Appeal decision

Appeal No. 2017-15550

Tokyo, Japan
Appellant KABUSHIKI KAISHA TOSHIBA

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The case of appeal against the examiner's decision of refusal of Japanese Patent Application No. 2016-507365, entitled "INFORMATION PROCESSING METHOD AND INFORMATION PROCESSING SYSTEM" (International publication No. WO2015/136938 published on September 17, 2015) has resulted in the following appeal decision.

Conclusion

The appeal of the case was groundless.

Reason

No. 1 History of the procedures

The Patent application was filed on March 12, 2015 as an international filing date (Priority Date: March 14, 2014, Japan, September 9, 2014, Japan), and the history of the procedures is as follows.

Dated May 10, 2017: Notice of reasons for refusal
July 5, 2017: Submission of written statement
Dated July 18, 2017: Examiner's decision of refusal
October 19, 2017: Submission of written demand for trial and written amendment
Dated November 24, 2017: Reconsideration report

No. 2 Decision to dismiss the amendment dated October 19, 2017

[Conclusion of Decision to Dismiss Amendment]

The amendment dated October 19, 2017 shall be dismissed.

[Reason]

1. Details of Amendment

The amendment dated October 19, 2017 (hereinafter referred to as "Amendment") is to amend Claim 1 of the scope of claims of the initial application (hereinafter referred to as "Claim 1 before Amendment") to the following Claim 1 of the scope of claims (hereinafter referred to as "Claim 1 after Amendment"). (The underlines were added by the demandant.)

(Claim 1 before Amendment)
"[Claim 1]
An information processing method, comprising:
a process to execute, using first biological information read from a medium held by a passer passing through a first position, and second biological information acquired from an image obtained by imaging the passer passing through the first position, first authentication processing to authenticate the passer;
a process to store third biological information, based on at least one of the first biological information and the second biological information used in the first authentication processing, in a storage section, when the authentication of the passer by the first authentication processing has succeeded;
a process to execute, using fourth biological information acquired from an image obtained by imaging a passer passing through a second position located downstream of the first position in an advancing direction of the passer, and the third biological information stored in the storage section, second authentication processing to authenticate the passer; and
an authentication process to permit passage through the second position when the passer is authenticated by the second authentication processing."

(Claim after Amendment)
"[Claim 1]
An information processing method, comprising:
a process to execute, using first biological information read from a medium held by a passer passing through a first position, and second biological information acquired from an image obtained by imaging the passer passing through the first position, first authentication processing which calculates a similarity to authenticate the passer based on whether or not the similarity has exceeded a first threshold value;
a first storage process to store third biological information, based on at least one of the first biological information and the second biological information used in the first authentication processing, in a storage section, when the authentication of the passer has succeeded as a result of the first authentication processing where the first threshold value has been exceeded;
a process to execute second authentication processing, using fourth biological information acquired from an image obtained by imaging a passer passing through a second position located downstream of the first position in an advancing direction of the passer, and the third biological information stored in the storage section, which calculates a similarity to authenticate the passer based on whether or not the similarity has exceeded a second threshold value;
an authentication process to permit passage through the second position when the passer is authenticated by the second authentication processing where the second threshold value has been exceeded"; and

a setting process to set the second threshold value higher than the first threshold value."

2. Purpose of the Amendment and whether or not new matter exists

2-1. Amended matters related to the Amendment

Comparing the descriptions between Claim 1 before Amendment and Claim 1 after Amendment, the Amendment includes the following amended matters.

(a) The matter amended from the description before Amendment "a process to execute, using first biological information read from a medium held by a passer passing through a first position, and second biological information acquired from an image obtained by imaging the passer passing through the first position, first authentication processing to authenticate the passer", to the description after Amendment "a process to execute, using first biological information read from a medium held by a passer passing through a first position, and second biological information acquired from an image obtained by imaging the passer passing through the first position, first authentication processing which calculates a similarity to authenticate the passer based on whether or not the similarity has exceeded a first threshold value".

(b) The matter amended from the description before Amendment "when the authentication of the passer by the first authentication processing has succeeded" to the description after Amendment "when the authentication of the passer has succeeded as a result of the first authentication processing where the first threshold value has been exceeded".

