

## Appeal decision

Appeal No. 2017-13708

Tokyo, Japan  
Appellant

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The case of appeal against the examiner's decision of refusal of Japanese Patent Application No. 2015-91288, entitled "Game machine", [the application published on Dec. 8, 2016, Japanese Unexamined Patent Application Publication No. 2016-202795] has resulted in the following appeal decision:

### Conclusion

The appeal of the case was groundless.

### Reason

#### 1 History of the procedures

The present application is an application filed on Apr. 28, 2015, reasons for refusal were notified as of Apr. 13, 2017, a written opinion and an amendment were submitted on Jun. 12 of the same year, and a decision of refusal was issued as of Jun. 23 of the same year. In response to this, an appeal against the examiner's decision of refusal was made on Sep. 14 of the same year, and, simultaneously, an amendment was made.

On the other hand, reasons for refusal were notified as of May 29, 2018 by the body, and a written opinion and an amendment were submitted on Jul. 26, of the same year.

#### 2 The Invention

The invention according to Claim 2 of the present application (hereinafter, referred to as "the Invention") is an invention shown in Claim 2 of the scope of claims amended by the amendment dated Jul. 26, 2018 (this is separately described in A-F by the body).

#### "[Claim 2]

A A game machine that carries out variable display, and is capable of performing control into an advantageous state that is advantageous to a player, comprising:

B a specific display means capable of displaying a specific display related to the variable display;

C a change performance execution means capable of executing a change performance to change a display form of the specific display; and

D an additional performance execution means capable of executing an additional performance to add an advance-notice image to the specific display, wherein,

E in the change performance and the additional performance, performance forms at a time of start of a performance are common, and wherein,

F as a performance form at a time of start of the performance, in the change performance and the additional performance, branching to the change performance or the additional

performance is carried out after having displayed an image of an identical character of a form by which it is impossible for a player to identify which of the additional performance and the change performance is carried out."

### 3 Outline of the reasons for refusal by the body as of May 29, 2018

#### (1) Reason 1

The invention according to Claim 2 of the present application is an invention described in Japanese Unexamined Patent Application Publication No. 2014-236814 distributed in Japan before the application thereof (hereinafter, referred to as "Cited Document 1"), and, therefore, falls under Article 29(1)(iii) of the Patent Act, and the appellant should not be granted a patent for that.

#### (2) Reason 2

The inventions according to Claims 1 and 2 of the present application could have been invented with ease by a person having usual knowledge in the technical field of the Invention before the application was filed based on the inventions described in Cited Document 1 and Japanese Unexamined Patent Application Publication No. 2015-77172 (hereinafter, referred to as "Cited Document 2"), which were distributed in Japan or abroad before the application was filed, and thus, the appellant should not be granted a patent for that in accordance with the provisions of Article 29(2) of the Patent Act.

#### (3) Reason 3

The inventions according to Claims 1 and 2 of the present application are unclear, and the statement of the scope of claims of the present application does not meet the requirement stipulated in Patent Act Article 36(6)(ii).

### 4 Cited Documents

#### (1) Cited Document 1

##### A Described matters in Cited Document 1

In Cited Document 1 cited as Cited Document 1 in the reasons for refusal by the body, there are described the following matters (1-1)-(1-6) together with drawings.

##### (1-1) "[0012]"

Hereinafter, while referring to drawings accordingly, a pachinko game machine 1 according to an embodiment of the present invention will be described."

##### (1-2) "[0060]"

Next, in step S4, the CPU 101 executes the special pattern processing for executing the first special pattern lottery or the second special pattern lottery, displaying a stop pattern that indicates a lottery result of the relevant lottery after having performed variable display of a special pattern on the first special pattern indicator 4a or the second special pattern indicator 4b, and performing transmission and the like of various kinds of commands to the performance control unit 400. This special pattern processing will be described in detail later by reference to FIG. 7.

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##### [0062]"

Next, in step S6, the CPU 101 executes the large winning port processing for: making the large winning port 23 carry out a predetermined opening/closing operation by controlling the large-winning-port opening/closing unit 115; and transmitting various

commands related to so-called big winning game performance to the performance control unit 400, when it is determined as winning the special pattern lottery of the special pattern processing of step S4 (when hitting the Jackpot). By this processing, a big winning game (special game) is caused to progress, and it becomes possible for a player to gain a large amount of prize balls."

