

Appeal Decision

Appeal No. 2019-15846

Appellant SANKYO CO. LTD.

The case of appeal against the examiner's decision of refusal of Japanese Patent Application No. 2017-149927, entitled "Game machine", [the application published on Oct. 26, 2017: Japanese Unexamined Patent Application Publication No. 2017-192820] has resulted in the following appeal decision:

Conclusion

The appeal of the case was groundless.

Reason

No. 1 History of the procedures

The application related to this case (hereinafter, referred to as "the Present Application") is a divisional application filed on Aug. 2, 2017 from Japanese Patent Application No. 2015-52672 filed on Mar. 16, 2015, reasons for refusal were notified as of May 30, 2018, a written opinion and a written amendment were submitted on Aug. 1 of the same year, reasons for refusal were notified as of Dec. 17 of the same year and, at the same time, the Applicant was ordered to hold consultation following a written directive and to notify the result thereof, a written opinion and a written amendment were submitted on Mar. 5, 2019, a decision of refusal (hereinafter, referred to as "Examiner's decision") was made as of Aug. 26, 2019 (date of delivery: Sep. 3 of the same year), and, against this, a request for an appeal against an examiner's decision of refusal was filed on Nov. 26, 2019 and, at the same time, a written amendment was submitted.

No. 2 Decision to dismiss the amendment

[Conclusion of Decision to Dismiss Amendment]

The amendment according to the written amendment submitted on Nov. 26, 2019 (hereinafter, referred to as "the Amendment") is dismissed.

[Reason]

1 Details of Amendment

The Amendment includes an amendment made to the scope of claims, and includes an amendment to make

"A game machine to perform variable display, the game machine capable of controlling a game into an advantageous state that is advantageous for a player based on a specific display result being displayed, the game machine comprising

a variable display execution means to perform variable display by any of a plurality of variable display pattern types, wherein

the variable display execution means comprises:

a first means to start variable display and make the variable display be definitely stopped via a temporary-stop mode involving a predetermined operation; and

a second means to start variable display and make the specific display result be definitely stopped after executing a specific performance via a temporary-stop mode, wherein

a period of the temporary-stop mode differs according to a type of a variable display pattern, wherein

regardless of a type of a variable display pattern, temporary stop is possible by a temporary-stop mode including a common operation,

a temporary-stop mode includes a first temporary-stop mode that suggests to be controlled into the advantageous state, and a second temporary-stop mode that suggests not to be controlled into the advantageous state, wherein

in a case of the first temporary-stop mode, change to the second temporary-stop mode is not made, whereas

in a case of the second temporary-stop mode, there are a case where change into the first temporary-stop mode is made, and a case where change into the first temporary-stop mode is not made, and wherein

at a time when change into the first temporary-stop mode is made in the second temporary-stop mode, a period of the second temporary-stop mode is longer than a period of the second temporary-stop mode when change into the first temporary-stop mode is not made." recited in Claim 1 before the Amendment amended by the written amendment submitted on Mar. 5, 2019, be amended to

"A game machine to perform variable display, the game machine capable of controlling a game into an advantageous state that is advantageous for a player based on a specific display result being displayed, the game machine comprising

a variable display execution means to perform variable display by any of a plurality of variable display pattern types, wherein

the variable display execution means comprises:

a first means to start variable display and make the variable display be definitely

stopped via a temporary-stop mode involving a predetermined operation; and

a second means to start variable display and make the specific display result be definitely stopped after executing a specific performance via a temporary-stop mode, wherein

a period of the temporary-stop mode differs according to a type of a variable display pattern, wherein

regardless of a type of a variable display pattern, temporary stop is possible by a temporary-stop mode including a common operation,

a temporary-stop mode includes a first temporary-stop mode that suggests to be controlled into the advantageous state, and a second temporary-stop mode that suggests not to be controlled into the advantageous state, wherein

in a case of the first temporary-stop mode, change to the second temporary-stop mode is not made, whereas