(c) The matter amended from the description before Amendment "a process to store third biological information in a storage section" to the description after Amendment "a first storage process to store third biological information in a storage section".

(d) The matter amended from the description before Amendment "a process to execute, using fourth biological information acquired from an image obtained by imaging a passer passing through a second position located downstream of the first position in an advancing direction of the passer, and the third biological information stored in the storage section, second authentication processing to authenticate the passer", to the description after Amendment "a process to execute, using fourth biological information acquired from an image obtained by imaging a passer passing through a second position located downstream of the first position in an advancing direction of the passer, and the third biological information stored in the storage section, second authentication processing which calculates a similarity to authenticate the passer based on whether or not the similarity has exceeded a second threshold value."

(e) The matter amended from the description before Amendment "when the passer is authenticated by the second authentication processing" to the description after Amendment "when the passer is authenticated by the second authentication processing where the second threshold value has been exceeded".

(f) The amendment to add the matter "a setting process to set the second threshold value higher than the first threshold value" regarding the relation between the "first threshold value" and the "second threshold value" amended by the Amended matters (b) and (d).

2-2. Regarding whether or not new matter exists

2-2-1. Regarding the Amended matters (a), (b), (d), and (e)

Since it is recognized that the Amended matters (a) and (b) are described in [0034] and [0037] in the specification of the initial application, and that the Amended matters (d) and (e) are described in [0057] and [0058] in the specification of the initial application, the amended matters do not violate Article 17-2(iii) of the Patent Act.

2-2-2. Regarding the Amended matter (c)

Since it is recognized that the Amended matter (c) obviously indicates the contents in [0038] in the specification of the initial application, "When having succeeded in the authentication of a passer (step S405: Yes), the first passer authenticating portion 15 (an example of a storage control portion) saves (stores) the feature information for authentication, based on at least one of the two pieces of feature information used for the first authentication processing, in the feature information storage section 31 of the server 30 (step S406)", the amended matter does not violate Article 17-2(iii) of the Patent Act.

2-2-3. Regarding the Amended matter (f)

As for the description on the Amended matter (f), there is the following description in [0058] in the specification of the initial application: "Here, the second threshold value may be set to the same value as the first threshold value used in the authentication of a passer in the first authenticating device 10, or may be set to a value different from the first threshold value."

However, the description in the paragraph only specifies that "the second threshold value may be set to a value different from the first threshold value", and does not disclose the specification "to set the second threshold value higher than the first threshold value" as described in the Amended matter (f).

Even if other descriptions in the specification of the initial application are taken into consideration, there is no description indicating technical matters, such as the matter "to set the second threshold value higher than the first threshold value" or working effect thereof.

In [0040] to [0042] in the specification of the initial application, there are the following descriptions: it is possible to enhance the security against the exchange of passers by using the former one of two pieces of feature information used in the first authentication processing, which are "feature information read from a medium M by an identification information reading portion" and "feature information acquired by the first facial feature extraction portion"; since the former feature information is acquired from an image which was obtained by imaging a passer before the first authentication processing is executed, "similarity with the feature information acquired from an image obtained by imaging the passer" decreases, and is likely to be influenced by secular

change and so on of a passer; and the influence of the secular change and so on of a passer can be decreased, by storing the latter feature information in the feature information storage section 31, thereby improving authentication accuracy. Paragraph [0064] describes that it is possible to reduce the possibility that the authentication of a passer succeeds, using the feature information for authentication having low reliability which has been stored for a predetermined time in the feature information storage section 31, by setting the "second threshold value" in using the feature information for authentication which has been stored for a predetermined time in the feature information storage section 31 to a value higher than "second threshold values" in other cases.

However, these paragraphs do not describe the contents for supplementing the matter "the second threshold value ... may be set to a value different from the first threshold value" in [0058], but only indicate that the feature information storage section 31 preferably stores information which is unlikely to be influenced by secular change. Thus, even considering the descriptions in the paragraphs with paragraph [0058], it cannot be said that the matter "to set the second threshold value higher than the first threshold value" is indicated.

Therefore, according to the above matters, since the Amended matter (f) introduces new technical matters in the relation with the scope of matters described in the specification of the initial application, the scope of claims, or the drawings, it cannot be said that the matter was made within the scope of them. Thus, the Amended matter (f) violates Article 17-2(iii) of the Patent Act.