(1-3) "[0136]

In step S115, the CPU 401 instructs the image sound control unit 500 to perform the informing performance execution processing to start informing performance by the image display unit 6, in response to the informing performance start command received in the processing of step S114. In addition, the CPU 401 executes a performance of a content that has been set in this informing performance, when it has been set by the processing of step 113 that the reservation-image change suggestion performance or the variation-right-image change suggestion performance is executed during execution of the informing performance for starting."

(1-4) "[0175]

First, in advance of concrete description of characteristic operations according to the present embodiment, an outline of variable display of a decoration pattern, display of a reservation image, and display of a variation right image that are carried out in the pachinko game machine 1 will be described by reference to FIG. 16. ... Note that, in the following, description will be made while taking a case in which the first special pattern lottery is performed as the special pattern lottery, and, also, an image indicating that the first special pattern lottery is being suspended is displayed as a reservation image, and, along with this, an image indicating that the first special pattern lottery is in execution is displayed as a variation right image as an example. And, the same applies to a case where the second special pattern lottery is carried out as the special pattern lottery.

[0176]

First, as shown in FIG. 16 (1), on the display screen of the image display unit 6 (hereinafter, simply referred to as the image display unit 6), a decoration pattern DI (DI1-DI3), a reservation image RI (RI1-RI4), a variation right image KI, and a stage ST (ST0-ST4) are displayed. The decoration pattern DI is constituted of three (triserial) decoration patterns DI1-DI3, and displayed on the image display unit 6. More specifically, the left decoration pattern DI1 is displayed on the left side, the right decoration pattern DI2 on the right side, and the center decoration pattern DI3 in the center. The left, right, and center decoration patterns DI1-DI3 are variably displayed in response to variable display of a special pattern (in synchronization with the variable display)."

(1-5) "[0189]

In a case where the reservation-image change suggestion performance has been started, a character image (a bee having a star) is displayed on the right side of the image display unit 6, as shown in FIG. 20 (1). In a similar fashion, also when the variation-right-image change suggestion performance has been started, the character image (a bee having a star) 700 is displayed on the right side of the image display unit 6, as shown in FIG. 20 (1). In this way, in both the case where the reservation-image change suggestion performance has been started and the case where the variation-right-image change suggestion performance has been started, the character image (an image of a bee having

a star) 700 is displayed on the right side of the image display unit 6 in a similar fashion. From this, a player does not know whether the reservation-image change suggestion performance has been started, or the variation-right-image change suggestion performance has been started, at the stage where the performance has been started. Note that, in FIG. 20 (1), the color of the star which the bee has is green (refer to FIG. 18 and FIG. 19), as an example.

[0190]

Hereinafter, by reference to FIG. 21 and FIG. 22, the reservation-image change suggestion performance will be described, first. In a case where the reservation-image change suggestion performance has been started, when an item throwing performance is executed after having displayed the bee having a star 700 on the right side of the image display unit 6 as shown in FIG. 20 (1), during variation (during an informing performance) of decoration patterns corresponding to the variation right image KI to which the reservation image RI0 (not illustrated) has moved, the bee throws the green star, as shown in FIG. 21 (1). Then, when the thrown star hits a reservation image as shown in FIG. 21 (2), the reservation image of a usual display form hit by the star changes into a read-ahead advance notice display form of the same color as that of the star shown in FIG. 21 (3). In the example of FIG. 21 (1)-(3), as the item throwing performance, the thrown green star hits the reservation image RI3 of white color to change the reservation image RI3 to the read-ahead advance notice display form of green color. By this, it is possible for a player to know in advance that, in informing performance (special pattern lottery) corresponding to the reservation image RI3, the possibility to hit a jackpot is high to some extent (confidence level 10%: refer to FIG. 19), and enjoy in expectation.

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[0193]

Next, the variation-right-image change suggestion performance will be described by reference to FIG. 23. When the variation-right-image change suggestion performance has been started, a bee having a star is displayed on the right side of the image display unit 6 as shown in FIG. 20 (1), and, after that, as shown in FIG. 23(1), during variation of (during informing performance) of decoration patterns corresponding to the variation right image KI to which the reservation image RI0 (not illustrated) has moved, the bee throws the green star. ... On the other hand, as shown in FIG. 23 (4), when the thrown star has hit the variation right image, the variation right image hit by the star is changed to the advance notice display form (that is, being in a blaze in a manner covering over a part of the decoration patterns) as shown in FIG. 23 (5), and it is informed in the currently-executing informing performance that a pseudo successive performance is executed. By this, it is possible for a player to enjoy in expectation by knowing, in the currently-executing informing performance (the special pattern lottery of this time), that the pseudo successive performance is executed, and the possibility to hit a jackpot is high to some extent (for example, confidence level 5%).