in a case of the second temporary-stop mode, there are a case where change into the first temporary-stop mode is made, and a case where change into the first temporary-stop mode is not made, wherein

at a time when change into the first temporary-stop mode is made in the second temporary-stop mode, a period of the second temporary-stop mode is longer than a period of the second temporary-stop mode when change into the first temporary-stop mode is not made, and wherein

a suggestion performance suggesting control into the advantageous state after start of variable display until a reach performance starts is displayed, the suggestion performance is eliminated after start of the reach performance, and the suggestion performance is displayed once again when the reach performance ends." (the underlines were added by the collegial body in order to clearly specify the portions of before and after the amendment).

2 Propriety of amendment

(1) Purpose of amendment

The Amendment is an amendment that restricts "advantageous state", which is a matter necessary for specifying the invention according to Claim 1 before the Amendment, in such a way that "a suggestion performance suggesting control into the advantageous state after start of variable display until a reach performance starts is displayed, the suggestion performance is eliminated after start of the reach performance, and the suggestion performance is displayed once again when the reach performance ends", and the fields of industrial application and the problems to be solved are identical

between the invention recited in Claim 1 before amendment and the invention recited in Claim 1 after amendment, and, therefore, it is for the purpose of restriction of the scope of claims of Article 17-2(5)(ii) of the Patent Act.

(2) New matters

The Amendment is an amendment that is based on the descriptions of [0279] to [0280] and FIG. 24 in the description, the scope of claims, or the drawings originally attached to the application of the Present Application, and is not one that introduces a new technical matter, and, therefore, satisfies the requirement stipulated in Article 17-2(3) of the Patent Act.

3 Consideration on requirement for independent patentability

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

(1) The Amended Invention

When showing the Amended Invention again, it is as follows (Note that the symbols A to M were added by the collegial body for separate description).

"M A game machine

A to perform variable display, the game machine capable of controlling a game into an advantageous state that is advantageous for a player based on a specific display result being displayed, the game machine comprising

B a variable display execution means to perform variable display by any of a plurality of variable display pattern types, wherein

D the variable display execution means comprises:

a first means to start variable display and make the variable display be definitely stopped via a temporary-stop mode involving a predetermined operation; and

E a second means to start variable display and make the specific display result be definitely stopped after executing a specific performance via a temporary-stop mode, wherein

F a period of the temporary-stop mode differs according to a type of a variable display pattern,

G regardless of a type of a variable display pattern, temporary stop is possible by a temporary-stop mode including a common operation,

H a temporary-stop mode includes a first temporary-stop mode that suggests to be controlled into the advantageous state, and a second temporary-stop mode that suggests not to be controlled into the advantageous state, wherein

I in a case of the first temporary-stop mode, change to the second temporary-stop mode is not made, whereas

J in a case of the second temporary-stop mode, there are a case where change into the first temporary-stop mode is made, and a case where change into the first temporary-stop mode is not made, wherein

K at a time when change into the first temporary-stop mode is made in the second temporary-stop mode, a period of the second temporary-stop mode is longer than a period of the second temporary-stop mode when change into the first temporary-stop mode is not made, and wherein

L a suggestion performance suggesting control into the advantageous state after start of variable display until a reach performance starts is displayed, the suggestion performance is eliminated after start of the reach performance, and the suggestion performance is displayed once again when the reach performance ends."

(2) Application filed on the same date

The invention according to Claim 1 of Japanese Patent Application No. 2017-149926 (Japanese Unexamined Patent Application Publication No. 2017-192819) (hereinafter, referred to as "Same-day Invention") cited in the reasons for refusal stated in the examiner's decision, which is a divisional application filed on Aug. 2, 2017 from Japanese Patent Application No. 2015-5267 filed on Mar. 16, 2015 that is the same day with the application date of the Present Application, is specified by the matters recited in Claim 1 of the scope of claims amended by the written amendment submitted on Mar. 5, 2019, as follows (Note that the symbols a to m were added by the collegial body in a manner making these correspond to A to M of the Amended Invention).

