservation display displayed in the predetermined mode changes, the suggestive performance executing means being capable of executing

D1 a first suggestive performance suggesting that the mode of the reservation display displayed in the predetermined mode changes to a first special mode,

D2 a second suggestive performance suggesting that the mode of the reservation display displayed in the predetermined mode changes to a second special mode,

D3 a third suggestive performance suggesting that the mode changes from the predetermined mode to the first special mode, and then suggesting that the mode changes to the second special mode, and

D4 a specified suggestive performance suggesting that the plurality of modes of reservation displays displayed in the predetermined mode change to the special modes by one performance." after amendment (the written amendment dated August 21, 2017 which is the Amendment) (Codes were added by the body for separate description, and underlines indicate amended portions).

2. Propriety of amendment

The Amendment, in Claim 1 before amendment, adds a matter that "a third suggestive performance suggesting that the mode changes from the predetermined mode to the first special mode, and then suggesting that the mode changes to the second special mode."

Then, the inventions described in Claim 1 before and after amendment are identical regarding the field of industrial application and the problems to be solved.

Therefore, the Amendment corresponds to one at the restriction in a limited way which is prescribed in Article 17-2(5)(ii) of the Patent Act.

In addition, the Amendment is not one that adds new matters.

3. Independent requirements for patentability

Then, it will be examined below whether or not the appellant can be granted a patent independently for the invention described in Claim 1 after the Amendment (hereinafter, referred to as "the Amended Invention") at the time of filing of the patent application (whether or not it complies with the provisions of Article 126(7) of the Patent Act as applied mutatis mutandis pursuant to the provisions of Article 17-2(6) of the same Act).

(1) Description and other materials of the prior application

There are the following descriptions in the description, the scope of claims, or drawings (hereinafter, referred to as "the description and other materials of the prior application") originally attached in the application of Japanese Patent Application No. 2014-214592 (refer to Japanese Unexamined Patent Application Publication No. 2016-77730) filed before the filing date of the present application, which are cited for reasons for refusal stated in the examiner's decision. (Underlines were added by the collegial body, and the same shall apply hereinafter.)

(A) "[0001]

The present invention relates to a game machine such as a pachinko game machine.

[Background Art]

[0002]

Conventionally, a game machine has been known, in which a right to receive a big win drawing is acquired on the condition that a game ball has successfully entered a start trap, a big win trap is opened if winning a big win by the big win drawing, and it is possible to execute a special game allowing a player to earn a lot of prize balls by making a game ball successfully enter the big win trap. In detail, when the game ball successfully enters the start trap, it is stored in a special symbol determining information memory regions as special symbol determining information, and by the establishment of the start condition, the special symbol determining information stored in the special symbol determining information memory region is read out to execute the big win drawing."

(B) "[0033]

<<Basic Action of Game Machine>>

Next, the basic action of a game machine 100 will be described. The game machine 100, when first and second start conditions are established, acquires special symbol determining information according to the establishment timing, and performs a big win drawing based on the special symbol determining information. The acquisition of the special symbol determining information corresponds to the acquisition of the right of the big win drawing. In the big win drawing, it is determined whether or not it won a big win (whether it won a big win or lost). When the big win drawing is performed based on the establishment of the first start condition, the game machine 100 variably displays a first special symbol of a first special symbol display portion 201a. Then, after a lapse of a predetermined time since the start of the variable display, the first special symbol is stopped and displayed at a symbol showing a result of the big win drawing (namely, in a mode showing a result of the big win drawing). On the other hand, when the big win drawing is performed based on the

establishment of the second start condition, the game machine 100 variably displays a second special symbol of a second special symbol display portion 201b. Then, after a lapse of a predetermined time since the start of the variable display, the second special symbol is stopped and displayed at a symbol showing a result of the big win drawing (namely, in a mode showing a result of the big win drawing)."

(C) "[0170]

FIG. 19 (a) illustrates one example of a display mode of a reservation image. Reservation images QC1 to QC7 are images different from each other. In this example, the reservation image QC1 is a white image, the reservation image QC2 is a blue image, the reservation image QC3 is a green image, the reservation image QC4 is a red image, and the reservation image QC5 is a rainbow symbol (seven-color) image."

(D) "[0217]

-----Reservation performance mode determination processing-----

A CPU 431 determines a performance mode of a reservation performance, in a reservation performance mode determination processing. As the performance mode of the reservation performance which can be determined in this processing, a first reservation performance to a third reservation performance which are different in a performance mode from each other are set. Although the details of the performance mode of the first reservation performance to the third reservation performance are obvious from the description of this embodiment and following embodiments, briefly describing the performance mode of each reservation performance, the first reservation performance is a performance in which an initial image and a final image are the same image and the image does not change. Also, the initial image is a reservation image initially displayed in an image display region QR3 as a reservation image corresponding to a prior determination subject."

(E) "[0254]

FIG. 32 is an explanatory view showing a performance example of a reservation change premonition performance. FIG. 32 is a performance example of a reservation change premonition performance in the case that the execution of a reservation non-change performance Y1-2 and a reservation non-change notification performance is determined to the prior determination subject. In this case, as shown in FIG. 32 (a), after the image QC2 is displayed in the image display region QR3 as an initial image, as the reservation change premonition performance as shown in FIG. 32 (b), a performance in which a character TK having a green ball appears is executed within the image display portion 104, and near the image display region (on the left side of the image display region QR4 in this example). As described above, since the reservation change premonition performance suggests that the initial image may change to a reservation image corresponding to a specific image which is different from the initial image and has higher reliability to a big win than the initial image or the right image, in this example, although instead of the reservation change premonition performance shown in FIG. 32 (b), as shown in FIG. 33 (a) or (b), it is possible to execute a performance in which the character TK having a red or rainbow ball appears, a performance in which the character TK having a white or blue ball appears is not executed."