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[0195]

As has been described above, according to the present embodiment, in the reservation-image change suggestion performance and the variation-right-image change suggestion performance, the same character image (a bee having a star: refer to FIG. 18) changes a reservation image displayed on an area (ST1-ST4) for displaying a reservation image (RI1-RI4) into the read-ahead advance notice display form (refer to FIG. 17 (2)),

and, also, changes the variation right image (KI) displayed on the area (ST0) for displaying a variation right image into the advance notice display form (refer to FIG. 17 (3)) (refer to FIG. 17-FIG. 20). From this, according to the present embodiment, since the same character image is displayed when the reservation-image change suggestion performance has been started and when the variation-right-image change suggestion performance has been started, it is possible for a player to expect both a change of a reservation image (that is, whether a jackpot can be expected in the previous informing performance), or a change of the variation right image (that is, whether a jackpot can be expected in the current informing performance), at the time of beginning of these performances. In addition, in the present embodiment, it is controlled such that a display form of a character image at the time point when the reservation-image change suggestion performance has been started is the same as a character image at the time point when the variation-right-image change suggestion performance has been started (refer to FIG. 20). From this, according to the present embodiment, since it is not possible for a player to determine whether a reservation image changes (that is, whether a jackpot can be expected in the previous informing performance), or the variation right image changes (that is, whether a jackpot can be expected in the current informing performance) , at the time of beginning of these performances, and thus the player can enjoy in expectation of the both (because such determination is not possible even for a player having a lot of game experience)."

(1-6) "[0202]

In addition, the constitution cited as an example in the present embodiment mentioned above is a constitution that informs execution of the pseudo successive performance by a change of the variation right image in the variation-right-image change suggestion performance to the advance notice display form (refer to FIG. 23). However, it may be a constitution to inform execution of another performance (for example, SPSP reach performance) by a change of the variation right image in the variation-right-image change suggestion performance into the advance notice display form."

## B Matters recognized

From the above "A", the following matters (1-a)-(1-f) can be recognized.

(1-a)

In paragraph [0012], it is described as "a pachinko game machine 1 according to an embodiment of the present invention", and, in paragraph [0060], as "executing the first special pattern lottery or the second special pattern lottery, displaying a stop pattern that indicates a lottery result of the relevant lottery, after having performed variable display of a special pattern on the first special pattern indicator 4a or the second special pattern indicator 4b ". Furthermore, it is described in paragraph [0062] as "executes the large winning port processing for: causing the large winning port 23 to carry out a predetermined opening/closing operation by controlling the large-winning-port opening/closing unit 115; and transmitting various commands related to so-called big winning game performance to the performance control unit 400, when it is determined as winning the special pattern lottery of the special pattern processing (when hitting the Jackpot) . By this processing, a big winning game (special game) is made to progress, and it becomes possible for a player to gain a large amount of prize balls.". Therefore,

it can be said that there is described, in Cited Document 1, the pachinko game machine 1 to execute the first special pattern lottery or the second special pattern lottery, perform variable display of a special pattern, and carry out control in such a way that, when it is determined as winning the special pattern lottery, a big winning game in which a player is capable of gaining a large amount of prize balls is made to proceed.

(1-b)

In paragraph [0175], it is described that "description will be made taking a case in which the first special pattern lottery is performed as the special pattern lottery, and, also, an image indicating that the first special pattern lottery is being suspended is displayed as a reservation image, and, along with this, an image indicating that the first special pattern lottery is in execution is displayed as a variation right image as an example. And, the same applies to a case where the second special pattern lottery is carried out as the special pattern lottery.", and, in paragraph [0176], it is described that "on the display screen of the image display unit 6 (hereinafter, simply referred to as the image display unit 6), a decoration pattern DI (DI1-DI3), a reservation image RI (RI1-RI4), a variation right image KI, and a stage ST (ST0-ST4) are displayed." Therefore, it can be said that there is described in Cited Document 1 the image display unit 6 that displays a reservation image that indicates that the first special pattern lottery or the second special pattern lottery is being suspended or a variation right image that indicates that the first special pattern lottery or the second special pattern lottery is in execution.

