Appeal decision

Appeal No. 2019-9112

Appellant   COLOPL, Inc.

Patent Attorney   SHIRAI, Hiroki

The case of appeal against the examiner's decision of refusal of Japanese Patent Application No. 2018-90174, entitled "GAME PROGRAM, METHOD, AND INFORMATION PROCESSING DEVICE", [the application published on November 14, 2019: Japanese Unexamined Patent Application Publication No. 2019-195418] has resulted in the following appeal decision:

Conclusion
        The appeal of the case was groundless.

Reason
No. 1 History of the procedures
        The present application is a patent application filed on May 8, 2018, and, although a written amendment was submitted on September 5, 2018, reasons for refusal were notified as of October 10 of the same year; since there was no reply at all from the Applicant within its designation period, a decision of refusal was issued as of April 22, 2019, and a copy of the original of the examiner's decision was delivered to the Applicant on May 7 of the same year; then, against this, a request for appeal against the examiner's decision of refusal was submitted on July 5, 2019.

No. 2 The Invention
        The inventions according to Claims 1 to 12 of the present application are ones that are specified by the matters recited in Claims 1 to 12 of the scope of claims after amendment by the written amendment submitted on September 5, 2018, and the recitations of Claims 1 to 12 of the scope of claims in question are as follows.
" [Claim 1]
        A game program, which is executed in a computer including a processor, a memory, and an operation receiving unit that receives input operation by a user,
        the game program making the processor execute:

a first step of storing in the memory possessed character information indicating characters possessed by the user among characters of a human and a monster character having an external appearance different from the human;

a second step of stochastically selecting any one of a plurality of game media including a human character and a monster character, giving the selected human character or monster character to the user, and updating the possessed character information of the memory;

a third step of accepting a first input operation for designating, in advance of constructing a predetermined game space, among characters possessed by the user, a human character and a monster character operable by the user in the game space in advance as an operable character;

a fourth step of constructing the predetermined game space to arrange the designated operable characters, and switching either one of the human character and the monster character designated as the operable character as a character to participate in a battle by a second input operation by the user; and

a fifth step of accepting a third input operation for making the operable character operate, and making the operable character participating in a battle carry out an action according to operation by the user.

[Claim 2]

The game program according to Claim 1, wherein

a game based on the game program is a game in which a battle is started seamlessly from a movement of the operable character in the predetermined game space, wherein

in the fourth step, in a state that a human character, not a monster character, is arranged as the operable character, based on accepting operation to designate the monster character as the second input operation, the designated monster character is arranged in the predetermined game space to make the designated monster character participate in a battle, and wherein

in the fifth step, while, in a state that a human character, not a monster character, is arranged as the operable character, in response to the third input operation, the human character is made to perform an action operation for a battle, in a state that, according to designation of a monster character based on the second input operation, the monster character is arranged, the monster character, not the human character, is made to perform an action operation for a battle in response to the third input operation.

[Claim 3]

The game program according to Claim 2, wherein,

in the fourth step, only in a condition that, in a state that a human character, not a monster character, is arranged as the operable character in the game space, operation to designate the monster character is accepted as the second input operation, the designated monster character is arranged in the predetermined game space, and, without passing through a state capable of making the human character carry out an action according to operation by the user in the predetermined game space by the third input operation, the monster character is not arranged in a manner capable of battling based on the third input operation in the predetermined game space.

[Claim 4]

The game program according to any one of Claims 1 to 3, wherein,

in the third step, designation of a plurality of human characters is accepted as the operable character by the second input operation, and wherein,

in the fifth step, by accepting a fourth input operation to select one human character among the plurality of human characters, the one human character selected by the fourth input operation is made to carry out the action in response to the third input operation, whereas the human characters other than the one human character are made to carry out an action by automatic operation.

[Claim 5]

The game program according to any one of Claims 1 to 4, wherein

the operation receiving unit is a touch screen, and wherein,

in the fifth step, based on a fifth input operation of moving a touch position of the user with respect to the touch screen from a first position to a second position in a manner continuing a touch, the operation character is made to carry out an attack action.

[Claim 6]

The game program according to Claim 5, wherein,

in the fifth step, by accepting tapping operation to the touch screen, the operation character is made to carry out an attack action, and wherein

the attack action based on the tapping operation has homing performance against an enemy character that is higher than that of the attack action based on the fifth input operation.

[Claim 7]

The game program according to any one of Claims 1 to 6, wherein

the possessed character information stored in the memory includes information on contents of an action that can be performed by a character possessed by the user, and wherein the game program makes the processor further execute:

a six step of displaying an edit screen for editing, regarding a character

possessed by the user, contents of an action that is made to be carried out in the fifth step by the operation character; and

a seven step of accepting, in the edit screen, a sixth input operation for editing the contents of the action, and updating the possessed character information of the memory based on an edit result.

[Claim 8]

The game program according to Claim 2 or 3, wherein,

in the fourth step, by accepting, in a state that the monster character is arranged in the predetermined game space, the second input operation, the monster character is deleted from the game space and the state is changed to a state in which the human character is arranged in the game space.

[Claim 9]

The game program according to any one of Claims 1 to 8, further making the processor execute:

an eighth step of, by the user executing a battle in the predetermined game space, giving a reward item to the user without resort to billing processing; and

a ninth step of giving a valuable item different from the reward item to the user by billing processing, wherein

by consuming the reward item or the valuable item in the second step, the selection and giving is performed.

[Claim 10]

The game program according to any one of Claim 2 or 3, wherein

a game based on the game program supports multi-play in which a plurality of users can make operable characters of their own operate simultaneously in the same game space, wherein,

in the third step, a request for synchronization of multi-play is transmitted and received to and from a terminal of each user, and a result of designation of, among characters possessed by each of the plurality of users taking part in the multi-play, a human character and a monster character that can be operated by each user in the game space as an operable character of each user in advance is received from the terminal of each user, and wherein,

in the fourth step and the fifth step, a game is made to progress in a manner sharing the predetermined game space with each user taking part in the multi-play.