(F) "[0270]

///The second embodiment///

Although, in the first embodiment, during the reservation performance mode determination processing, the case that the execution of the first reservation performance is determined was described, in this embodiment, during the reservation performance mode determination processing, reservation performance content determination processing executed after the execution of the second reservation performance is determined will be described.

[0271]

-----Reservation performance content determination processing-----

The CPU 431 determines the execution of the second reservation performance in the reservation performance mode determination processing, and then executes the reservation performance content determination processing. Details of the contents of the second reservation performance will be described below.

[0272]

The CPU 431 executes the reservation performance content determination processing for determining specific performance contents of the second reservation performance. The performance executed as the second reservation performance is an image includes at least a performance in which an initial image and a final image are different and the image changes (reservation change performance), and furthermore, a reservation change notification performance suggesting that the reservation change performance is executed may be executed before the reservation change performance. Details of the reservation change performance and the reservation change notification performance will be described below.

...

[0276]

FIG. 41 is an explanatory view showing a performance example of a reservation change performance Y2-7. As shown in FIG. 41 (a), the image QC2 is displayed in the image display region QR3 as an initial image. Next, if a right to determine a special symbol is completed with respect to a prior reservation corresponding to an image display region QR1 shown in FIG. 41 (a), as shown in FIG. 41 (b), the image QC2 is changed to the image QC3, and then it is shifted to an image display region QR2. Furthermore, if a right to determine a special symbol is completed with respect to a prior reservation corresponding to the image display region QR1 shown in FIG. 41 (b), as shown in FIG. 41 (c), the image QC3 is changed to the image QC4, and then it is shifted to the image display region QR1. Then, a right to determine a special symbol is completed to the prior determination subject, as shown in FIG. 41 (d), the image QC4 is erased from the image display region QR1, and an image PC5 is displayed in an image display region PR1 as a final image. It is recognized by a player that the image QC4 is changed to the image PC5 and then the image display region QR1 is shifted to the image display region PR1.

[0277]

Although the reservation change performance may be a performance directly changed from the initial image to the final image, as shown in FIG. 41, the initial image is changed to an image different from the initial image and the final image, and then the final image may be finally displayed (hereinafter, in the reservation change performance, the image different from the initial image and the final image is referred to as "the

passing image"). When executing a performance which changes from the initial image to the passing image in the reservation change performance and changes from the passing image to the final image, as the passing image, an image which has higher reliability to a big win than the initial image and lower reliability to a big win than the final image is selected. Also, a plurality of passing images may be selected as the passing images, between respective passing images, concerning reliability to a big win, an image which has lower reliability to a big win is selected for the passing image displayed earlier, and an image which has higher reliability to a big win is selected for the passing image displayed later. In the reservation change performance shown in FIG. 41, as the passing image, the images (the image QC3 and the image QC4) different from the initial image (the image QC2) and the final image (the image PC5) are selected, and also the passing images are displayed in order of low reliability to a big win (in order of the image QC3, and the image QC4) (refer to FIG. 41 (b) and (c))."

(G) "[0297]

In this embodiment, the reservation change notification performance includes at least the reservation change premonition performance similar to the reservation non-change notification performance (a performance suggesting that the initial image may change to a specified image which is different from the initial image and having higher reliability to a big win than the initial image, as the reservation image or right image), and may include a reservation change suggestive performance which can be executed after the reservation change premonition performance and suggests that the initial image changes to a reservation image corresponding to the specified image or a right image thereof."

(H) "[0299]

FIG. 44 is an explanatory view showing a performance example of the reservation change suggestive performance. As described above, the reservation change suggestive performance can be executed after the reservation change premonition performance and FIG. 44 (a) shows the same figure as FIG. 32 (b). Also, FIG. 44, in the reservation change performance Y2-7, is an explanatory view showing the reservation change suggestive performance executed between FIG. 41 (a) and FIG. 41 (b).

[0300]

The reservation change premonition performance in which the character TK having a green ball appears is executed as shown in FIG. 44 (a). As shown in FIG. 44 (b), after the image QC2 is shifted from the image display region QR3 to the image display region QR2, as the reservation change suggestive performance, a performance in which the character TK throws the green ball toward the image display region QR2 is executed. Then, as shown in FIG. 44 (c), there is executed a performance in which the green ball thrown by the character TK hits the image QC2 displayed in the image display region QR2 and the image QC2 displayed in the image display region QR2 changes to the image QC3. According to the execution of this reservation change suggestive performance, a player can recognize that the image QC2 displayed in the image display region QR2 will change the image QC3 (the reservation image of a green image) having higher reliability to a big win than the image QC2."