(1-c)

In paragraph [0136], it is described that "the CPU 401 executes a performance of a content that has been set in this informing performance, when it has been set by the processing of step 113 that the reservation-image change suggestion performance or the variation-right-image change suggestion performance is executed during execution of the informing performance for starting.", and, in paragraph [0190], it is described that "In a case where the reservation-image change suggestion performance has been started, when an item throwing performance is executed after having displayed the bee having a star 700 on the right side of the image display unit 6 as shown in FIG. 20 (1), during variation (during an informing performance) of decoration patterns corresponding to the variation right image KI to which the reservation image RI0 (not illustrated) has moved, the bee throws the green star, as shown in FIG. 21 (1). Then, when the thrown star hits a reservation image as shown in FIG. 21 (2), the reservation image of a usual display form hit by the star changes into a read-ahead advance notice display form of the same color as the star as shown in FIG. 21 (3). In the example of FIG. 21 (1)-(3), as the item throwing performance, the thrown green star hits the reservation image RI3 of white color to change the reservation image RI3 to the read-ahead advance notice display form of green color." Therefore, it can be said that there is described, in Cited Document 1, the CPU 401 that carries out the reservation-image change suggestion performance in which a reservation image changes into the read-ahead advance notice display form of green color.

(1-d)

In paragraph [0136], it is described that "the CPU 401 executes a performance of a content that has been set in this informing performance, when it has been set by the

processing of step 113 that the reservation-image change suggestion performance or the variation-right-image change suggestion performance is executed during execution of the informing performance for starting.", and, in paragraph [0193], it is described that "When the variation-right-image change suggestion performance has been started, a bee having a star is displayed on the right side of the image display unit 6 as shown in FIG. 20 (1), and, after that, as shown in FIG. 23(1), during variation of (during informing performance) of decoration patterns corresponding to the variation right image KI to which the reservation image RIO (not illustrated) has moved, the bee throws the green star." and "when the thrown star has hit the variation right image, the variation right image hit by the star is changed to the advance notice display form (that is, being in a blaze in a manner covering over a part of the decoration patterns) as shown in FIG. 23 (5), and it is informed in the currently-executing informing performance that a pseudo successive performance is executed.". Furthermore, in paragraph [0202], it is described that "it may be a constitution to inform execution of another performance (for example, SPSP reach performance) by a change of the variation right image in the variation-right-image change suggestion performance into the advance notice display form." Therefore, it can be said that there is described, in Cited Document 1, the CPU 401 that carries out the variation-right-image change suggestion performance in which the variation right image changes into the advance notice display form where it is in a blaze in a manner covering over a part of the decoration patterns, and informs execution of the SPSP reach performance.

(1-e)

In paragraph [0189], it is described that "In a case where the reservation-image change suggestion performance has been started, a character image (a bee having a star) is displayed on the right side of the image display unit 6, as shown in FIG. 20 (1). In a similar fashion, also when the variation-right-image change suggestion performance has been started, the character image (a bee having a star) 700 is displayed on the right side of the image display unit 6, as shown in FIG. 20 (1). In this way, in both the case where the reservation-image change suggestion performance has been started and the case where the variation-right-image change suggestion performance has been started, the character image (an image of a bee having a star) 700 is displayed on the right side of the image display unit 6 in a similar fashion.", and, therefore, it can be said that there is described, in Cited Document 1, a matter that "in any of the case where the reservation-image change suggestion performance has been started and the case where the variation-right-image change suggestion performance has been started, the bee having a star 700 that is a character image is displayed on the right side of the image display unit 6 similarly".

(1-f)

In paragraph [0012], it is described as "a pachinko game machine 1 according to an embodiment of the present invention", and, in paragraph [0189], it is described that "in both the case where the reservation-image change suggestion performance has been started and the case where the variation-right-image change suggestion performance has been started, the character image (an image of a bee having a star) 700 is displayed on the right side of the image display unit 6 in a similar fashion. From this, a player does not know whether the reservation-image change suggestion performance has been started, or the variation-right-image change suggestion performance has been started, at the stage where the performance has been started." Furthermore, in paragraph [0190], it is

described that "In a case where the reservation-image change suggestion performance has been started, when an item throwing performance is executed after having displayed the bee having a star 700 on the right side of the image display unit 6 as shown in FIG. 20 (1), during variation (during an informing performance) of decoration patterns corresponding to the variation right image KI to which the reservation image RI0 (not illustrated) has moved, the bee throws the green star, as shown in FIG. 21 (1).", and, in paragraph [0193], it is described that "When the variation-right-image change suggestion performance has been started, a bee having a star is displayed on the right side of the image display unit 6 as shown in FIG. 20 (1), and, after that, as shown in FIG. 23(1), during variation of (during informing performance) of decoration patterns corresponding to the variation right image KI to which the reservation image RI0 (not illustrated) has moved, the bee throws the green star.". Therefore, it can be said that there is described in Cited Document 1 "the pachinko game machine 1 in which: in either of the case where the reservation-image change suggestion performance has been started or the case where the variation-right-image change suggestion performance has been started, the bee having a star 700 that is a character image is displayed similarly; it is configured such that a player does not know which of the reservation-image change suggestion performance or the variation-right-image change suggestion performance has been started, at the stage when a performance has been started; when the reservation-image change suggestion performance has been started, a performance after that is executed after the bee having a star 700 has been displayed on the right side of the image display unit 6; and when the variation-right-image change suggestion performance has been started, a performance after that is executed after the bee having a star 700 has been displayed on the right side of the image display unit 6".