[Claim 11]

A method of executing a game program by a computer including a processor, a memory, a display, and an operation unit to accept input operation of a user,

the processor executing:

a first step of storing in the memory possessed character information indicating characters possessed by the user among characters of a human and a monster character having an external appearance different from the human;

a second step of stochastically selecting any one of a plurality of game media including a human character and a monster character, giving the selected human character or monster character to the user, and updating the possessed character information of the memory;

a third step of accepting a first input operation for designating, in advance of constructing a predetermined game space, among characters possessed by the user, a human character and a monster character operable by the user in the game space in advance as an operable character;

a fourth step of constructing the predetermined game space to arrange the designated operable characters, and switching, by a second input operation of the user, which one of the human character and the monster character designated as the operable character is made to participate in a battle; and

a fifth step of accepting a third input operation for making the operable character operate, and making the operable character participating in a battle carry out an action according to operation by the user.

[Claim 12]

An information processing device,

the information processing device comprising:

a processor to control an operation of the information processing device by executing a game program;

a memory to store the game program; and

an operation unit to accept input operation of a user, wherein

the processor executes:

a first step of storing in the memory possessed character information indicating characters possessed by the user among characters of a human and a monster character having an external appearance different from the human;

a second step of stochastically selecting any one of a plurality of game media including a human character and a monster character, giving the selected human character or monster character to the user, and updating the possessed character information of the memory;

a third step of accepting a first input operation for designating, in advance of constructing a predetermined game space, among characters possessed by the user, a

human character and a monster character operable by the user in the game space in advance as an operable character;

a fourth step of constructing the predetermined game space to arrange the designated operable characters, and switching, by a second input operation of the user, which one of the human character and the monster character designated as the operable character is made to participate in a battle; and

a fifth step of accepting a third input operation for making the operable character operate, and making the operable character participating in a battle carry out an action according to operation by the user."

No. 3 Outline of reasons for refusal stated in the examiner's decision

The reason of the decision of refusal as of April 22, 2019 of the original examination is that the present application should be rejected by the reasons described in the written notice of reasons for refusal as of October 10, 2018 (hereinafter, referred to as "Written Notice of Reasons for Refusal"), and an outline of the reasons is as follows.

(New matters) The amendment made in the written amendment as of September 5, 2018 (hereinafter, referred to as "the Amendment") is not an amendment made within the matters described in the description, the scope of claims, or the drawings originally attached to the application in the following points, and, therefore, does not meet the requirement stipulated in Article 17-2(3) of the Patent Act.

Note

(1) (Omitted)

(2) In the Amendment, the amendment that specifies "constructing the predetermined game space to arrange the designated operable characters, and switching either one of the human character and the monster character designated as the operable character as a character to participate in a battle by a second input operation by the user" in Claims 1, 11, and 12 is not one made within the range of the matters described in the originally attached description and the like in a point of introducing a new technical matter as performing processing that "in response to input operation of a user, only a monster character is made to participate in a battle instead of a human character, and is arranged in a game space as an operable character". (Hereinafter, an amendment that is not made within the range of the matters described in the originally attached description and

the like is simply referred to as "one to add a new matter")

(3) In the Amendment, the amendment that specifies that "without passing through a state capable of making the human character carry out an action according to operation by the user in the predetermined game space by the third input operation, the monster character is not arranged in a manner capable of battling based on the third input operation in the predetermined game space" in Claim 3 is one to add a new matter.

(4) In the Amendment, the amendment that specifies that "in the fifth step, by accepting a fourth input operation to select one human character among the plurality of human characters, the one human character selected by the fourth input operation is made to carry out the action in response to the third input operation, whereas the human characters other than the one human character are made to carry out an action by automatic operation" in Claim 4 is one to add a new matter.

(5) In the Amendment, the amendment that specifies that "further making the processor to execute: an eighth step of, by the user executing a battle in the predetermined game space, giving a reward item to the user without resort to billing processing; and a ninth step of giving a valuable item different from the reward item to the user by billing processing" in Claim 9 is one to add a new matter.

(6) In the Amendment, the amendment that specifies that "in the third step, a request for synchronization of multi-play is transmitted and received to and from a terminal of each user, and a result of designation of, among characters possessed by each of the plurality of users taking part in the multi-play, a human character and a monster character that can be operated by each user in the game space as an operable character of each user in advance is received from the terminal of each user, and wherein, in the fourth step and the fifth step, a game is made to progress in a manner sharing the predetermined game space with each user taking part in the multi-play" in Claim 10 is one to add a new matter.

No. 4 Judgment by the body
1 Regarding the above-mentioned No. 3 (2)
(1) Although the amended matter of the Amendment indicated in (2) of the reasons for refusal stated in the examiner's decision is one related to "a fourth step of constructing the predetermined game space to arrange the designated operable characters, and

switching either one of the human character and the monster character designated as the operable character as a character to participate in a battle by a second input operation by the user", it is understood that switching either one of "human character" and "monster character" "designated as the operable character" as a character to participate in a battle by the second input operation by the user here includes switching only one of "human character" and "monster character" as a character to participate in a battle by input operation of the user, and, therefore, examination will be made hereinafter about whether or not it is described in the originally attached description and the like that "constructing a predetermined game space to arrange designated operable characters, and switching only a monster character designated as an operable character as a character to participate in a battle by a second input operation by a user".

(2) Described matters of the originally attached description and the like

A   In the originally attached description and the like, there are the following descriptions relating to the relevant amended matter.

(A) "[0071] (Arrangement of Game Space and Object) The game progress unit 112 of the user terminal 100 starts a game based on the game program 231.   When the game starts, the object control unit 114 constructs a predetermined game space according to the instruction of the game progress unit 112, and arranges a predetermined operation character in the game space.   Further, the object control unit 114 may arrange in the game space a background object such as a tree, a rock, or a building as a background of the game space.   Further, the object control unit 114 may arrange in the game space an enemy character (another character) that is a battle opponent of the operation character.

[0072] In the present embodiment, as an example of a game realized by the game system 1, an example in which the user selects one of the characters that can be operated from the characters that the user has and operates the character will be described.   However, in a game realized by the game system 1, the user may be allowed to operate a plurality of characters (for example, a human character and a riding monster described later, or a plurality of human characters).   In addition, instead of performing all the movements of each character according to the user's input operation, it may be the case that only a part of the movements such as the timing of the attack and the direction of movement is operated by the user (so-called semi-automatic operation).

[0073] In the present embodiment, as an example, a game space (referred to as a field space) corresponding to an outdoor space such as a grassland is constructed by the object control unit 114 at the start of the game, and an operation character or the like is

arranged in the field space will be described.