"m A game machine

a to perform variable display, the game machine capable of controlling a game into an advantageous state that is advantageous for a player based on a specific display result being displayed, the game machine comprising:

b a variable display execution means to perform variable display by any of a plurality of variable display pattern types; and

c a corresponding display execution means to perform display corresponding

to variable display, wherein

d the variable display execution means comprises:

a first means to start variable display and make the variable display be definitely stopped via a temporary-stop mode involving a predetermined operation; and

e a second means to start variable display and make the specific display result be definitely stopped after executing a specific performance via a temporary-stop mode, wherein

f a period of the temporary-stop mode differs according to a type of a variable display pattern,

h a temporary-stop mode includes a first temporary-stop mode that suggests to be controlled into the advantageous state, and a second temporary-stop mode that suggests not to be controlled into the advantageous state, wherein

i in a case of the first temporary-stop mode, change to the second temporary-stop mode is not made, whereas

j in a case of the second temporary-stop mode, there are a case where change into the first temporary-stop mode is made, and a case where change into the first temporary-stop mode is not made, wherein

k at a time when change into the first temporary-stop mode is made in the second temporary-stop mode, a period of the second temporary-stop mode is longer than a period of the second temporary-stop mode when change into the first temporary-stop mode is not made, and wherein

l the corresponding display execution means is capable of displaying an indication that corresponds to variable display during a period from beginning of the variable display to definitely stop of the specific display result."

(3) Comparison

The Amended Invention and Same-day Invention will be compared (the headers (a) to (m) correspond to the specifying matters A to M of the Amended Invention).

(a) (m) "A game machine to perform variable display, the game machine capable of controlling a game into an advantageous state that is advantageous for a player based on a specific display result being displayed," of a of Same-day Invention corresponds to "A game machine to perform variable display, the game machine capable of controlling a game into an advantageous state that is advantageous for a player based on a specific display result being displayed, the game machine" of A of the Amended Invention.

(b) "Comprising" "a variable display execution means to perform variable display by any of a plurality of variable display pattern types" of b of Same-day Invention corresponds to "comprising a variable display execution means to perform variable display by any of a plurality of variable display pattern types" of B of the Amended Invention.

(d) (e) "The variable display execution means comprises" "a first means to start variable display and make the variable display be definitely stopped via a temporary-stop mode involving a predetermined operation" and "a second means to start variable display and make the specific display result be definitely stopped after executing a specific performance via a temporary-stop mode" of d and e of Same-day Invention corresponds to "the variable display execution means comprises" "a first means to start variable display and make the variable display be definitely stopped via a temporary-stop mode involving a predetermined operation" and "a second means to start variable display and make the specific display result be definitely stopped after executing a specific performance via a temporary-stop mode" of D and E of the Amended Invention.

(f) "A period of the temporary-stop mode differs according to a type of a variable display pattern" of f of Same-day Invention corresponds to "a period of the temporary-stop mode differs according to a type of a variable display pattern" of F of the Amended Invention.

(h) "A temporary-stop mode includes a first temporary-stop mode that suggests to be controlled into the advantageous state, and a second temporary-stop mode that suggests not to be controlled into the advantageous state," of h of Same-day Invention corresponds to "a temporary-stop mode includes a first temporary-stop mode that suggests to be controlled into the advantageous state, and a second temporary-stop mode that suggests not to be controlled into the advantageous state," of H of the Amended Invention.

(i) "In a case of the first temporary-stop mode, change to the second temporary-stop mode is not made," of i of Same-day Invention corresponds to "in a case of the first temporary-stop mode, change to the second temporary-stop mode is not made," of I of the Amended Invention.

(j) "In a case of the second temporary-stop mode, there are a case where change into the first temporary-stop mode is made, and a case where change into the first temporary-stop mode is not made," of j of Same-day Invention corresponds to "in a case of the second temporary-stop mode, there are a case where change into the first temporary-stop mode is made, and a case where change into the first temporary-stop mode is not made," of J of the Amended Invention.