2-3. Regarding the purpose requirements

In light of the case, we will examine whether the Amendment falls under those that are intended for the matters stipulated in each item of Article 17-2(5) of the Patent Act.

2-3-1. Regarding whether the Amendment is intended for the matters stipulated in Article 17-2(5)(i) of the Patent Act (Deletion of a claim), Article 17-2(5)(iii) of the Patent Act (Correction of errors), and Article 17-2(5)(iv) of the Patent Act (the clarification of an ambiguous statement)

<Amended matters (a) to (f)>

It is obvious that the Amended matters (a) to (f) are not intended for the matters stipulated in Article 17-2(5)(i), Article 17-2(5)(iii), and Article 17-2(5)(iv) of the Patent Act.

2-3-2. Regarding whether the Amendment is intended for the matters stipulated in Article 17-2(5)(ii) of the Patent Act (Restriction of the scope of claims)

<Amended matter (a)>

The Amended matter (a), which is an addition of matters for specifying concrete processing of the first authentication processing, is recognized as restriction of matters required for specifying the invention described in Claim 1 before Amendment, and it is also recognized that the invention described in Claim 1 before Amendment and the invention described in Claim 1 after Amendment are identical in the field of invention

and problem to be solved by the invention.

Therefore, the Amended matter (a) is intended for "Restriction of the scope of claims" stipulated in Article 17-2(5)(ii) of the Patent Act.

<Amended matter (b)>

The Amended matter (b) is recognized as ensuring consistency with the statement in the Amended matter (a), and is intended for "Restriction of the scope of claims" stipulated in Article 17-2(5)(ii) of the Patent Act, as well as the Amended matter (a).

<Amended matter (c)>

The Amended matter (c), which amends the description before Amendment "a process to store third biological information in a storage section" to the description after Amendment "a first storage process to store third biological information in a storage section", does not modify the contents of the process of "storing third biological information in a storage section" between before and after the Amendment.

Therefore, the Amended matter (c) is only a modification of expression, and does not modify the contents between before and after the Amendment. Thus, it cannot be said that the Amended matter (c) is a substantial amendment.

<Amended matter (d)>

The Amended matter (d), which is an addition of matters for specifying concrete processing of the second authentication processing, is recognized as restriction of matters required for specifying the invention described in Claim 1 before Amendment, and it is also recognized that the invention described in Claim 1 before Amendment and the invention described in Claim 1 after Amendment are identical in the field of invention and problem to be solved by the invention.

Therefore, the Amended matter (d) is intended for "Restriction of the scope of claims" stipulated in Article 17-2(5)(ii) of the Patent Act.

<Amended matter (e)>

The Amended matter (e) is recognized as ensuring consistency with the statement in the Amended matter (d), and is intended for "Restriction of the scope of claims" stipulated in Article 17-2(5)(ii) of the Patent Act, as well as the Amended matter (d).

<Amended matter (f)>

The Amended matter (f), which specifies a relation between the first threshold value and the second threshold value "to set the second threshold value higher than the first threshold value", is recognized as restriction of matters relating to "first authentication processing" and "second authentication processing" which are matters required for specifying the invention described in Claim 1 before Amendment, and it is also recognized that the invention described in Claim 1 before Amendment and the invention described in Claim 1 after Amendment are identical in the field of invention and problem to be solved by the invention.

Therefore, the Amended matter (f) is intended for "Restriction of the scope of claims" stipulated in Article 17-2(5)(ii) of the Patent Act.

2-4. Judgment on independent requirements for patentability

As described in the above "2-3. Regarding the purpose requirements", the Amendment is intended for restriction of scope of claims. Therefore, we will examine whether the invention described in Claim 1 after Amendment (hereinafter referred to as "Amended Invention") is one which could have been patented independently at the time of filing of the patent application (whether it falls under the provision of Article 126(7) of the Patent Act which is applied mutatis mutandis in the provisions of Article 17-2(6) of the Patent Act).

(1) Cited Document

The following matters are described in Japanese Unexamined Patent Application Publication No. 2005-129016 (hereinafter referred to as "Cited Document") which is cited in reasons for refusal of the examiner's decision. (The underlines were added by the body.)