[0074] Note that the game space constructed by the object control unit 114 is not limited to the field space described above. For example, the object control unit 114 constructs a game space (referred to as a dungeon space) corresponding to an indoor (so-called dungeon) space, such as in a cave or a building, according to the instruction of the game progress unit 112, and an operation character or the like may be arranged in the space. For example, when the operation receiving unit 111 accepts input operation instructing to enter a dungeon, the game progress unit 112 may instruct the object control unit 114 to construct a dungeon space and arrange an operation character or the like in the space."

(B) "[0075] FIG. 3 is a diagram illustrating an example of a screen on which a field space is drawn, which is a kind of game space. At least one operation character is arranged in the field space. The state (A) in FIG. 3 is a diagram showing a state in which the human character 301 is arranged with the weapon 302 of the character held on the back in the field space.

[0076] Here, the "human character" is a kind of operable character. Note that "human character" is merely an example of a name, and the human character 301 does not necessarily have to be a human or humanoid character. Also, the weapon 302 is not essential.

[0077] (Riding monster and automatic battle monster) The state (B) of FIG. 3 is a diagram showing a state in which the human character 301 is mounted on the riding monster 303 in the field space. The riding monster 303 is a kind of character that can be operated, and is a kind of character that becomes a friend of the human character 301 (that is, a friend in the battle). The riding monster 303 may be able to participate in a battle instead of the human character 301.

[0078] The human character 301 can mount on the riding monster 303. In other words, the riding monster 303 is a character that is a vehicle for the human character 301. The "character participating in the battle" is a character arranged in the game space during a battle with an enemy character (described later), and is a character that becomes a friend of the user's operation character during the battle. Note that the character participating in the battle does not necessarily perform an action such as an attack on the enemy character. Further, the character participating in the battle may not receive an action from the enemy character. For example, even when only the riding monster 303 performs various actions such as an attack based on the input operation although the human character 301 is mounted on the riding monster 303, the human character 301 is deemed to be participating in the battle."

(C) "[0079] When the user performs an operation for designating the riding monster 303 and input operation for instructing the riding, the operation receiving unit 111 accepts these operations, and the game progress unit 112 associates the human character 301 with the designated riding monster 303. Furthermore, the game progress unit 112 notifies the object control unit 114 that the human character 301 and the riding monster 303 are associated with each other. In response to the notification, the object control unit 114 arranges the human character 301 in a posture and a position riding on the riding monster 303. Thereby, the user can enjoy the game by changing the association of the riding monster 303 as a vehicle with respect to a certain human character 301. Therefore, the interest of the game is improved.

[0080] When the human character 301 is mounted on the riding monster 303, the battle processing unit 112A of the game progress unit 112 may prevent the riding human character 301 from performing actions such as an attack and defense in subsequent battles. In other words, the battle processing unit 112A allows both the riding monster 303 and the human character 301 to participate in the battle, but input operations related to various actions in the battle may be performed only in relation to one of them."

(D) "[0081] Note that the game progress unit 112 may cancel the riding state of the human character 301 in accordance with a predetermined input operation by the user. In this case, the riding monster 303 is deleted from the field space, and only the human character 301 remains in the space.

[0082] The apparent relationship between the human character 301 and the riding monster 303 according to the present invention is not limited to "riding", and may be appropriately determined according to the appearance of the riding monster 303. For example, when the human character 301 and the bird-shaped riding monster 303 are associated with each other, the riding monster 303 may jump up in a manner grabbing the human character 301."

(E) "[0151] Furthermore, it is desirable that the fellow character associated with the equipment be a riding monster. The human character may be, for example, a character related to the progress of a game story or a character that can be acquired according to the progress of the story (that is, 'join a friend'). On the other hand, a riding monster can participate in a battle for the first time by being associated with an operable character. In other words, a riding monster cannot participate in a battle by itself. Therefore, it can be prevented that the main character is associated with the equipment and cannot participate in the battle. Further, by avoiding the use of the human character for equipment enhancement and by using the riding monster, it is possible to prevent the progress of the story and hindering of the understanding of the

user's story."

B   The following points can be read from the described matters indicated in the above-mentioned A.

(A) Matters that can be read from the above-mentioned A(A)

a   When a game is started, a predetermined game space is constructed, and, in the game space, a predetermined operation character is arranged.

b   It may be a game in which a user selects one character from operable characters among characters possessed by the user itself to operate the character, and it may be a game in which the operable characters are a plurality of characters (for example, a human character and a riding monster which are discussed below, or a plurality of human characters and the like) at one time.

(B) Matters that can be read from the above-mentioned A(B)

a   In a field space that is an example of the game space, at least one operation character is arranged, and, in the field space, there is a state that a human character is arranged.

b   In the field space, there is a state that a human character is arranged in a state of riding on a riding monster.

c   A riding monster is a kind of operable character, and is a kind of character that becomes a friend (that is, a friend in the battle) of the human character.

d   A riding monster may be capable of participating in a battle instead of the human character.

e   A riding monster is a character that becomes a vehicle for the human character.

f   The character participating in the battle is a character that is arranged within the game space during a battle with a certain enemy character, and is a character that becomes a friend of an operation character of the user during the battle.

g   The character participating in the battle does not necessarily perform an action such as an attack on the enemy character, and does not necessarily receive an action from the enemy character.   For example, even when only the riding monster performs various actions such as an attack based on the input operation although the human character is riding on the riding monster, the human character is deemed to be participating in the battle.

(C) Matters that can be read from the above-mentioned A(C)

a   By the user performing operation to designate a riding monster and input operation to instruct riding, the human character is associated with the designated riding monster, and the human character is arranged in a posture and a position riding on the riding monster.

b   When the human character is mounted on the riding monster, the riding human character may be prevented from performing actions such as an attack and defense in subsequent battles.

c   It may be such that, although both the riding monster and the human character are allowed to participate in the battle, input operations related to various actions in the battle are performed only with respect to one of them.

(D) Matters that can be read from the above-mentioned A(D)

a   The riding state of the human character may be canceled in accordance with a predetermined input operation by the user.   In this case, the riding monster is deleted from the field space, and only the human character remains in the space.

(E) Matters that can be read from the above-mentioned A(E)

a   The riding monster can participate in a battle for the first time by being associated with an operable character, and the riding monster cannot participate in a battle by itself.