(1) "[0307]

In the case that the execution of the reservation change notification performance is determined, a number of times of executing the reservation change notification performance may be a numerical value larger by 1 than a number of the passing images in the reservation change performance or less (namely, it is a number of times of changing the images or less, and for example, if there is only one passing image, since the initial image changes to the passing image and the passing image changes to the final image, it is 2 or less). If the number of times of executing the reservation change notification performance is the same as a numerical value larger by 1 than the number of the passing images in the reservation change performance, the reservation change notification performance is executed whenever the image changes. Also, a timing of executing the reservation change performance is executed in synchronism with a timing of changing the images, and it is set so as to execute the reservation change performance after the reservation change notification performance. Also, as the reservation change premonition performance, it is determined whether it suggests that the initial image or the passing image changes to which image, on the basis of the initial image or the passing image before change, and the passing image or the right image thereof after change. When suggesting that it may change to one image, it is suggested that it may change to the passing image after change or the right image thereof, and when suggesting that it may change to a plurality of images, it is suggested that it may change to any one of the passing image after change and the right image thereof and the image which has higher reliability to a big win than the initial image or the passing image before change and is different from the passing image after change or the right image thereof. Also, a method of determining these is not particularly limited, and may be determined based on a performance random number. Also, when executing the reservation change performance, although as the reservation change notification performance, the reservation change premonition performance and the reservation change suggestive performance are executed, for example, when one reservation change notification performance is executed within a variable period of one special symbol variation, if variable time of the special symbol variation is less than time required for the execution of the reservation change premonition performance and the reservation change suggestive performance, only the reservation change premonition performance is executed, or it may be not execute the reservation change notification performance, and in that case, the reservation change performance is executed after the reservation change premonition performance or without reservation change notification performance."

(J) "[0310]

According to this embodiment there are provided, a reservation means capable of reserving a right of special game determination as to whether or not a special game is performed by the establishment of a start condition, and a performance control means carrying out the performance. The performance control means has a reservation display control means which makes a display means display that a reservation symbol indicating that the right is reserved, and can change the reservation symbol to a special reservation symbol; and a notification performance control means which can carry out a notification performance suggesting the change to the special reservation symbol before the reservation symbol is changed to the special reservation symbol. The reservation

display control means can change the reservation symbol to a first special reservation symbol suggesting that there is high possibility that the special game will be performed, or a second special reservation symbol suggesting that there is higher possibility that the special game will be performed than the first special reservation symbol. The notification performance control means, when the reservation symbol is changed to the first special reservation symbol, makes it possible to carry out a first notification performance which suggests that there is possibility to be changed to the first special reservation symbol, and when the reservation symbol is changed to the second special reservation symbol, makes it possible to carry out a second notification performance which suggests that there is possibility to be changed to the second special reservation symbol.

[0311]

In the above constitution, the reservation means corresponds to a main control part 401 which reserves a right of a big win drawing with a predetermined number as an upper limit with reference to FIG. 4, and stores special symbol information in RAM 413. Also, the performance control means having the reservation display control means and the notification performance control means corresponds to a performance control part 403 which executes a variable performance with reference to FIG. 12. Processing executed by the reservation display control means is a reservation change performance which changes a reservation symbol displayed at the present time to a special reservation symbol having higher reliability to a big win than the reservation symbol displayed at the present time. When the reservation symbol is changed to the first special reservation symbol as the reservation change performance, the notification performance control means, as the suggestive performance, executes the reservation change notification performance suggesting that the reservation symbol is changed to the first special reservation symbol, and when the reservation symbol is changed to the second special reservation symbol as the reservation change performance, the notification performance control means, as the suggestive performance, executes the reservation change notification performance suggesting that the reservation symbol is changed to the second special reservation symbol."

(K) "[0422]

[Variation 2 of Reservation Change Suggestive Performance]

In the second embodiment, although the reservation change notification performance is a performance which suggests that when a plurality of rights of special symbol determination are reserved, among that, one specified right of special symbol determination is reserved, in this variation, it is possible to suggest that the reservation change performance is executed about a reservation image showing that two specified rights of special symbol determination are reserved."

[0423]

FIG. 87 and FIG. 88 are explanatory views showing a performance example of the reservation change notification performance according to this variation, and are explanatory views of a performance example of the reservation change notification performance when the execution of the reservation change performance Y2-6 is determined in the reservation performance determination processing to the prior determination subject, and the execution of the reservation change performance Y2-2 is determined in the reservation performance determination processing to a prior

reservation with higher priority in the right of the special symbol determination by one than the prior determination subject (a reservation corresponding to the reservation image QC1 displayed in the image display region QR2 shown in FIG. 87 (a), and referred to as a subject prior reservation).

[0424]

In the reservation change performance Y2-6 in this variation, the image QC2 corresponding to the prior determination subject is changed to the image QC4 when being displayed in the image display region QR3 as shown in FIG. 87 (a), then, the image QC 4 is successively shifted to the image display regions QR2 and QR1 whenever the right of special symbol determination of the prior reservation is completed, and after the right of special symbol determination of the prior determination subject is completed, the image PC4 is displayed in the image display region PR1 as the final image. Also, in the reservation change performance Y2-2, the image QC1 corresponding to the subject prior reservation is changed to the image QC3 when being displayed in the image display region QR2 as shown in FIG. 87 (a), then, the image QC3 is shifted to the image display region QR1 when the right of special symbol determination of the prior reservation of the subject prior reservation is completed, and after the right of special symbol determination of the subject prior reservation is completed, the image PC3 is displayed in the image display region PR1 as the final image.

[0425] In this case, as the reservation change premonition performance, as shown in 87 (b), a performance in which the character TK appears while having a green ball and a red ball is executed. Then, as the reservation suggestive performance, after a performance in which the character TK throws the green ball toward the image display region QR2 and throws the red ball toward the image display region QR3 (refer to FIG. 87 (c)), and a performance in which the green ball hits the image QC1 displayed in the image display region QR2 and the red ball hits the image QC2 displayed in the image display region QR3 (refer to FIG. 88 (a)) are executed, as the reservation change performances Y2-2 and Y2-7, there is executed a performance in which the image QC1 displayed in the image display region QR2 changes to the image QC3, and the image QC2 displayed in the image display region QR3 changes to the image QC4 (refer to FIG. 88 (b)). The reservation change notification performance according to this variation is especially easy to be executed during rightward shooting in which the plurality of rights of special symbol determination are easy to reserve in a short period."