#### C Invention described in Cited Document 1

When the described matters of the above-mentioned (1-1)-(1-6) and the recognized matters (1-a)-(1-f) are integrated, it is recognized that the following invention (hereinafter, referred to as "Cited Invention") is described in Cited Document 1.

"a The pachinko game machine 1 to execute the first special pattern lottery or the second special pattern lottery, perform variable display of a special pattern, and carry out control in such a way that, when it is determined as winning the special pattern lottery, a big winning game in which a player is capable of gaining a large amount of prize balls is made to proceed (recognized matter 1-a), comprising:

b the image display unit 6 that displays a reservation image that indicates that the first special pattern lottery or the second special pattern lottery is being suspended or a variation right image that indicates that the first special pattern lottery or the second special pattern lottery is in execution (recognized matter 1-b);

c the CPU 401 that carries out the reservation-image change suggestion performance in which a reservation image changes into the read-ahead advance notice display form of green color (recognized matter 1-c); and

d the CPU 401 that carries out the variation-right-image change suggestion performance in which the variation right image changes into the advance notice display form where it is in a blaze in a manner covering over a part of the decoration patterns, and informs execution of the SPSP reach performance (recognized matter 1-d), wherein

e in either of the case where the reservation-image change suggestion performance has



been started or the case where the variation-right-image change suggestion performance has been started, the bee having a star 700 that is a character image is displayed on the right side of the image display unit 6 similarly (recognized matter 1-e); and wherein f in either of the case where the reservation-image change suggestion performance has been started or the case where the variation-right-image change suggestion performance has been started, the bee having a star 700 that is a character image is displayed similarly; it is configured such that a player does not know which of the reservation-image change suggestion performance and the variation-right-image change suggestion performance has been started, at the stage when a performance has been started; when the reservation-image change suggestion performance has been started, a performance after that is executed after the bee having a star 700 has been displayed on the right side of the image display unit 6; and when the variation-right-image change suggestion performance has been started, a performance after that is executed after the bee having a star 700 has been displayed on the right side of the image display unit 6. (recognized matter 1-f)"

## (2) Cited Document 2

### A Described matters in Cited Document 2

In Cited Document 2 cited as Cited Document 2 in the reasons for refusal by the body, the following matters are described together with drawings.

"[0339]

Meanwhile, the sub-icon 53 mentioned above may be added to the reservation icon 520 in question that is currently varying. FIG. 45 is a diagram showing a state that the sub-icon 53 has been added to the reservation icon 520 in question. FIG. 46 is a diagram showing a state that a plurality of the sub-icons 53 are added in series to the reservation icon 520 in question.

[0340]

As shown in FIG. 45 and FIG. 46, even if in a case in which the sub-icon 53 is not added at the time of starting the variation (at the time of starting variation of a special pattern related to the reservation icon 520), the sub-icons 53 may be added in series at a predetermined timing during the variation. For example, in the example shown in FIG. 46, an "SP" sub-icon 53a is added, and, in addition, a second "SP" sub-icon 53b is added. By this, it is suggested that a SPSP reach performance is performed in the variation."

## 5 Comparison

The Invention and Cited Invention will be compared (the following (a)-(f) correspond to the constitution of Cited Invention).

(a) In Cited Invention, to make a big winning game, in which a player is capable of gaining a large amount of prize balls, progress is to make a game progress in a state that is advantageous to the player, and, therefore, to "carry out control in such a way that a big winning game in which a player is capable of gaining a large amount of prize balls is made to proceed" of Cited Invention corresponds to "is capable of performing control into an advantageous state that is advantageous to a player" of the Invention.

In addition, since a pachinko game machine is a type of a game machine, "the pachinko game machine 1" of Cited Invention corresponds to "game machine" of the

Invention.