(A) "The present invention relates to an authentication system, a program, and a building. More particularly, the present invention relates to an authentication system which authenticates a person-to-be-authenticated." ([0001])

(B) "FIG. 2 is a block diagram exemplary illustrating a detailed configuration of the authentication system 100. In this example, the admission-to-building management section 102 includes an unlocking section 208, a camera 202, a card reader 204, and the admission-to-building authentication section 206. Each of the admission-to-room management sections 104a-d is provided corresponding to each of the living rooms A-D (refer to FIG. 1), and includes an unlocking section 306, a camera 302, and an admission-to-room authentication section 304, respectively.

The unlocking section 208 unlocks the door 106 at the front entrance when the person is authenticated by the admission-to-building authentication section 206. The camera 202 is an example of a first photographing section which photographs the person-to-be-authenticated. The camera 202 is provided at the front entrance, photographs the face of the person-to-be-authenticated who is going to enter, and sends the resultant face image to the admission-to-building authentication section 206. The card reader 204 receives the face image of the person-to-be-authenticated stored on the ID card from the ID card retained by the person-to-be-authenticated, and sends it to the admission-to-building authentication section 206.

The admission-to-building authentication section 206 is an example of a first authentication section, and authenticates the person-to-be-authenticated by comparing the face image of the person-to-be-authenticated stored on the ID card retained by the person-to-be-authenticated with the face image of the person-to-be-authenticated photographed by the camera 202. Thereby, the admission-to-building authentication section 206 authenticates the person-to-be-authenticated photographed by the camera 202.

Then, when coincidence between these face images is greater than a predetermined value, the person is authenticated to be an authenticated person and the admission-to-building authentication section 206 causes the unlocking section 208 to

unlock the front entrance. Thereby, the admission-to-building authentication section 206 opens the door 106 when it authenticates the person-to-be-authenticated to be the person who is permitted to pass the door 106 of the front entrance. Then, the admission-to-building authentication section 206 transmits the face image of the person-to-be-authenticated photographed by the camera 202 to the admission-to-room management sections 104a-e.

The unlocking section 306 of the admission-to-room management section 104 unlocks the door 108 at the entrance of each of the living rooms when the person-to-be-authenticated is authenticated by the admission-to-room authentication section 304. The camera 202 is provided at the corresponding entrance of each of the living rooms, photographs the face of the person-to-be-authenticated who is going to enter the room, and sends the resultant face image to the admission-to-room authentication section 304. The camera 302 is an example of a second photographing section which photographs the person-to-be-authenticated, and is provided at the location through which the person-to-be-authenticated passes so that the person-to-be-authenticated may pass the location after he/she has passed the location at which the camera 202 is provided along the route.

The admission-to-room authentication section 304 is an example of a second authentication section which authenticates the person-to-be-authenticated, and compares the face image of the person-to-be-authenticated photographed by the camera 202 at the front entrance with the face image of the person-to-be-authenticated photographed by the camera 302 at the entrance of each of the living rooms by receiving the face image of the person-to-be-authenticated photographed by the camera 202 from the admission-to-building authentication section 206. Then, when the coincidence between these face images is greater than a predetermined value, the person is authenticated as a person who is permitted to enter the room and the admission-to-room authentication section 304 causes the unlocking section 306 to unlock the corresponding one of the living rooms. Thereby, the admission-to-room authentication section 304 opens each of the doors 108a-e when it authenticates the person as a person who is permitted to pass each of the doors 108a-e. According to this example, the person can be authenticated efficiently at the entrance of each of the living rooms." ([0024]-[0029])

Thus, according to the above description (A) and (B), it is recognized that the Cited Document discloses the following matters:

"An information processing method in which an authentication system 100 authenticates a person-to-be-authenticated, comprising an admission-to-building management section 102 which includes: an unlocking section 208, a camera 202, a card reader 204, and an admission-to-building authentication section 206; and admission-to-room management sections 104a-d having an unlocking section 306, a camera 302, and an admission-to-room authentication section 304, respectively, wherein

the camera 202 is provided at the front entrance, photographs the face of the person-to-be-authenticated who is going to enter, and sends the resultant face image to the admission-to-building authentication section 206, the card reader 204 receives the face image of the person-to-be-authenticated stored on the ID card from the ID card retained by the person-to-be-authenticated, and sends it to the admission-to-building authentication section 206,

the admission-to-building authentication section 206 authenticates the person-to-be-authenticated by comparing the face image of the person-to-be-authenticated stored on the ID card of the person-to-be-authenticated with the face image of the person-to-be-authenticated photographed by the camera 202, and when coincidence between these face images is greater than a predetermined value, the person is authenticated to be an authenticated person, the admission-to-building authentication section 206 causes the unlocking section 208 to unlock the front entrance, and transmits the face image of the person-to-be-authenticated photographed by the camera 202 to the admission-to-room management sections 104a-e,

the admission-to-room authentication section 304 compares the face image of the person-to-be-authenticated photographed by the camera 202 at the front entrance with the face image of the person-to-be-authenticated photographed by the camera 302 at the entrance of each of the living rooms by receiving the face image of the person-to-be-authenticated photographed by the camera 202 from the admission-to-building authentication section 206, and when the coincidence between these face images is greater than a predetermined value, the person is authenticated as a person who is permitted to enter the room and the admission-to-room authentication section 304 causes the unlocking section 306 to unlock the corresponding one of the living rooms." (Hereinafter referred to as "Cited Invention").

(2) Comparison

The Amended Invention and the Cited Invention are compared.

(2-1)

The "entrance of the living room" in the Cited Invention is located downstream of the "front entrance" for the person-to-be-authenticated who enters from the "front entrance". Thus, the "front entrance" and the "entrance of the living room" in the Cited Invention correspond to the "first position" and the "second position located downstream of the first position" in the Amended Invention, respectively.

(2-2)

It is obvious that the "person-to-be-authenticated" and the "ID card" in the Cited Invention correspond to the "passer" and the "medium" in the Amended Invention, respectively.

(2-3)

In the Cited Invention, since "the card reader 204 receives the face image of the person-to-be-authenticated stored on the ID card from the ID card retained by the person-to-be-authenticated, and sends it to the admission-to-building authentication section 206", the "face image of the person-to-be-authenticated stored on the ID card from the ID card retained by the person-to-be-authenticated" corresponds to the "first biological information" in the Amended Invention.

In the Cited Invention, since "the camera 202 is provided at the front entrance, photographs the face of the person-to-be-authenticated who is going to enter, and sends the resultant face image to the admission-to-building authentication section 206", it is

natural to understand that images captured by the camera 202 include images other than the face of the person-to-be-authenticated. The face image of the person-to-be-authenticated is supplied to the admission-to-building authentication section 206 for comparison, from among the "images captured". Thus, "the face image of the person-to-be-authenticated photographed by the camera 202 at the front entrance" corresponds to the "second biological information acquired from an image obtained by imaging" in the Amended Invention.

In the Cited Invention, "the admission-to-building authentication section 206 authenticates the person-to-be-authenticated by comparing the face image of the person-to-be-authenticated stored on the ID card of the person-to-be-authenticated with the face image of the person-to-be-authenticated photographed by the camera 202, and when coincidence between these face images is greater than a predetermined value, the person is authenticated to be an authenticated person, the admission-to-building authentication section 206 causes the unlocking section 208 to unlock the front entrance". As for the "coincidence" in the Cited Invention and the "similarity" in the Amended Invention, no technical feature is specified for the terms other than the terms themselves. Therefore, it is natural to consider the "coincidence" in the Cited Invention and the "similarity" in the Amended Invention as only terms different in expression used for representing a degree of identity between two pieces of information to be compared. It can be said that the "predetermined (coincidence)" in the Cited Invention corresponds to the "first threshold value" in the Amended Invention.

Thus, the description in the Cited Invention "the admission-to-building authentication section 206 authenticates the person-to-be-authenticated by comparing the face image of the person-to-be-authenticated stored on the ID card of the person-to-be-authenticated with the face image of the person-to-be-authenticated photographed by the camera 202, and when coincidence between these face images is greater than a predetermined value, the person is authenticated to be an authenticated person", corresponds to the description in the Amended Invention "a process to execute, using first biological information read from a medium held by a passer passing through a first position, and second biological information acquired from an image obtained by imaging the passer passing through the first position, first authentication processing which calculates a similarity to authenticate the passer based on whether or not the similarity has exceeded a first threshold value".