(k) "At a time when change into the first temporary-stop mode is made in the second temporary-stop mode, a period of the second temporary-stop mode is longer than a period of the second temporary-stop mode when change into the first temporary-stop mode is not made," of k of Same-day Invention corresponds to "at a time when change into the first temporary-stop mode is made in the second temporary-stop mode, a period of the second temporary-stop mode is longer than a period of the second temporary-stop mode when change into the first temporary-stop mode is not made," of K of the Amended Invention.

Then, the Amended Invention and Same-day Invention are identical in points of being

"M A game machine

A to perform variable display, the game machine capable of controlling a game into an advantageous state that is advantageous for a player based on a specific display result being displayed, the game machine comprising

B a variable display execution means to perform variable display by any of a plurality of variable display pattern types, wherein

D the variable display execution means comprises:

a first means to start variable display and make the variable display be definitely stopped via a temporary-stop mode involving a predetermined operation; and

E a second means to start variable display and make the specific display result be definitely stopped after executing a specific performance via a temporary-stop mode, wherein

F a period of the temporary-stop mode differs according to a type of a variable display pattern,

H a temporary-stop mode includes a first temporary-stop mode that suggests to be controlled into the advantageous state, and a second temporary-stop mode that suggests not to be controlled into the advantageous state, wherein

I in a case of the first temporary-stop mode, change to the second temporary-stop mode is not made, whereas

J in a case of the second temporary-stop mode, there are a case where change into the first temporary-stop mode is made, and a case where change into the first temporary-stop mode is not made, wherein

K at a time when change into the first temporary-stop mode is made in the second temporary-stop mode, a period of the second temporary-stop mode is longer than a period of the second temporary-stop mode when change into the first temporary-stop mode is not made.", and are different in the following points, although not quite satisfactorily.

· Different Feature 1 (specifying matters c, l)

Same-day Invention is one "comprising" "a corresponding display execution means to perform display corresponding to variable display" and "the corresponding display execution means is capable of displaying an indication that corresponds to variable display during a period from beginning of the variable display to definite stop of the specific display result", whereas,

in the Amended Invention, there is no such specification.

· Different Feature 2 (specifying matter G)

In the Amended Invention, "regardless of a type of a variable display pattern, temporary stop is possible by a temporary-stop mode including a common operation", whereas,

in Same-day Invention, there is no such specification.

· Different Feature 3 (specifying matter L)

In the Amended Invention, "a suggestion performance suggesting control into the advantageous state after start of variable display until a reach performance starts is displayed, the suggestion performance is eliminated after start of the reach performance, and the suggestion performance is displayed once again when the reach performance ends", whereas,

in Same-day Invention, there is no such specification.

(4) Judgment when it is supposed that Same-day Invention is the prior application, and the Amended Invention is the later application.

A Regarding Different Feature 1

(A) The Amended Invention is one that does not have the specifying matter of Same-day Invention of "comprising" "a corresponding display execution means to

perform display corresponding to variable display" and "the corresponding display execution means is capable of displaying an indication that corresponds to variable display during a period from beginning of the variable display to definite stop of the specific display result", and, in this point, it is one in which the specifying matter of Same-day Invention is made to be generic-conceptualized, and the specifying matter of Same-day Invention (prior application) concerning the above-mentioned Different Feature 1 is a matter that is included also in the Amended Invention (later application).