(F) When the above matters are summarized,

in the originally attached description and the like, regarding a "monster character" as an operable character, only a "riding monster" is described, and, regarding a "human character" and a "monster character" designated as operation characters, it is only described that only the "human character" is made to participate in the battle, and, the "human character" is made to mount on the "monster character" to participate in the battle; therefore, even considering that it is described to the effect that it is possible to select a plurality of characters as operation characters in the game space, the only matter that can be read from this is that both of the "human character" and the "riding monster character" are made to participate in a battle, but it cannot be read to the extent that only the "riding monster character" is made to participate in the battle.

Then, even considering that it is described that a "riding monster" "may be capable of participating in a battle instead of a human character", it cannot be read to the extent that only a "riding monster" is selected to be made to participate in a battle, and even considering that a "riding monster" is a character that becomes a vehicle for a human character, and that it is illustrated that "even when only the riding monster performs various actions such as an attack based on the input operation although the human character is riding on the riding monster, the human character is deemed to be participating in the battle", it should be concluded that the matter that a "riding monster" "may be capable of participating in a battle instead of a human character" only describes that, when the human character is riding on the riding monster, various kinds of action such as an attack based on input operation may be performed only by the riding monster.

Furthermore, even examining regarding "operation by the user" related to

selecting one of "characters designated as an operable character" and making the selected one participate in a battle, it is only described, in the originally attached description and the like, that "by a user performing operation to designate a riding monster and input operation to instruct riding, the human character is arranged in a posture and a position riding on the riding monster", and that "the riding state of the human character may be canceled in accordance with a predetermined input operation by the user", and, in addition, although it is described that, when the riding state is canceled, "the riding monster is deleted from the field space, and only the human character remains in the space", even in view of this description, it cannot be read to the extent that only a "riding monster" is made to participate in a battle.

In this connection, also from the description of another embodiment that a riding monster can participate in a battle for the first time by being associated with an operable character, and the riding monster cannot participate in a battle by itself (the above-mentioned A(E)), it is understood as it is not supposed in the Invention that only the "monster character" is made to participate in a battle.

C   As above B, there is no alternative but to say that there is no description or suggestion in the originally attached description and the like about "switching only a monster character designated as an operable character as a character to participate in a battle by a second input operation by a user".

Furthermore, even in view of the common general technical knowledge, it cannot be said that the matter of "switching only a monster character designated as an operable character as a character to participate in a battle by a second input operation by a user" is a matter that is obvious for a person skilled in the art from the descriptions of the originally attached description and the like, either.

D   The Appellant alleges that, while indicating that it is described, in paragraph 0077 of the description of the present application, that "The riding monster 303 may be able to participate in a battle instead of the human character 301.", and, in paragraph 0078, that "The "character participating in the battle" is a character arranged in the game space during a battle with an enemy character (described later), and is a character that becomes a friend of the user's operation character during the battle", if these descriptions are interpreted rationally, this leads to a conclusion that there can be a case where a riding monster is arranged in the game space instead of a human character.

However, the description of [0078] pointed out by the Appellant is one as indicated in the above-mentioned A(B), and it is reasonable to understand that the

description of paragraph [0078] is one that describes to the effect that, when a "human character" is mounted on a "riding monster", the "human character" that is mounted on the "riding monster" that has become operable is a "character participating in the battle".

Furthermore, as in the above B(E), the description of paragraph [0077] that "The riding monster 303 may be able to participate in a battle instead of the human character 301." is only understood as it describes that, when a human character is riding on a riding monster, various kinds of action such as an attack based on input operation may be performed only by the riding monster.

As described above, it cannot be said that it can be rationally read, from the description of paragraphs [0077] and [0078], that "there can be a case where a riding monster is arranged in the game space instead of a human character", as the Appellant alleges.

(3) Summary

As described above, within the Amendment, the amendment that specifies "constructing the predetermined game space to arrange the designated operable characters, and switching any one of the human character or the monster character designated as the operable character as a character to participate in a battle by a second input operation by the user" in Claims 1, 11, and 12 is not one that is made within the range of the matters described in the originally attached description and the like, because it is one that introduces a new technical matter of performing processing that "in response to input operation of a user, only a monster character is made to participate in a battle instead of a human character, and is arranged in a game space as an operable character" in relation to the technical matters derived by summing up all the descriptions of the originally attached description and the like.

2 Regarding the above-mentioned No. 3 (3)

(1) The Amended matter in the Amendment indicated in (3) of the reasons for refusal stated in the examiner's decision is "without passing through a state capable of making the human character carry out an action according to operation by the user in the predetermined game space by the third input operation, the monster character is not arranged in a manner capable of battling based on the third input operation in the predetermined game space" of Claim 3, and, although it is not necessarily clear what this tries to specify, judging from "the third input operation" here being input operation "for making the operable character operate", it is understood as it is one for specifying "without having made a 'human character' be in 'a state capable of carrying out an

operation according to the third input operation' before a 'monster character' is arranged, the relevant 'monster character' is 'not arranged in the "game space" in a state capable of battling based on operation according to the third input operation'"; therefore, whether or not such matter (hereinafter, referred to as "Amended Matter (3)") is described in the originally attached description and the like will be examined below.

(2) Matters described in the originally attached description and the like

A   In the originally attached description and the like, there are descriptions indicated in (B), (C), and (E) of the above-mentioned 1(2)A relating to Amended Matter (3).

B   The following points can be read from the described matters indicated in the above A.

(A) Matters that can be read from the above-mentioned 1(2)A(B)

b   In the field space, there is a state that a human character is arranged in a state riding on a riding monster.

c   The riding monster is a kind of an operable character, and is a kind of character that becomes a friend (that is, a friend in the battle) of the human character.

d   The riding monster may be capable of participating in a battle instead of the human character.

e   The riding monster is a character that becomes a vehicle for the human character.

f   The character participating in the battle is a character that is arranged within the game space during a battle with a certain enemy character, and is a character that becomes a friend of an operation character of the user during the battle.

g   The character participating in the battle may not necessarily perform an action such as an attack on the enemy character, and may not necessarily receive an action from the enemy character.   For example, even when only the riding monster performs various actions such as an attack based on the input operation although the human character is riding on the riding monster, the human character is deemed to be participating in the battle.