Therefore, "The pachinko game machine 1 to execute the first special pattern lottery or the second special pattern lottery, perform variable display of a special pattern, and carry out control in such a way that, when it is determined as winning the special pattern lottery, a big winning game in which a player is capable of gaining a large amount of prize balls is made to proceed" of Cited Invention corresponds to "A game machine that carries out variable display, and is capable of performing control into an advantageous state that is advantageous to a player" of the Invention.

(b) In Cited Invention, since the first special pattern lottery or the second special pattern lottery is executed and variable display of a special pattern is performed, it can be said that a reservation image that indicates that the first special pattern lottery or the second special pattern lottery is being suspended or a variation right image that indicates that the first special pattern lottery or the second special pattern lottery is in execution is one that performs a specific display related to a variable display. Therefore, it can be said that "a reservation image that indicates that the first special pattern lottery or the second special pattern lottery is being suspended or a variation right image that indicates that the first special pattern lottery or the second special pattern lottery is in execution" of Cited Invention corresponds to "a specific display related to the variable display" of the Invention.

Accordingly, "the image display unit 6 that displays a reservation image that indicates that the first special pattern lottery or the second special pattern lottery is being suspended or a variation right image that indicates that the first special pattern lottery or the second special pattern lottery is in execution" of Cited Invention corresponds to "a specific display means capable of displaying a specific display related to the variable display" of the Invention.

(c) In Cited Invention, since to make the color of a reservation image be changed is to make the display form of the reservation image be changed, it can be said that "the reservation-image change suggestion performance in which a reservation image changes into the read-ahead advance notice display form of green color" of Cited Invention corresponds to "a change performance to change a display form of the specific display" of the Invention.

Therefore, "the CPU 401 that carries out the reservation-image change suggestion performance in which a reservation image changes into the read-ahead advance notice display form of green color" of Cited Invention corresponds to "a change performance execution means capable of executing a change performance to change a display form of the specific display" of the Invention.

(d) Both of "the variation-right-image change suggestion performance in which the variation right image changes into the advance notice display form where it is in a blaze in a manner covering over a part of the decoration pattern, and informs execution of the SPSP reach performance" of Cited Invention and "an additional performance to add an advance-notice image to the specific display" of the Invention are advance-notice performances carried out to the specific display related to the variable display.

Therefore, "the CPU 401 that carries out the variation-right-image change suggestion performance in which the variation right image changes into the advance notice display form where it is in a blaze in a manner covering over a part of the decoration patterns, and informs execution of the SPSP reach performance" of Cited Invention and "an additional performance execution means capable of executing an additional performance to add an advance-notice image to the specific display" of the Invention are common in a point of being "a performance execution means capable of executing an advance-notice performance to the specific display".

(e) In Cited Invention, display of the bee having a star 700, which is a character image, on the right side of the image display unit 6 is one form of a performance, and, in addition, such display is a display that is carried out in common on the occasion of starting the reservation-image change suggestion performance and the variation-right-image change suggestion performance.

Therefore, "in either of the case where the reservation-image change suggestion performance has been started or the case where the variation-right-image change suggestion performance has been started, the bee having a star 700 that is a character image is displayed on the right side of the image display unit 6 similarly" of Cited Invention and "in the change performance and the additional performance, performance forms at a time of start of a performance are common" of the Invention are common in a point of "in the change performance and the advance-notice performance, performance forms at the time of start of a performance are common".

(f) In Cited Invention, in either of a case where the reservation-image change suggestion performance has been started or a case where the variation-right-image change suggestion performance has been started, the bee having a star 700 that is a character image is displayed in the same manner, and thus a player does not know whether the reservation-image change suggestion performance has been started or the variation-right-image change suggestion performance has been started, at the stage when a performance has been started. Therefore, "the bee having a star 700 that is a character image" of Cited Invention corresponds to "an image of an identical character of a form by which it is impossible for a player to identify which of the additional performance and the change performance is carried out" of the Invention.

Furthermore, in Cited Invention, since the bee having a star 700 that is a character image is displayed when a performance is started, and, after that, the subsequent performance of the reservation-image change suggestion performance or the variation-right-image change suggestion performance is executed, it can be said that branching to the reservation-image change suggestion performance or the variation-right-image change suggestion performance is made after the bee having a star 700 that is a character image has been displayed.