(L) In [0002] of (A), there is the description that "a game machine in which if winning a big win by the big win drawing, ...it is possible to execute a special game allowing a player to earn a lot of prize balls", and in [0033] of (B), there is the description that "when the big win drawing is performed..., the game machine 100 variably displays a special symbol". It can be said that the description and other materials of the prior application describe "a game machine 100 which variably displays a special symbol by performing a big win drawing and can execute a special game allowing a player to earn a lot of prize balls if winning a big win". (Recognized matter (L))

(M) Since in [0310] of (J), there is the description of "a reservation means capable of reserving a right of special game determination as to whether or not a special game is performed by the establishment of a start condition," and in [0311], there is the

description that "the reservation means...reserves the right of the big win drawing...," it is obvious that "a right of special game determination as to whether or not a special game is performed by the establishment of a start condition" is "a right of a big win drawing," and together with the description of "makes a display means display that a reservation symbol indicating that the right is reserved," it is also obvious that the description and other materials of the prior application describe "a display means" which displays "a reservation symbol indicating that a right of a big win drawing is reserved." (Recognized matter (M-1))

Furthermore, since there are the descriptions of "a reservation display control means which makes a display means display that a reservation symbol indicating that the right is reserved, and can change the reservation symbol to a special reservation symbol" and "the reservation display control means can change the reservation symbol to a first special reservation symbol...or a second special reservation symbol..." in [0310], it can be said that the description and other materials of the prior application describe "a reservation display control means" which "can change the reservation symbol to a first special reservation symbol or a second special reservation symbol and make the display means display the same." (Recognized matter (M-2))

(N) Since there are the descriptions that "the initial image is ... a reservation image" in [0217] of (D), "the reservation change premonition performance suggests that the initial image may change to a reservation image corresponding to a specific image which is different from the initial image" in [0254] of (E), "the reservation change notification performance includes at least the reservation change premonition performance..., and may include a reservation change suggestive performance which can be executed after the reservation change premonition performance" in [0297] of (G), and "the notification performance control means... executes the reservation change notification performance" and "the notification performance control means...executes the reservation change notification performance" in [0311] of (J), it can be said that the description and other materials of the prior application describe "a notification performance control means which executes" "a reservation change notification performance which includes at least a reservation change premonition performance suggesting that an initial image may change to a reservation image corresponding to a specified image which is different from the initial image, and may include a reservation change suggestive performance which can be executed after the reservation change premonition performance."

In addition, since there are the descriptions of "has a notification performance control means" and "the notification performance control means, when the reservation symbol is changed to the first special reservation symbol, makes it possible to carry out a first notification performance which suggests that there is possibility to be changed to the first special reservation symbol, and when the reservation symbol is changed to the second special reservation symbol, makes it possible to carry out a second notification performance which suggests that there is possibility to be changed to the second special reservation symbol" in [0310] of (J), it can be said that the description and other materials of the prior application describe "a notification performance control means" which "when the reservation symbol is changed to the first special reservation symbol, makes it possible to carry out a first notification performance which suggests that there is possibility to be changed to the first special reservation symbol, and when the reservation symbol is changed to the second special reservation symbol, makes it

possible to carry out a second notification performance which suggests that there is possibility to be changed to the second special reservation symbol."

Consequently, it can be said that the description and other materials of the prior application describe "a notification performance control means which executes a reservation change notification performance which includes at least a reservation change premonition performance suggesting that an initial image which is a reservation image may change to a reservation image corresponding to a specified image which is different from the initial image, and may include a reservation change suggestive performance which can be executed after the reservation change premonition performance, the notification performance control means, when the reservation symbol is changed to a first special reservation symbol, making it possible to carry out the first notification performance which suggests that there is possibility to be changed to the first special reservation symbol, and when the reservation symbol is changed to the second special reservation symbol, making it possible to carry out a second notification performance which suggests that there is possibility to be changed to the second special reservation symbol." (Recognized matter (N))

(O) In [0300] of (H), it is described that "the reservation change premonition performance in which the character TK having a green ball appears is executed as shown in FIG. 44 (a)," "as the reservation change suggestive performance, a performance in which the character TK throws the green ball toward the image display region QR2 is executed, and then," "the green ball thrown by the character TK hits the image QC2 displayed in the image display region QR2 and the image QC2 displayed in the image display region QR2 changes to the image QC3."

Together with the description of "the reservation image QC3 is a green image" of [0170] of (C), since it can be said that the color of the ball thrown by the character TK and the color of the image QC3 to which the image QC2 hit with the ball thrown by the character TK changes are the same green, considering the description of "the reservation image QC3 is a blue image" of [0170] of (C) and the description of "the reservation change notification performance includes at least the reservation change premonition performance..., and may include a reservation change suggestive performance which can be executed after the reservation change premonition performance" of [0297] of (G), it can be said that the description and other materials of the prior application describe that the reservation change notification performance is executed, in which "the reservation change premonition performance in which a character TK having a green ball appears is executed, as the reservation change suggestive performance, a performance in which the character TK throws the green ball toward the image display region QR2 is executed, and then the green ball thrown by the character TK hits the blue reservation image QC2 displayed in the image display region QR2 and the reservation image QC2 displayed in the image display region QR2 changes to the reservation image QC3" which has the same green color as the thrown ball. (Recognized matter (O-1))