(B) Matters that can be read from the above-mentioned 1(2)A(C)

a   By the user performing operation to designate a riding monster and input operation to instruct riding, a human character is associated with the designated riding monster, and the human character is arranged in a posture and a position riding on the riding monster.

b   When the human character is mounted on the riding monster, the riding human character may be prevented from performing actions such as an attack and defense in

subsequent battles.

c   It may be such that, although both the riding monster and the human character are allowed to participate in the battle, input operations related to various actions in the battle are performed only with respect to one of them.

(C) matters that can be read from the above-mentioned 1(2)A(E)

a   A riding monster is capable of participating in a battle for the first time by being associated with an operable character.   In other words, a riding monster cannot participate in a battle by itself.

(D) When the above matters are summarized, in the originally attached description and the like, although it is described that, by a user "performing operation to designate a riding monster and input operation to instruct riding", it is possible to make "the human character be arranged in a posture and a position riding on the riding monster", and that, after a human character having ridden on a riding monster, only either one of these is made to be operable, and so on, there is no description or suggestion at all about a matter that it is possible to make, when only a human character is arranged in the state that a riding monster is not arranged, the relevant human character be in a state capable of being operated by user operation or in a state not capable of being operated by the user operation, and about a control procedure related to that, and also there is no description or suggestion about a matter that, when performing operation to designate a riding monster and input operation to instruct riding, what kind of state the human character is in; that is, whether or not it is a state capable of being operated by user operation.   In addition, even if a "riding monster" "cannot participate in a battle by itself", it cannot be derived from this that a "human character" before riding on the "riding monster" is inevitably made to be in "a state capable of being operated by user operation".

C   As described above, Amended Matter (3) is not described and suggested in the originally attached description and the like, and, even if the common general technical knowledge is taken into consideration, it cannot be said that Amended Matter (3) is a matter that is obvious for a person skilled in the art from the descriptions of the originally attached description and the like, either.

D   Appellant's allegation

(A) The Appellant points out that it is described, in paragraph [0151], that "a riding monster can participate in a battle for the first time by being associated with an operable character.   In other words, a riding monster cannot participate in a battle by

itself.", and, regarding a "riding monster" "being associated with an operable character", there is a description in paragraph [0079] that "associates the human character with the designated riding monster", and, in paragraph [0078], there is described the definition of the "character participating in the battle", and it is clearly indicated that "The 'character participating in the battle' is a character arranged in the game space during a battle with an enemy character (described later), and is a character that becomes a friend of the user's operation character during the battle.", and alleges that, by a person skilled in the art coming in contact with these descriptions, the person skilled in the art understands rationally that that matter that "without undergoing operation to associate a human character with a monster character, the monster character is never made to carry out a battle by itself" is described in the description, and, therefore, Amended Matter (3) is described in the originally attached description and the like.

(B) However, Amended Matter (3) is not one that specifies that "without undergoing operation to associate a human character with a monster character, the monster character is never be made to carry out a battle by itself", but, it is understood that it is one, as instructed in the above-mentioned (1), that specifies that "without having made a 'human character' be in 'a state capable of being allowed to be operated according to the third input operation' before a 'monster character' is arranged, the relevant 'monster character' is 'not arranged in the "game space" in a state capable of battling based on operation according to the third input operation", and, therefore, there is no alternative but to say that the Appellant's allegation is not reasonable in its premise.

(3) Summary

As described above, in the Amendment, the amendment including a matter that specifies Amended Matter (3) in Claim 3 is one that introduce new technical matters in relation to the technical matters derived by summing up all the descriptions of the originally attached description and the like, and, therefore, it is not one that is made within the scope of the matters described in the originally attached description and the like.

3 Regarding the above-mentioned No. 3 (4)
(1) Whether or not the recitation that "in the fifth step, by accepting a fourth input operation to select one human character among the plurality of human characters, the one human character selected by the fourth input operation is made to carry out the action in response to the third input operation, whereas the human characters other than the one human character are made to carry out an action by automatic operation" of

Claim 4 (hereinafter, referred to as "Amended Matter (4)") that is the amended matter in the Amendment indicated in (4) of the reasons for refusal stated in the examiner's decision is described in the originally attached description and the like will be examined as follows.

(2) Described matters in the originally attached description and the like
A   In the originally attached description and the like, there are the following descriptions in addition to the above-mentioned 2(2)A(A) relating to Amended Matter (4).

(A) "[0089] The enemy character 305 is an NPC (non player character) whose action is controlled by the battle processing unit 112A according to a predetermined action pattern.   The enemy character 305 may have the same appearance and ability (movement and attack method, etc.) as the riding monster 303 or be a kind of the automatic battle monster 304."

(B) "[0139] The user can cause the riding monster on which the human character is riding to participate in the battle together with the human character.   In addition, the user can cause an automatic battle monster to participate in the battle together with the human character or the riding monster.   Therefore, the fellow character is a riding monster or an automatic battle monster.   In addition, when it is possible to cause a human character to participate in a battle as an NPC, the human character is also included in the fellow character."

B   The following points can be read from the described matters indicated in the above A.

(A) Matters that can be read from the above-mentioned 1(2)A(A)
a   When a game is started, a predetermined game space is constructed, and, in the game space, a predetermined operation character is arranged.
b   It may be a game in which a user may select one character from operable characters among characters possessed by the user itself to operate the character, and it may be a game in which the operable characters are a plurality of characters (for example, a human character and a riding monster which are discussed below, or a plurality of human characters and the like) at one time.
c   Instead of performing all the movements of each character according to the user's input operation, semi-automatic operation may be adopted in which only a part of the movements such as the timing of the attack, the direction of movement, or the like is operated by the user.

(B) Matters that can be read from the above-mentioned A(A)

a   An enemy character is an NPC whose action is controlled by the battle processing unit in accordance with a predetermined action pattern.

(C) Matters that can be read from the above-mentioned A(B)

a   When it is possible to cause a human character to participate in a battle as an NPC, the human character is also included in the fellow character.

(D) When the above matters are summarized, it can be said that, in the originally attached description and the like, it is described that a plurality of human characters can be selected at a time as characters operable by a user, and, in addition, it is described that input operation regarding a character may be semi-automatic; however, the relevant description is only shown as an example of input operation of an operable character, and it is not one in which it is described that some of characters among a plurality of characters are made to operate semi-automatically.

Then, even if it can be said that it is suggested that an enemy character is an NPC and it is possible to make a human character participate in a battle as an NPC, it cannot be said in the first place that an NPC character is an operable character, and, even if it is pushed aside, it cannot be read from the relevant descriptions that one human character that is selected from a plurality of human characters is made to be operable by a user, and the other human characters are made to participate in a battle as NPC characters, either.