(2-4)

In the Cited Invention, "the admission-to-room authentication section 304 compares the face image of the person-to-be-authenticated photographed by the camera 202 at the front entrance with the face image of the person-to-be-authenticated photographed by the camera 302 at the entrance of each of the living rooms by receiving the face image of the person-to-be-authenticated photographed by the camera 202 from the admission-to-building authentication section 206, and when the coincidence between these face images is greater than a predetermined value, the person is authenticated as a person who is permitted to enter the room and the admission-to-room authentication section 304 causes the unlocking section 306 to unlock the corresponding one of the living rooms". The "face image of the person-to-be-authenticated photographed by the camera 302 at the entrance of each of the living

rooms" corresponds to the "fourth biological information acquired from an image obtained by imaging a passer passing through a second position located downstream of the first position in an advancing direction of the passer" in the Amended Invention. "The face image of the person-to-be-authenticated photographed by the camera 202", which is "received from the admission-to-building authentication section 206", corresponds to the "third biological information, based on the second biological information used in the first authentication processing" in the Amended Invention.

The "authentication processing for the person-to-be-authenticated" to be executed by the "admission-to-room authentication section 304" in the Cited Invention, which is different from the authentication for the person-to-be-authenticated to be executed by the admission-to-building authentication section 206, corresponds to the "second authentication processing" in the Amended Invention.

It can be said the "predetermined (coincidence)" in the "authentication processing for the person-to-be-authenticated" to be executed by the admission-to-room authentication section 304 corresponds to the "second threshold value" in the Amended Invention.

Thus, the Cited Invention and the Amended Invention are identical in including "a process to execute second authentication processing which calculates a similarity, using fourth biological information acquired from an image obtained by imaging a passer passing through a second position located downstream of the first position in an advancing direction of the passer, and the third biological information, to authenticate the passer based on whether or not the similarity has exceeded a second threshold value".

(2-5)

In the Cited Invention, "the admission-to-room authentication section 304 compares the face image of the person-to-be-authenticated photographed by the camera 202 at the front entrance with the face image of the person-to-be-authenticated photographed by the camera 302 at the entrance of each of the living rooms by receiving the face image of the person-to-be-authenticated photographed by the camera 202 from the admission-to-building authentication section 206, and when the coincidence between these face images is greater than a predetermined value, the person is authenticated as a person who is permitted to enter the room and the admission-to-room authentication section 304 causes the unlocking section 306 to unlock the corresponding one of the living rooms." The description "the admission-to-room authentication section 304 causes the unlocking section 306 to unlock corresponding one of the living rooms" corresponds to the "authentication process to permit passage through the second position" in the Amended Invention. Therefore, it can be said that the Cited Invention includes "an authentication process to permit passage through the second position when the passer is authenticated by the second authentication processing where the second threshold value has been exceeded".

As a result of the considerations in (2-1) to (2-5), the Amended Invention and the Cited Invention are identical with each other in the following points:

"An information processing method, comprising:

a process to execute, using first biological information read from a medium held

by a passer passing through a first position, and second biological information acquired from an image obtained by imaging the passer passing through the first position, first authentication processing which calculates a similarity to authenticate the passer based on whether or not the similarity has exceeded a first threshold value;

a process to execute, using fourth biological information acquired from an image obtained by imaging a passer passing through a second position located downstream of the first position in an advancing direction of the passer, and the third biological information, second authentication processing which calculates a similarity to authenticate the passer based on whether or not the similarity has exceeded a second threshold value; and

an authentication process to permit passage through the second position when the passer is authenticated by the second authentication processing where the second threshold value has been exceeded",

and they are different from each other in the following points:

[Different Feature 1]

The Amended Invention includes "a first storage process to store third biological information, based on at least one of the first biological information and the second biological information used in the first authentication processing, in a storage section, when the authentication of the passer has succeeded as a result of the first authentication processing where the first threshold value has been exceeded". The Cited Invention configured so that "the admission-to-building authentication section 206 ... transmits the face image of the person-to-be-authenticated photographed by the camera 202 to the admission-to-room management sections 104a-e", does not clearly indicate whether "the face image of the person-to-be-authenticated photographed by the camera 202" is stored in a storage section.