Therefore, "the pachinko game machine 1 in which: in either of the case where the reservation-image change suggestion performance has been started or the case where the variation-right-image change suggestion performance has been started, the bee having a star 700 that is a character image is displayed similarly; it is configured such that a

player does not know which of the reservation-image change suggestion performance or the variation-right-image change suggestion performance has been started; when the reservation-image change suggestion performance has been started, at the stage when a performance has been started, a performance after that is executed after the bee having a star 700 has been displayed on the right side of the image display unit 6; and when the variation-right-image change suggestion performance has been started, a performance after that is executed after the bee having a star 700 has been displayed on the right side of the image display unit 6" of Cited Invention and "a game machine, wherein, as a performance form at a time of start of the performance, in the change performance and the additional performance, branching to the change performance or the additional performance is carried out after having displayed an image of an identical character of a form by which it is impossible for a player to identify which of the additional performance and the change performance is carried out" of the Invention are common as being "a game machine, wherein, as a performance form at a time of start of the performance, in the change performance and the advance-notice performance, branching to the change performance or the advance-notice performance is carried out after having displayed an image of an identical character of a form by which it is impossible for a player to identify which of the change performance and the advance-notice performance is carried out".

Accordingly, the Invention and Cited Invention are identical in a point of being "A A game machine that carries out variable display, and is capable of performing control into an advantageous state that is advantageous to a player, comprising:

B a specific display means capable of displaying a specific display related to the variable display;

C a change performance execution means capable of executing a change performance to change a display form of the specific display; and

D' a performance execution means capable of executing an advance-notice performance to the specific display, wherein,

E' in the change performance and the advance-notice performance, performance forms at the time of start of a performance are common, and wherein,

F' as a performance form at a time of start of the performance, in the change performance and the advance-notice performance, branching to the change performance or the advance-notice performance is carried out after having displayed an image of an identical character of a form by which it is impossibility for a player to identify which of the change performance and the advance-notice performance is carried out."

, and are different in the following point.

[Different Feature]

A point that, in the Invention, the advance-notice performance that branches to the change performance after having displayed an image of an identical character is the additional performance to add advance-notice image to a specific display, whereas, in Cited Invention, it is the variation-right-image change suggestion performance in which the variation right image changes into the advance notice display form where it is in a blaze in a manner covering over a part of the decoration pattern, and execution of the SPSP reach performance is informed. (Constitutions D, E, F)

6 Judgment

### (1) Examination on Different Feature

In paragraph [0339] and [0340] in Cited Document 2, it is described that suggestion of execution of the SPSP reach performance is made by adding the "SP" sub-icon 53a to the reservation icon 520 that is currently varying (hereinafter, referred to as "Matter described in Cited Document 2").

Then, Cited Invention and Matter described in Cited Document 2 are common in a point that execution of the SPSP reach performance is informed by changing a currently varying image that indicates the reservation.

Therefore, it would have been achieved by a person skilled in the art with ease to apply the Matter described in Cited Document 2 to Cited Invention, and, in Cited Invention, as the advance notice display form to inform that the SPSP reach performance is executed on the occasion of executing the variation-right-image change suggestion performance, adopt the advance notice display form to add the image of "SP" sub-icon to a variation right image, and make Cited Invention have the constitution of the Invention concerning the aforementioned Different Feature.

### (2) Regarding the effect exerted by the Invention

The effect exerted by the Invention due to the aforementioned Different Feature is of a degree that can be predicted by a person skilled in the art from Cited Invention and the Matter described in Cited Document 2, and is not remarkable.

### (3) Appellant's allegation

The appellant alleges in the written opinion that "Mr. administrative judge has made a denial of inventive step of the present invention, after having recognized that it is described in Cited Document 2 that 'In the example shown in FIG. 46, the 'SP' sub-icon 53a is added, and, further, the second 'SP' sub-icon 53b is added. By this, in the variation, it is suggested that the SPSP reach performance is carried out.', by applying the invention described in Cited Document 2 to the invention described in Cited Document 1.

Here, on the occasion of applying the sub-icons 53a and 53b described in Cited Document 2 to the image of bee 700 described in Cited Document 1, it is hardly possible for a person skilled in the art to try to make the image of bee 700 appear in a form not having the sub-icons 53a and 53b.

The reason for this is that, in a case when executing the additional performance, if the image of bee 700 is made to appear in a form not having the sub-icons 53a and 53b, this comes down to a situation that the sub-icons 53a and 53b are added to a variation right image in an abrupt manner irrespective of the image of bee 700, resulting in execution of an unnatural performance.

In addition, in paragraph [0190] of Cited Document 1, it is described to the effect that the image of bee 700 appears having an item.