In view of the above, it is not described, in the originally attached description and the like, that "characters operable by a user" are operated by "automatic operation", and, in addition, it is recognized that there is no description or suggestion that one human character selected from a plurality of human characters designated as characters operable by a user is made to be operable by the user, and the other human characters are made to be operated automatically.

C   As described above, there is no description and suggestion about Amended Matter (4) in the originally attached description and the like, and, in addition, even if the common general technical knowledge is taken into consideration, it cannot be said that Amended Matter (4) is a matter that is obvious for a person skilled in the art from the descriptions of the originally attached description and the like.

D   Appellant's allegation

(A) The Appellant indicates that it is described in paragraph [0139] that "it is

possible to make a human character participate in a battle as an NPC", and, regarding the definition of "NPC", it is described in paragraph [0089] as "an NPC whose action is controlled in accordance with a predetermined action pattern", and alleges that when a person skilled in the art comes into contact with paragraph [0072] and these descriptions, the person can understand that the matter that "by accepting a fourth input operation to select one human character among the plurality of human characters, the one human character selected by the fourth input operation is made to carry out the action in response to the third input operation, whereas the human characters other than the one human character are made to carry out an action by automatic operation" is described in the description.

(B) However, as examined in above C(D), even if it is suggested in paragraph [0139] that "it is possible to make a human character participate in a battle as an NPC", it cannot be said in the first place that an NPC character is an operable character, and, even if it is pushed aside, it cannot be read from the relevant descriptions that one human character that is selected from a plurality of human characters is made to be operable by a user, and the other human characters are made to participate in a battle as NPC characters, either.

(C) When the descriptions of paragraph [0139] that are taken by the Appellant as a ground are examined further, the relevant description of paragraph [0139] is a description that says, following the descriptions of "[0137] [Embodiment 3], The game system according to the present invention may associate a friend character who can participate in a battle with the equipment of the operation character. Then, when a fellow character is associated with the equipment, the fellow character may not be allowed to participate in subsequent battles, and an effect corresponding to the fellow character may be given to the equipment.

[0138] The user can operate a human character or a riding monster as an operation character. Therefore, the equipment of the operation character is, for example, the weapon 302, armor, and an accessory of the human character 301, and the weapon, armor, an accessory, etc. of the riding monster 303.", that "[0139] The user can cause the riding monster on which the human character is riding to participate in the battle together with the human character. In addition, the user can cause an automatic battle monster to participate in the battle together with the human character or the riding monster. Therefore, the fellow character is a riding monster or an automatic battle monster. In addition, when it is possible to cause a human character participate in a battle as an NPC, the human character is also included in the fellow character.", and thus the description that "when it is possible to cause a human character participate in a

battle as an NPC, the human character is also included in the fellow character." of paragraph [0139] is not one that describes causing an "operation character" capable of being operated by a user to participate in a battle as an NPC, but it is reasonable to understand as it is one that describes that a human character participating in a battle as an NPC can become a "fellow character"; that is, a "fellow character" when "a friend character who can participate in a battle" is associated with an accessory of an "operation character", and, therefore, it is inappropriate to understood, from the relevant description, that it is suggested that an "operation character" is made to participate in a battle as an NPC.

(D) As described above, the Appellant's allegation cannot be employed.

(3) Summary

As described above, in the Amendment, the amendment including the matter specifying Amended Matter (4) in Claim 4 introduces new technical matters in relation to the technical matters derived by summing up all the descriptions of the originally attached description and the like, and, therefore, it is not one that is made within the range of the matters described in the originally attached description and the like.

4 Regarding the above-mentioned No. 3 (5)
(1) Whether or not the matter that "further making the processor to execute: an eighth step of, by the user executing a battle in the predetermined game space, giving a reward item to the user without resort to billing processing; and a ninth step of giving a valuable item different from the reward item to the user by billing processing, wherein, by consuming the reward item or the valuable item in the second step, the selection and giving is performed" of Claim 9 (hereinafter, referred to as "Amended Matter (5)") that is an amended matter in the Amendment indicated in (5) of the reasons for refusal stated in the examiner's decision is described in the originally attached description and the like is examined below.

(2) Described matters in the originally attached description and the like
A   In the originally attached description and the like, there are the following descriptions relating to Amended Matter (5).

(A) "[0046] The server 200 communicates with each user terminal 100 and has a function of supporting the user terminal 100 to advance the game.   For example, the server 200 performs sale of valuable data and provision of services.   When the game is a multiplayer game, the server 200 may have a function of communicating with

each user terminal 100 participating in the game and mediating exchanges between the user terminals 100.   The server 200 functions as the control unit 210 and the storage unit 220 through the cooperation of the processor 20, the memory 21, the storage 22, the communication IF 23, the input/output IF 24, and the like."

(B) "[0064] <u>The lottery unit 112B executes a process related to a lottery for acquiring a character.   The lottery method is not particularly limited</u>.   For example, the lottery unit 112B may determine a lottery result based on a cabinet (lottery data table) included in the game information 232 in accordance with a predetermined input operation by the user.   The lottery unit 112B notifies the monster granting unit 112C of the result of the lottery; that is, the character to be given to the user."

(C) "[0094] The state (C) of FIG. 4 is a diagram showing a state where the battle is won.   For example, as shown in the figure, it is assumed that the human character 301 battles alone and defeats the enemy character 305.   In this case, <u>the battle processing unit 112A gives to the user a reward item corresponding to the content or result of the battle</u>.   Specifically, <u>the battle processing unit 112A increases a value indicating the number of reward items included in the user information 233</u>.   Note that the battle processing unit 112A may change the type and number of reward items to be given according to the type and level of the enemy character 305.   Further, the object control unit 114 or the display control unit 115 may arrange and display the UI object 306 or the UI image 306 indicating the type and number of reward items obtained by the user (granted to the user).

[0095] As will be described in detail later, <u>the battle processing unit 112A may determine a character to be given to the user when the reward item is given and the possession number of the reward items becomes a predetermined number or more</u>. The character to be given may be any one of the human character 301, the riding monster 303, and the automatic battle monster 304, but is preferably the riding monster 303 or the automatic battle monster 304."