[Different Feature 2]

In relation to the above [Different Feature 1], the Amended Invention uses "the third biological information stored in the storage section" in the process of executing the second authentication processing to authenticate the passer, while the Cited Invention uses "the face image of the person-to-be-authenticated photographed by the camera 202, which has been transmitted from the admission-to-building authentication section 206".

[Different Feature 3]

The Amended Invention includes "a setting process to set the second threshold value higher than the first threshold value, while the Cited Invention does not include the process.

(3) Judgment

Regarding [Different Feature 1] and [Different Feature 2]

In the Cited Invention, since the "face image of the person-to-be-authenticated photographed by the camera 202" transmitted from the admission-to-building authentication section 206 to each of the admission-to-room management sections 104a-e is used for authenticating the person-to-be-authenticated in the admission-to-room

authentication section 304 included in the admission-to-room management section, it is a matter of common general technical knowledge and obvious matter for a person skilled in the art to store the "face image of the person-to-be-authenticated photographed by the camera 202" in storage means on the side of the admission-to-room management section, and to execute processing by the admission-to-room authentication section 304 to authenticate the person-to-be-authenticated using the "face image of the person-to-be-authenticated photographed by the camera 202" stored in the storage means.

Regarding [Different Feature 3]

The admission-to-building authentication section 206 and the admission-to-room authentication section 304 in the Cited Invention use different information in comparison for authentication using an image of a person-to-be-authenticated photographed by the camera 202 (the former uses "the face image of the person-to-be-authenticated stored on the ID card retained by the person-to-be-authenticated" and the latter user "the face image photographed by the camera 302"). It is obvious there is a difference in aging with time between the "face image of the person-to-be-authenticated stored on the ID card retained by the person-to-be-authenticated" and the "face image photographed by the camera 302". Therefore, it is natural that the "coincidence" in the comparison in the admission-to-building authentication section 206 is different from the "coincidence" in the comparison in the admission-to-room authentication section 304.

Furthermore, in general, a security level for permitting entry to each of living rooms is determined for each living room based on the characteristics of the living room, as a matter of technical common knowledge.

Thus, in the Cited Invention, setting the degree of "coincidence" in the admission-to-room authentication section 304 to be higher than a degree of "coincidence" in the admission-to-building authentication section 206, or "to set the second threshold value higher than the first threshold value" in the Amended Invention, is a design matter which can be appropriately implemented by a person skilled in the art on the basis of the security level required for each of the living rooms.

The effect to be produced by the configuration of the Amended Invention can be easily predicted by a person skilled in the art from the matters disclosed in the Cited Invention.

In light of the above, since the Amended Invention could have been easily made by a person skilled in the art based on the matters disclosed in the Cited Invention, the appellant should not be granted a patent independently at the time of patent application under the provisions of Article 29(2) of the Patent Act, and the Amended Invention violates the provisions of Article 126(7) of the Patent Act which is applied mutatis mutandis in the provisions of Article 17-2(6) of the Patent Act.

2-5. Summary regarding "Decision to dismiss the amendment"

As examined in "2-2" to "2-4", the Amendment, which violates the provisions of Article 17-2(3) of the Patent Act or the provision of Article 126(7) of the Patent Act

which is applied mutatis mutandis in the provisions of Article 17-2(6) of the Patent Act, should be dismissed under the provisions of Article 53(1) of the Patent Act which is applied mutatis mutandis pursuant to Article 159(1) of the Patent Act.

No. 3 Regarding the Invention

1. The Invention

Since the written amendment as of October 19, 2017 was dismissed as described above, the invention according to Claim 1 of the application (hereinafter referred to as "the Invention") is specified by the matters described in Claim 1 of the scope of claims of the initial application (see (Claim 1 before Amendment) in "No. 2 Decision to dismiss the amendment as of October 19, 2017" "1. Details of Amendment").