Also, since there are the descriptions of "instead of the reservation change premonition notification shown in FIG. 32 (b), as shown in FIG. 33 (a)... it is possible to execute a performance in which the character TK having a red...ball appears" in [0254] of (E), "FIG. 44 is an explanatory view showing a performance example of the

reservation change suggestive performance" and "FIG. 44 (a) shows the same figure as FIG. 32 (b)" in [0299] of (H), it is substantially disclosed that as another example of "a performance example of the reservation change suggestive performance" of FIG. 44, "instead of the reservation change premonition notification shown in FIG. 32 (b)," "as shown in FIG. 33 (a)," there is a performance example "which can execute a performance in which the character TK having a red ball appears" (Recognized matter (O-2-1))

Accordingly, it can be said that the description and other materials of the prior application also substantially disclose that instead of an example "executing the reservation change premonition performance in which the character TK having a green ball appears"; namely, the reservation change premonition notification shown in FIG. 32 (b), "the reservation change premonition performance in which the character TK having a red ball appears is executed."

Then, it can be said that it is also substantially disclosed that if executing the reservation change premonition performance in which the character TK having a red ball appears, as the reservation change suggestive performance, a performance carrying out the same change as the aforementioned (Recognized matter (O-1)); namely, there is executed a performance in which the color of the ball thrown by the character TK and the color of the image to which the image QC2 hit by the ball thrown by the character changes become the same red.

Here, considering the description of "the reservation image QC4 is a red image" of [0170] of (C), since the fact that the image QC2 changes to a red image means that the image QC2 changes to the red reservation image QC4, it can be said that the description and other materials of the prior application also substantially disclose that instead of "executing, as the reservation change suggestive performance, a performance in which the character TK throws the green ball toward the image display region QR2, and then executing a performance in which the green ball thrown by the character TK hits the blue reservation image QC2 displayed in the image display region QR2 and the image QC2 displayed in the image display region QR2 changes to the image QC3"; namely, green, "as the reservation change suggestive performance, there is executed a performance in which the character TK throws a red ball toward the image display region QR2 is executed, and then, a performance in which the red ball thrown by the character TK hits the blue reservation image QC2 displayed in the image display region QR2 and the reservation image QC2 displayed in the image display region QR2 changes to the reservation image QC4 which has the same red color as the ball thrown by the character TK." (Recognized matter (O-2-2))

Combining Recognized matters (O-2-1), (O-2-2), and the description of "the reservation change notification performance includes at least the reservation change premonition performance..., and may include a reservation change suggestive performance which can be executed after the reservation change premonition performance" of [0297], it can be said that the description and other materials of the prior application describe that "the reservation change notification performance is executed, in which the reservation change premonition performance in which the character TK having a red ball appears is executed, as the reservation change suggestive performance, a performance in which the character TK throws the red ball toward the image display region QR2 is executed, and then, the red ball thrown by the character

TK hits the blue reservation image QC2 displayed in the image display region QR2 and the reservation image QC2 displayed in the image display region QR2 changes to the reservation image QC4 which has the same red color as the thrown ball" (Recognized matter (O-2))

(P) Since there is the description that "in the reservation change performance, the image different from the initial image and the final image is referred to as "the passing image" in [0277] of (F), and there is the descriptions that "in the case that the execution of the reservation change notification performance is determined, a number of times of executing the reservation change notification performance may be a numerical value larger by 1 than a number of the passing images in the reservation change performance or less (...it is a number of times of changing the images or less, and for example, if there is only one passing image, since the initial image changes to the passing image and the passing image changes to the final image, it may be 2 or less). If the number of times of executing the reservation change notification performance is the same as a numerical value larger by 1 than the number of the passing images in the reservation change performance, the reservation change notification performance is executed whenever the image changes" and "when executing the reservation change performance, as the reservation change notification performance, the reservation change premonition performance and the reservation change suggestive performance are executed," it can be said that it is described that in the reservation change performance, if the number of times of executing the reservation change notification performance is the same as a numerical value larger by 1 than the number of passing images in the reservation change performance, and the initial image changes to the passing image different from the initial image and the passing image changes to a final image, the number of the passing images is 1 and the number of times of executing the reservation change premonition performance and the reservation change suggestive performance is 2.

Also, since in [0277], there is the description that "when executing a performance which changes from the initial image to the passing image in the reservation change performance and changes from the passing image to the final image, as the passing image, an image which has higher reliability to a big win than the initial image and lower reliability to a big win than the final image is selected," it can be said that the final image is an image different from both the initial image and the passing image.

In addition, together with the descriptions of "the reservation image QC3" and "the reservation image QC4" of [0170] of (C), and the description that "as the passing image,... the image QC3 and the image QC4...are selected," it is obvious that the passing image is the reservation image.

As described above, it can be said that the description and other materials of the prior application describe that "if the initial image changes to the passing image different from the initial image and the passing image changes to a final image different from both the initial image and the passing image, the number of the passing images is 1 and the number of times of executing the reservation change premonition performance and the reservation change suggestive performance is 2." (Recognized matter (P))