(D) "[0104] If it is determined that the battle have been completely finished, the battle processing unit 112A gives a reward item to a user according to the content of this battle (S108).   Furthermore, the battle processing unit 112A determines whether or not a predetermined number of reward items have been accumulated (S110).   When a predetermined number of reward items are not accumulated (NO in S110), the battle processing unit 112A does not perform subsequent processing.   On the other hand, when a predetermined number of reward items are accumulated (YES in S110), the battle processing unit 112A consumes the predetermined number of reward items possessed by the user (S112) and, according to the reward items, determines a monster

to be given to the user (S114).   For example, the battle processing unit 112A determines a monster to be given to the user according to the type of the reward items. The monster granting unit 112C grants the determined monster to the user (S116)."

(E) "[0109] (Character granting by lottery) On the other hand, the lottery granting process is a process of granting a monster to the user according to a lottery result.   FIG. 7 is a flowchart showing an example of the lottery granting process in the game system 1.   The lottery granting process shown in FIG. 7 is started when the user performs input operation to instruct a lottery at an arbitrary timing in the game.

[0110] The operation receiving unit 111 of the user terminal 100 accepts input operation instructing a lottery (S200).   When the operation receiving unit 111 accepts the input operation, the lottery unit 112B determines a monster to be given to the user by a lottery (S202).   The monster granting unit 112C grants the monster determined by the lottery unit 112B to the user (S204).   That is, the monster granting unit 112C adds data of the monster (one record in FIG. 3) determined by the lottery unit 112B to the character data 233A included in the user information 233 of the user terminal 100.   Finally, the game progress unit 112 notifies the display control unit 115 of the lottery result in S202, and the display control unit 115 creates an image showing the lottery result and displays it on the display unit 152 (S206).

[0111] Note that some consideration may be necessary for the user to execute the lottery. For example, it may be such that, when the user has a predetermined number or more of predetermined lottery items, the game progress unit 112 performs the processing from S202 onward, and, when the user does not have the predetermined number or more of the predetermined lottery items, does not perform the processing from S202 onward. Furthermore, when performing the processing from S202 onward, the game progress unit 112 may decrease the number of lottery items stored in the user information 233 of the storage unit 120 by the predetermined number.   That is, the game progress unit 112 may make lottery items of the predetermined number be consumed when performing the processing from S202 onward."

B   From the described matters indicated in the above-mentioned A, the following points can be read.

(A) Matters that can be read from the above-mentioned A(A)

a   The server performs sale of valuable data.

(B) Matters that can be read from the above-mentioned A(B)

a   The lottery unit executes a process related to a lottery for acquiring a character.

b   The lottery unit determines a lottery result; that is, a character to be given to a user.

(C) Matters that can be read from of the above-mentioned A(C) and A(D)

a   The battle processing unit gives a reward item according to the content or result of the battle to the user.

b   The battle processing unit changes the type and number of reward items to be given according to the type and level of the enemy character.

c   When a predetermined number of reward items are accumulated by giving a reward item, the battle processing unit determines a monster to be given to the user.

(D) Matters that can be read from the above-mentioned A(E)

a   The lottery granting process is a process of determining a monster to be given to the user by a lottery by the lottery unit, and granting the monster to the user.

b   The lottery granting process is carried out by the user performing input operation to instruct a lottery at an arbitrary timing in the game.

c   Some consideration may be necessary for the user to execute the lottery.

d   It may be such that, when the user has a predetermined number or more of predetermined lottery items, the game progress unit performs the processing to determine a monster to be given to the user by a lottery, and, when the user does not have the predetermined number or more of the predetermined lottery items, does not perform the processing to determine a monster to be given to the user by a lottery.

e   When performing the processing to determine a monster to be given to the user by a lottery, the game progress unit makes a predetermined number of lottery items to be consumed.

(E) When the above matters are summarized, although it is described in the originally attached description and the like that "the server" performs "sale of valuable data", there is no description at all about the relation between the relevant "valuable data" and a lottery item.

In addition, although it is described that a "reward item" is given by the battle processing unit to the user according to the content or result of a battle, it is only described that the relevant "reward item" is one that is used in order to be given to a character when a predetermined number or more of reward items are possessed, and there is no description or suggestion that the relevant "reward item" is used in the lottery processing, or can be used as a consideration of the lottery processing.

Then, although it can be said that it is described that, in performing the lottery processing, some sort of consideration is required; that is, possession of a predetermined number of predetermined lottery items is made to be a condition, or consumption of a predetermined number of lottery items on the occasion of performing the lottery processing is made to be a condition, there is no description at all about in what way the

user obtains the relevant lottery item, there is no explicit description found regarding whether or not the relevant lottery item is a chargeable one, and there is no description at all in the originally attached description and the like including a description regarding the relevant lottery item being given to the user by billing processing, and, in the first place, a description regarding the billing processing.

Furthermore, there is no description or suggestion that, in the lottery processing unit, a "reward item" can be used as a lottery item.

In view of the above, it cannot be acknowledged that it is described, in the originally attached description and the like, that "a valuable item is given" to "the user" by "billing processing", and that, by consuming "a "reward item" given to the user" "by executing a battle, without resort to billing processing" or "a valuable item different from the reward item" "given to the user by billing processing", "the selection and giving" (lottery processing) is performed.

C   As described above, it cannot be acknowledged that Amended Matter (5) is described in the originally attached description and the like, and, in addition, even taking the common general technical knowledge into consideration, it cannot be said that Amended Matter (5) is a matter that is obvious for a person skilled in the art from the descriptions of the originally attached description and the like.

D   Appellant's allegation

(A) The Appellant alleges that, from the specified matters in Claim 9 after the Amendment, and from a fact that it is described, in paragraph [0111], that "some consideration may be necessary for the user to execute the lottery", and, in paragraph [0064], that a lottery is performed according to input operation by the user, it is understood rationally by a person skilled in the art that the gist of "some sort of consideration" in paragraph [0111] is that it is not possible for a user to perform a lottery without limitation; therefore, in the description of the present application, it can be said that there is described, as an item that can be obtained by the user, a "reward item" that can be obtained by performing a battle and "valuable data" that can be obtained by the user purchasing valuable data to be sold, and, therefore, it can be understood rationally that some sort of consideration is required for performing a lottery, and such "reward item" and "valuable data" may be possible as a consideration thereof.