2. Reasons for refusal of the examiner's decision

The reasons for refusal of the examiner's decision is as follows: since the invention according to Claim 1 of the application is an invention described in the following cited Document distributed, or an invention that was made publicly available through an electric telecommunication line in Japan or a foreign country, prior to the filing of the patent application, the appellant should not be granted a patent under the provisions of Article 29(1)(iii) of the Patent Act; and since the invention according to Claim 1 of the application could have been easily made by a person ordinarily skilled in the art of the invention, based on an invention described in the following cited document distributed, or an invention that was made publicly available through an electric telecommunication line in Japan or a foreign country, prior to the filing of the patent application, the appellant should not be granted a patent under the provisions of Article 29(2) of the Patent Act.

Cited Document: Japanese Unexamined Patent Application Publication No. 2005-129016

3. Cited Document

The matters described in the Cited Document (Japanese Unexamined Patent Application Publication No. 2005-129016) cited in the reasons for refusal of the examiner's decision and the invention (Cited Invention) disclosed in the Cited Document are as described in "'No. 2 Decision to dismiss the amendment dated October 19, 2017' '2-4. Judgment on independent requirements for patentability' '(1) Cited Document'".

4. Comparison

The Invention is formed by deleting the Amended matters (a) to (f) mentioned in ""No. 2 Decision to dismiss the amendment as of October 19, 2017" "2-1. Amended matters related to the Amendment"" from the Amended Invention amended by the written amendment as of October 19, 2017. The amended matters excluding the comparison are the same as the matters described as "(2-1)" to "(2-5)" in "'No. 2

Decision to dismiss the amendment as of October 19, 2017' '2-4. Judgment on independent requirements for patentability' '(2) Comparison'".

The Invention and the Cited Invention are identical with each other in the following points:
"An information processing method, comprising:
a process to execute, using first biological information read from a medium held by a passer passing through a first position, and second biological information acquired from an image obtained by imaging the passer passing through the first position, first authentication processing to authenticate the passer;

a process to execute, using fourth biological information acquired from an image obtained by imaging a passer passing through a second position located downstream of the first position in an advancing direction of the passer, and the third biological information, second authentication processing to authenticate the passer; and

an authentication process to permit passage through the second position when the passer is authenticated by the second authentication processing",

and they are different from each other in the following points. (The following different features are the same as [Different Feature 1] and [Different Feature 2] specified in "'No. 2 Decision to dismiss the amendment dated October 19, 2017' '2-4. Judgment on independent requirements for patentability' '(2) Comparison'".)

[Different Feature 1]

The Amended Invention includes "a first storage process to store third biological information, based on at least one of the first biological information and the second biological information used in the first authentication processing, in a storage section, when the authentication of the passer has succeeded as a result of the first authentication processing where the first threshold value has been exceeded". The Cited Invention configured so that "the admission-to-building authentication section 206 ... transmits the face image of the person-to-be-authenticated photographed by the camera 202 to the admission-to-room management sections 104a-e", does not clearly indicate whether "the face image of the person-to-be-authenticated photographed by the camera 202" is stored in a storage section.

[Different Feature 2]

In relation to the above [Different Feature 1], the Amended Invention uses "the third biological information stored in the storage section" in the process of executing the second authentication processing to authenticate the passer, while the Cited Invention uses "the face image of the person-to-be-authenticated photographed by the camera 202, which has been transmitted from the admission-to-building authentication section 206".

5. Judgment

Judgments on the [Different Feature 1] and [Different Feature 2] are the same as the descriptions in "Regarding [Different Feature 1] and [Different Feature 2]" in "'No. 2 Decision to dismiss the amendment as of October 19, 2017' '2-4. Judgment on independent requirements for patentability' '(3) Judgment'".

Therefore, the Invention could have been easily made by a person skilled in the art based on the matters disclosed in the Cited Invention.

6. Closing

As described above, since the Invention could have been easily made by a person skilled in the art based on the matters disclosed in the Cited Invention, the appellant should not be granted a patent for the Invention under the provisions of Article 29(2) of the Patent Act.

Thus, the application should be rejected without examining inventions relating to other claims of the application.

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

October 23, 2018

Chief administrative judge: KANEKO, Koichi
Administrative judge: SATO, Tomoyasu
Administrative judge: AIZAKI, Hirotsune