(Q) In [0425] of (K) of the description and other materials of the prior application, it is described that as the reservation change premonition performance,...a performance in

which the character TK appears while having a green ball and a red ball is executed,...as the reservation suggestive performance, after a performance in which the character TK throws the green ball toward the image display region QR2 and throws the red ball toward the image display region QR3...and a performance in which the green ball hits the image QC1 displayed in the image display region QR2 and the red ball hits the image QC2 displayed in the image display region QR3...are executed... there is executed a performance in which the image QC1 displayed in the image display region QR2 changes to the image QC3, and the image QC2 displayed in the image display region QR3 changes to the image QC4," together with the description of "the reservation image QC1 is a white image, the reservation image QC2 is a blue image, the reservation image QC3 is a green image, the reservation image QC4 is a red image" of [0170] of (C), it can be said that the description and other materials of the prior application describe that "as the reservation change premonition performance, a performance in which the character TK appears while having a green ball and a red ball is executed, as the reservation change suggestive performance, after execution of a performance in which the character TK throws the green ball toward the image display region QR2 and throws the red ball toward the image display region QR3 and a performance in which the green ball hits the white reservation image QC1 displayed in the image display region QR2 and the red ball hits the blue reservation image QC2 displayed in the image display region QR3, there is executed a performance in which the image QC1 displayed in the image display region QR2 changes to the green reservation image QC3, and the image QC2 displayed in the image display region QR3 changes to the red reservation image QC4." (Recognized matter (Q))

From Described matters (A) to (K) and Recognized matters (L) to (Q), it is acknowledged that the description and other materials of the prior application disclose "a a game machine 100 which variably displays a special symbol by performing a big win drawing and can execute a special game allowing a player to earn a lot of prize balls if winning a big win (Recognized matter (L)) comprising:
b a display means which displays a reservation symbol indicating that a right of a big win drawing is reserved (Recognized matter (M-1));
c a reservation display control means which can change the reservation symbol to a first special reservation symbol or a second special reservation symbol and make the display means display the same (Recognized matter (M-2); and
d a notification performance control means which executes a reservation change notification performance which includes at least a reservation change premonition performance suggesting that an initial image which is a reservation image may change to a reservation image corresponding to a specified image which is different from the initial image, and may include a reservation change suggestive performance which can be executed after the reservation change premonition performance, the notification performance control means, when the reservation symbol is changed to the first special reservation symbol, making it possible to carry out a first notification performance which suggests that there is possibility to be changed to the first special reservation symbol, and when the reservation symbol is changed to the second special reservation symbol, making it possible to carry out a second notification performance which suggests that there is possibility to be changed to the second special reservation symbol (Recognized matter (N)), wherein

d1 the reservation change notification performance is executed, in which the reservation change premonition performance in which a character TK having a green ball appears is executed, as the reservation change suggestive performance, a performance in which the character TK throws the green ball toward the image display region QR2 is executed, and then the green ball thrown by the character TK hits the blue reservation image QC2 displayed in the image display region QR2 and the reservation image QC2 displayed in the image display region QR2 changes to the image QC3 which has the same green color as the thrown ball (Recognized matter (O-1)),

d2 the reservation change notification performance is executed, in which the reservation change premonition performance in which the character TK having a red ball appears is executed, as the reservation change suggestive performance, a performance in which the character TK throws the red ball toward the image display region QR2 is executed, and then, the red ball thrown by the character TK hits the blue reservation image QC2 displayed in the image display region QR2 and the reservation image QC2 displayed in the image display region QR2 changes to the reservation image QC4 which has the same red color as the thrown ball (Recognized matter (O-2)),

d3 if the initial image changes to a passing image different from the initial image and the passing image changes to a final image different from both the initial image and the passing image, the number of the passing images is 1 and, as the reservation change notification performance, the number of times of executing the reservation change premonition performance and the reservation change suggestive performance is 2 (Recognized matter (P)), and

d4 as the reservation change premonition performance, a performance in which the character TK appears while having a green ball and a red ball is executed, as the reservation change suggestive performance, after execution of a performance in which the character TK throws the green ball toward the image display region QR2 and throws the red ball toward the image display region QR3 and a performance in which the green ball hits the reservation image QC1 with respective color displayed in the image display region QR2 and the red ball hits the blue reservation image QC2 displayed in the image display region QR3, there is executed a performance in which the image QC1 displayed in the image display region QR2 changes to the green reservation image QC3, and the image QC2 displayed in the image display region QR3 changes to the red reservation image QC4 (Recognized matter (Q))." (Codes a to d, and d1 to d4 were added by the body in associated with A to D and D1 to D4 of the Amended Invention. Hereinafter, it is referred to as "the Prior Invention".).

(2) Comparison between the Amended Invention and the Prior Invention

The Amended Invention and the Prior Invention will be compared. (Codes are added in association with the matters specifying the Prior Invention)

(a) "A game machine 100 which variably displays a special symbol by performing a big win drawing and can execute a special game allowing a player to earn a lot of prize balls if winning a big win" which is the matter specifying the invention a in the Prior Invention corresponds to "a game machine which performs variable display and is controllable to an advantageous state advantageous to a player" which is the matter specifying the invention A of the Amended Invention.

(b) Concerning "a display means which displays a reservation symbol indicating that a right of a big win drawing is reserved" which is the matter specifying the invention b in the Prior Invention, since it can be said that the fact "a right of a big win drawing is reserved" means that the big win drawing has not been performed or a variable display has not been started, "a display means which displays a reservation symbol indicating that a right of a big win drawing is reserved" corresponds to "a reservation display means which can display a variable display that has not been started, as a reservation display" which is the matter specifying the invention B of the Amended Invention.

(c) "A reservation display control means which can change the reservation symbol to a first special reservation symbol or a second special reservation symbol and make the display means display the same" which is the matter specifying the invention c in the Prior Invention, corresponds to "a mode changing means which can change a mode of the reservation display from a predetermined mode to any one of plural kinds of special modes including a first special mode and a second special mode" which is the matter specifying the invention C of the Amended Invention.