(B) However, the problem here is whether or not the matter described in Claim 9 amended by the Amendment is a matter that is described in the originally attached description and the like, and thus it has to be said that it is unreasonable in its

premise to use as a ground, on the occasion of examination thereof, the recitation of Claim 9 after the Amendment.

Furthermore, even if that point is pushed aside, as indicated in the above-mentioned D, there is no description at all in the originally attached description and the like that a lottery item is given to the user by billing processing, including a description related to the billing processing, and also there is no description or suggestion that, in the lottery processing unit, a "reward item" can be used as a lottery item; therefore, it is obvious that it cannot be said that it can be rationally understood from the description of the originally attached description and the like that some sort of consideration is required for performing a lottery, and such "reward item" and "valuable data" may be possible as a consideration thereof.

Therefore, the Appellant's allegation cannot be adopted.

(3) Summary

As described above, in the Amendment, the amendment including the matter to specify Amended Matter (5) in Claim 9 is one that introduces a new technical matter in relation to the technical matters derived by summing up all the descriptions of the originally attached description and the like, and, therefore, it is not one that is made within the range of the matters described in the originally attached description and the like.

5 Regarding the above-mentioned No. 3 (6)

(1) Whether or not that matter "in the third step, a request for synchronization of multi-play is transmitted and received to and from a terminal of each user, and a result of designation of, among characters possessed by each of the plurality of users taking part in the multi-play, a human character and a monster character that can be operated by each user in the game space as an operable character of each user in advance is received from the terminal of each user, and wherein, in the fourth step and the fifth step, a game is made to progress in a manner sharing the predetermined game space with each user taking part in the multi-play" of Claim 10 that is the amended matter in the Amendment indicated in the item (6) of the reasons for refusal stated in the examiner's decision (hereinafter, referred to as "Amended Matter (6)") is described in the originally attached description and the like will be examined below.

(2) Described matters in the originally attached description and the like

A   Regarding matters related to Amended Matter (6) in the originally attached

description and the like

(A) In the originally attached description and the like, there is no description at all regarding a procedure in which "a request for synchronization of multi-play is transmitted and received to and from a terminal of each user".

(B) Even examining in relation to the procedure of "accepting a first input operation for designating, in advance of constructing a predetermined game space, among characters possessed by the user, a human character and a monster character operable by the user in the game space in advance as an operable character" that is "the third step" that pertains to Amended Matter (6), the supporting description thereof is the description of "[0071] (Game Space and Arrangement of Object) The game progress unit 112 of the user terminal 100 starts a game based on the game program 231. When the game starts, the object control unit 114 constructs a predetermined game space according to the instruction of the game progress unit 112, and arranges a predetermined operation character in the game space." of the originally attached description in the first place, but, from this, it is not possible to read the procedure that "a request for synchronization of multi-play is transmitted and received to and from a terminal of each user, and a result of designation of, among characters possessed by each of the plurality of users taking part in the multi-play, a human character and a monster character that can be operated by each user in the game space as an operable character of each user in advance is received from the terminal of each user".

Then, in addition to that, there is no description related to the procedure of, before "constructing a game space", "designating a human character and a monster character operable by the user in the game space as an operable character" among "characters possessed by the user".

(C) Although there is a description, in paragraph [0017], that "When the user terminal 100 communicates with a plurality of controllers 1020, by each user grasping each controller 1020, multi-play can be realized by the one user terminal 100 without communicating with other devices such as the server 200 via the network 2. Further, by each user terminal 100 being connected to each other by a wireless standard such as a wireless local area network (LAN) standard (communication connection is performed without via the server 200), multi-play can be realized locally by a plurality of user terminals 100....", and, in paragraph [0043] that "Note that the game realized by the game system 1 may be capable of multi-play. For example, the game may be a MMORPG (Massively Multiplayer Online Role-Playing Game) in which a plurality of users simultaneously operate their own operating characters in the same game space via their user terminals 100 to advance the game.", from these descriptions, it can be only

read that multi-play is possible and there are ones provided with a hardware environment for executing multi-play; therefore, it cannot be acknowledged that there is described the procedure that, in "the third step", "a request for synchronization of multi-play is transmitted and received to and from a terminal of each user, and a result of designation of, among characters possessed by each of the plurality of users taking part in the multi-play, a human character and a monster character that can be operated by each user in the game space as an operable character of each user in advance is received from the terminal of each user", or there is a suggestion regarding that point.

B   As described above, it cannot be acknowledged that Amended Matter (6) is described in the originally attached description and the like, and, further, even the common general technical knowledge is taken into consideration, it cannot be said that Amended Matter (6) is an obvious matter for a person skilled in the art from the descriptions of the originally attached description and the like.

C   Appellant's allegation
       (A) The Appellant alleges that, on the ground that (i) there is a description regarding a point that multi-play is possible and a description regarding a hardware environment for performing multi-play, and (ii) it is described as "designating, in advance of constructing a predetermined game space, among characters possessed by the user, a human character and a monster character operable by the user in the game space in advance as an operable character" as shown in the constitution of Claim 1 (1D), also the constitution of Claim 10 (10D) is within the range of the matters described in the description and the like originally attached to the application, and thus does not introduce a new technical matter.
       (B) However, even the above-mentioned (i) and (ii) alleged by the Appellant is taken into consideration, it cannot be said that Amended Matter (6) is described in the originally attached description and the like as described above, and, therefore, the Appellant's allegation is not one that influences the above-mentioned judgment.

(3) Summary
       As described above, in the Amendment, the amendment including specifying Amended Matter (6) in Claim 10 is one that introduces a new technical matter in relation to the technical matters derived by summing up all the descriptions of the originally attached description and the like, and, therefore, it is not one that is made within the range of the matters described in the originally attached description and the

like.

No. 5 Closing

As examined in the above-mentioned No. 4, the Amendment (the amendments according to the written amendment submitted on September 5, 2018) is not one made within the range of the matters described in the originally attached description and the like, and, therefore, it does not meet the requirement stipulated in Article 17-2(3) of the Patent Act.

Accordingly, the present application is an application for which a final decision shall be made to the effect that it falls under the category of the article 49(1) of the Patent Act, and thus should be rejected.

Therefore, the appeal decision shall be made as the above conclusion.

May 22, 2020

Chief administrative judge:　FUJITA, Toshihiko
Administrative judge:　OZAKI, Atsushi
Administrative judge:　HATAI, Junichi