Therefore, if it is a person skilled in the art who tries to apply 'the sub-icons 53a and 53b' described in Cited Document 2 to 'the image of bee 700 that appears having an item' described in Cited Document 1, the person would conceive of an invention that 'when additional performance is carried out, the image of bee 700 having the sub-icons 53a and 53b as an item is made to appear, and, when the change performance is carried out, the image of bee 700 having a colorized star (FIG. 18 of Cited Document 1) as an item is made to appear' (hereinafter, referred to as Combined Invention).

This Combined Invention is an invention in which 'branching to the change

performance or the additional performance is carried out after having displayed the image of bee 700 in a form by which it is impossible for a player to identify which of the change performance and the additional performance is executed'.

.. (Omitted) ..

In addition, the invention of Claim 2 after the amendment has a constitution of 'branching to the change performance or the additional performance is carried out after having displayed an image of an identical character of a form by which it is impossible for a player to identify which of the additional performance and the change performance is carried out' (hereinafter, referred to as Constitution Y) (refer to Constitution G).

Combined Invention is an invention in which 'branching to the change performance or the additional performance is carried out after having displayed the image of bee 700 in a form by which it is impossible for a player to identify which of the change performance and the additional performance is executed', and, therefore, Constitution Y would not be conceived of even if the invention described in Cited Document 2 is combined with the invention described in Cited Document 1." (refer to "(4) The reason for refusal (4-2) Regarding inventive step" of the written opinion as of Jul. 26, 2018).

In other words, the allegation is that, if, in the invention described in Cited Document 1 (Cited Document 1), the image of bee 700 is made to appear in a form not having a sub-icon, and, then, irrespective of the image of bee 700, a sub-icon is added to a variation right image in an abrupt manner, it is felt as an unnatural performance, and, therefore, when the constitution to add a sub-icon described in Cited Document 2 (Cited Document 2) is applied to the invention described in Cited Document 1, it will be a performance in which, on the occasion of executing the additional performance (the variation-right-image change suggestion performance), the image of bee 700 having the sub-icon as an item is made to appear, and, on the other hand, on the occasion of executing the change performance (the reservation-image change suggestion performance), the image of bee 700 having a colorized star as an item is made to appear, and thus it is different from "branching to the change performance or the additional performance is carried out after having displayed an image of an identical character of a form by which it is impossible for a player to identify which of the additional performance and the change performance is carried out" of the Invention.

However, the invention described in Cited Document 1 is an invention that exerts an effect that it is possible to enjoy both of the reservation-image change suggestion performance and the variation-right-image change suggestion performance in expectation by making the same image of a bee be displayed at the time of performance start of the reservation-image change suggestion performance and the variation-right-image change suggestion performance (paragraph [0195]), and, if, in such invention, different images of a bee are made to be displayed at the time of performance start, the above effect will not be exerted, and, therefore, also in a case where the constitution for adding a sub-icon of the Matter described in Cited Document 2 is applied to the invention described in Cited Document 1, it is not usually assumed to make different images of a bee be displayed at the time of performance start of the reservation-image change suggestion performance and the variation-right-image change suggestion performance.

In addition, the invention described in Cited Document 1 is an invention in which, at the time of performance start of the variation-right-image change suggestion

performance, a bee having a green star appears, the green star thrown by the bee hits the variation right image, and a change to the advance notice display form in which the flame is in a blaze in such a way covering over a part of the decoration pattern is made. Therefore, it is not one in which, at the time of performance start, a bee having a flame icon and the like that directly relates to a flame appears, but one in which a bee having a green star that has no direct relation with the flame of the advance notice display form is made to appear (paragraph [0193]).

Therefore, it would have been achieved by a person skilled in the art with ease to make, in the invention described in Cited Document 1, the same character image of a bee having a green star is caused to be displayed at the time of performance start of the reservation-image change suggestion performance and the variation-right-image change suggestion performance, and, in conjunction with this, adopt the advance notice display form shown in the Matter described in Cited Document 2 that adds the image of "SP" sub-icon having no direct relation with the bee having the green star to the variation right image instead of the advance notice display form in which the variation right image having no direct relation with the bee having the green star becomes in a blaze, at the time of execution of the variation-right-image change suggestion performance.

Accordingly, the above allegation of the appellant cannot be accepted.

## 7 Summary

As above, the Invention could have been invented by a person skilled in the art with ease based on Cited Invention and the Matter described in Cited Document 2, and, therefore, the appellant should not be granted a patent for that in accordance with the provisions of Article 29(2) of the Patent Act.

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

Accordingly, the appeal decision shall be made as described in the conclusion.

Sep. 10, 2018

Chief administrative judge:	HIRAJI, Toshimasa
Administrative judge:	TATSUKI, Norio
Administrative judge:	ANKYU, Shiro