(d) Since it can be said that "A notification performance control means which executes a reservation change notification performance which includes at least a reservation change premonition performance suggesting that an initial image which is a reservation image may change to a reservation image corresponding to a specified image which is different from the initial image, and may include a reservation change suggestive performance which can be executed after the reservation change premonition performance, the notification performance control means, when the reservation symbol is changed to the first special reservation symbol, making it possible to carry out a first notification performance which suggests that there is possibility to be changed to the first special reservation symbol, and when the reservation symbol is changed to the second special reservation symbol, making it possible to carry out a second notification performance which suggests that there is possibility to be changed to the second special reservation symbol" which is the matter specifying the invention d in the Prior Invention, can execute a performance suggesting that the reservation symbol displayed in a predetermined mode changes, it corresponds to "a suggestive performance executing means which can execute a suggestive performance suggesting that the mode of the reservation display displayed in the predetermined mode changes" which is the matter specifying the invention D of the Amended Invention.

(d1) It can be said that "the reservation change notification performance, in which the reservation change premonition performance in which a character TK having a green ball appears is executed, as the reservation change suggestive performance, a performance in which the character TK throws the green ball toward the image display region QR2 is executed, and then the green ball thrown by the character TK hits the blue reservation image QC2 displayed in the image display region QR2 and the reservation image QC2 displayed in the image display region QR2 changes to the reservation image QC3 which has the same green color as the thrown ball" in the matter specifying the invention d1 in the Prior Invention, suggests that the blue reservation image QC2 changes to the green reservation image QC3, and thus it corresponds to "a first suggestive performance suggesting that the mode of the reservation display

displayed in the predetermined mode changes to the first special mode" which is the matter specifying the invention D1 of the Amended Invention.

(d2) It can be said that "the reservation change notification performance is executed, in which the reservation change premonition performance in which the character TK having a red ball appears is executed, as the reservation change suggestive performance, a performance in which the character TK throws the red ball toward the image display region QR2 is executed, and then, the red ball thrown by the character TK hits the blue reservation image QC2 displayed in the image display region QR2 and the reservation image QC2 displayed in the image display region QR2 changes to the reservation image QC4 which has the same red color as the thrown ball" in the matter specifying the invention d2 in the Prior Invention, suggests that the blue reservation image QC2 changes to the red reservation image QC4, and thus it corresponds to "a second suggestive performance suggesting that the mode of the reservation display displayed in the predetermined mode changes to the second special mode" which is the matter specifying the invention D2 of the Amended Invention.

(d3) Concerning the fact that "if the initial image changes to a passing image different from the initial image and the passing image changes to a final image different from both the initial image and the passing image, the number of the passing images is 1 and, as the reservation change notification performance, the number of times of executing the reservation change premonition performance and the reservation change suggestive performance is 2" which is the matter specifying the invention d3 in the Prior Invention, by executing the reservation change notification performance including the reservation change premonition performance and the reservation change suggestive performance twice, the initial image changes to a passing image different from the initial image and the passing image change to a final image different from both the initial image and the passing image.

Consequently, since the first reservation notification change performance suggests that the initial image changes to the passing image different from the initial image, and the second reservation notification change performance suggests that the passing image changes to the final image different from both the initial image and the passing image, the two reservation notification change performances are different. The matter specifying the invention d3 in the Prior Invention includes a case that the reservation notification change performance of the matter specifying the invention d1 in the Prior Invention and the reservation notification change performance of the matter specifying the invention d2 in the Prior Invention are executed in this order. And, it corresponds to "a third suggestive performance suggesting that it changes from the predetermined mode to the first special mode, and then suggesting that it changes to the second special mode" which is the matter specifying the invention D3 of the Amended Invention.

(d4) The fact that as the reservation change premonition performance, a performance in which the character TK appears while having a green ball and a red ball is executed, as the reservation suggestive performance, after a performance in which the character TK throws the green ball toward the image display region QR2 and throws the red ball

toward the image display region QR3 and a performance in which the green ball hits the white reservation image QC1 displayed in the image display region QR2 and the red ball hits the blue reservation image QC2 displayed in the image display region QR3 are executed, a performance in which the image QC1 displayed in the image display region QR2 changes to the green reservation image QC3, and the image QC2 displayed in the image display region QR3 changes to the red reservation image QC4 is executed" means that the performance suggesting that the mode of "the white reservation image QC1" is changed to "the green reservation image QC3" and the mode of "the blue reservation image QC2" is changed to "the red reservation image QC4" respectively, is executed, and thus it corresponds to the fact that "a specified suggestive performance suggesting that the plurality of modes of reservation displays displayed in the predetermined mode changes to the special modes by one performance" is executed" which is the matter specifying the invention D4 of the Amended Invention.

According to the above descriptions, the Amended Invention and the Prior Invention are identical in

"A game machine which performs variable display and is controllable to an advantageous state advantageous to a player, comprising:

- a reservation display means which can display a variable display that has not been started, as a reservation display;

- a mode changing means which can change a mode of the reservation display from a predetermined mode to any one of plural kinds of special modes including a first special mode and a second special mode; and

- a suggestive performance executing means which can execute a suggestive performance suggesting that the mode of the reservation display displayed in the predetermined mode changes, the suggestive performance executing means being capable of executing

- a first suggestive performance suggesting that the mode of the reservation display displayed in the predetermined mode changes to the first special mode,

- a second suggestive performance suggesting that the mode of the reservation display displayed in the predetermined mode changes to the second special mode,

- a third suggestive performance suggesting that it changes from the predetermined mode to the first special mode, and then suggesting that it changes to the second special mode, and

- a specified suggestive performance suggesting that the plurality of modes of reservation displays displayed in the predetermined mode changes to the special modes by one performance."

And there are no difference between them.

(3) Summary

As described above, the Amended Invention is identical to the Prior Invention. Furthermore, since it cannot be said that the inventor of the Amended Invention is the same as the inventor of the Prior Invention, and it cannot be said that at the filing date of the present invention, the applicant thereof is the same as the applicant of the Prior Invention, the appellant should not be granted a patent for it independently at the time of patent application under the provisions of Article 29-2 of the Patent Act.

(4) Appellant's allegation

In "(3) Reasons for refusal" of a request for appeal dated August 21, 2017, the appellant alleges as follows, in comparison between the inventions described in Claims 1 and 2 amended by the written amendment dated August 21, 2017 and the Prior Invention.

"According to the written amendment submitted on the same day, it is limited that Invention 1 and Invention 2 (hereinafter, also referred to as "the Invention") can execute "a third suggestive performance suggesting that" the suggestive performance executing means "changes from the predetermined mode to the first special mode, and then suggesting that it changes to the second special mode" (the constitution D3).

Although, in the original description and other materials of Prior Invention 1, as disclosed in FIG. 87 and FIG. 88, it is disclosed that the reservation change performance is executed to the two reservation images, to one reservation image, it is not disclosed that it suggests that the mode of the reservation image changes to another mode and then suggests that it changes to a mode different from the another mode.

That is, the original description and other materials of Prior Invention 1 does not describe the technical matter relating to the constitution D3 included in the Invention after amendment.

Furthermore, by including the constitution D3 which is not included in the Prior Invention, it changes to another form after the mode of the reservation display changes, so that the Invention has a new effect which can make players pay attention to how many stages the mode of the reservation display changes."

However, as described in "(2) Comparison between the Amended Invention and the Prior Invention," the matter specifying the invention d3 in the Prior Invention includes a case that the reservation notification change performance of the matter specifying the invention d1 in the Prior Invention and the reservation notification change performance of the matter specifying the invention d2 in the Prior Invention are executed in this order, and thus it can be said that it includes a constitution corresponding to "a third suggestive performance suggesting that" the suggestive performance executing means "changes from the predetermined mode to the first special mode, and then suggesting that it changes to the second special mode" which is the constitution D3 of the Amended Invention.

Therefore, the appellant's allegation cannot be accepted.

4. Closing

As described above, since the Amendment violates the provisions of Article 126(7) of the Patent Act which is applied mutatis mutandis pursuant to the provisions of Article 17-2(6) of the Patent Act, the Amendment shall be dismissed under the provisions of Article 53(1) of the Patent Act applied mutatis mutandis by replacing certain terms pursuant to Article 159(1) of the Patent Act.

No. 3 Regarding the invention

1. The Invention

Since the Amendment was dismissed as described above, the invention relating

to Claim 1-2 of the present application is acknowledged as follows, as specified by the matters described in Claim 1-2 according to the scope of claims for patent amended by the written amendment dated May 2, 2017, and the invention relating to Claim 1 (hereinafter referred to as the "Invention") is as follows, as described in 1. of No. 2 above.

"[Claim 1]

A A game machine which performs variable display and is controllable to an advantageous state advantageous to a player, comprising:

B a reservation display means which can display a variable display that has not been started, as a reservation display;

C a mode changing means which can change a mode of the reservation display from a predetermined mode to any one of plural kinds of special modes including a first special mode and a second special mode; and

D a suggestive performance executing means which can execute a suggestive performance suggesting that the mode of the reservation display displayed in the predetermined mode changes, the suggestive performance executing means being capable of executing

D1 a first suggestive performance suggesting that the mode of the reservation display displayed in the predetermined mode changes to the first special mode,

D2 a second suggestive performance suggesting that the mode of the reservation display displayed in the predetermined mode changes to the second special mode, and

D4 a specified suggestive performance suggesting that the plurality of modes of reservation displays displayed in the predetermined mode changes to the special modes by one performance."

2. Summary of the notice for reasons for refusal

Reason 3 of the notice for reasons for refusal dated March 1, 2017 is that the Invention is identical to the invention described in the description and other materials of the prior application, and the appellant should not be granted a patent for the Invention in accordance with the provisions of Article 29-2 of the Patent Act.

3. The description and other materials of the prior application and the Prior Invention

Recognition of the Prior Invention described in the description and other materials of the prior application, is as described in "3. Independent requirements for patentability" of "No. 2 Decision to dismiss the amendment dated August 21, 2017" above.

4. Comparison/Judgment

The Invention is an invention made by deleting "a third suggestive performance suggesting that the mode changes from the predetermined mode to the first special mode, and then suggesting that the mode changes to the second special mode" of the matter specifying the invention D3 which is the amended matter described in 2. of No. 2 above.

Then, since the Amended Invention which corresponds to the invention including all constituent components of the Invention and further adding other limitation is identical to the Prior Invention as described in 3. of No. 2 above, it can be

said that the Invention is also identical to the Prior Invention for the same reason.

5. Closing

As described above, the Invention is identical to the Prior Invention, and furthermore, it cannot be said that the inventor of the Invention is the same as the inventor of the Prior Invention and it cannot be said that the applicant of the present invention is the same as the applicant of the Prior Invention at the filing date of the present application. Accordingly, the appellant should not be granted a patent for the Invention under the provisions of Article 29-2 of the Patent Act.

Therefore, the present application should be rejected without examining the remaining claims.

May 7, 2018

Chief administrative judge: SETSU, Taro
Administrative judge: KAWASAKI, Hiroshi
Administrative judge: FUJITA, Toshihiko