(B) When further consideration is made, in a pachinko game machine, it is well-known to provide a corresponding display execution means that makes it possible to display an indication corresponding to variable display in a period from beginning of the variable display to definite stop of a specific display result (hereinafter, referred to as "Well-known art 1". Example: Japanese Unexamined Patent Application Publication No. 2015-39494 cited in the examiner's decision (in particular, "[0031] ... an active hold display corresponding to the variable display being executed is displayed on the active hold display unit 18d ... the active hold display is displayed by a plurality display modes (for example, the normal mode, the first special mode, or the second special mode), and it is constituted in such a manner that, according to by which display mode it is displayed, a degree of expectation that the display result of the variable display becomes a jackpot varies.", "[0351] Next, when the variable display stops, and a derivation display of a losing pattern is carried out (FIG. 4 4(H)), the active hold display and the hold display are shifted, and, together with this, new variable display is started. ...", refer to FIG. 4); and Japanese Unexamined Patent Application Publication No. 2014-117517 (in particular, refer to [0277] to [0309], especially "[0278] ... In the variation icon display area 800, there is displayed the variation icon 801 that corresponds to the relevant special-pattern-1 variable game.", and FIG. 20). Without illustrating other examples, it is a relation between variable display of a decoration pattern display device composed of a liquid crystal display device and the like and variable display (corresponding display) of a special pattern display device composed of, for example, a 7-segment display corresponding to the variable display, in a general pachinko game machine).

Then, in view of the descriptions such as [0005] of the description of the Present Application or Same-day application, the problems to be solved of the Amended Invention and Same-day Invention are to give a sense of expectation during the period of the temporary-stop mode, the specification of "comprising" "a corresponding display execution means" "capable of displaying an indication that corresponds to variable display during a period from beginning of the variable display to definite stop of the

specific display result" of Same-day Invention has no direct relation to the essential matters specifying the invention that correspond to means for solving the problems of the problem to be solved, and therefore does not have an influence on solving the problem to be solved.

Then, in Same-day Invention, elimination of Well-known art 1 that makes it possible to display an indication corresponding to variable display in a period from beginning of the variable display to definite stop of a specific display result is a very minor difference (elimination of a well-known art) in the means for solving the problem to be solved, and it is not one that has a new effect.

As above, the above-mentioned Different Feature 1 is not a substantive different feature.

B Regarding Different Feature 2

(A) It is well-known that, regardless of a type of a variable display pattern, temporary stop is possible by a temporary-stop mode including a common operation (hereinafter, referred to as "Well-known art 2". Example: Japanese Unexamined Patent Application Publication No. 2001-321516 cited in the Examiner's decision (in particular, refer to [0077], [0207] to [0298], FIG. 11, and FIG. 14 to FIG. 51. In the relevant portions, it is described that, in re-variation patterns of pattern 1 to pattern 9, a time period of temporary stop differs, and the mode of temporary stop includes a common operation in which, regardless of which pattern a re-variation pattern is, the pattern swings up and down); and Japanese Unexamined Patent Application Publication No. 2012-179180 (in particular, refer to [0188], FIG. 11-1, FIG. 12-3. In the temporary-stop display, a decoration pattern is displayed in such a way that it is swinging finely. Since there is no mention about relation between a temporary-stop display and each variation performance pattern, it is recognized that a common operation of finely swinging is included in any of the variable patterns).

(B) The problems to be solved of the Amended Invention and Same-day Invention are, as mentioned above, to give a sense of expectation during the period of the temporary-stop mode, and the specification of "regardless of a type of a variable display pattern, temporary stop is possible by a temporary-stop mode including a common operation" of the Amended Invention does not have an influence on solving the problem to be solved because it can be said that, in the temporary-stop mode, the common operation is carried out in any situation.

Then, in Same-day Invention, it is very minor difference (just addition of a well-

known art) in the means for solving the problem to be solved to add Well-known art 2 in which, regardless of a type of a variable display pattern, temporary stop is possible by a temporary-stop mode including a common operation, and it is not one that has a new effect, and, therefore, the above-mentioned Different Feature 2 is not a substantive different feature.

C Different Feature 3 will be examined.

(A) In a pachinko game machine, it is well-known to display a suggestion performance suggesting control into an advantageous state after beginning of variable display until beginning of reach performance, eliminate the suggestion performance after the beginning of the reach performance, and display the suggestion performance once again at the time when the reach performance is ended (hereinafter, referred to as "Well-known art 3". Example: Japanese Unexamined Patent Application Publication No. 2014-117517 (in particular, refer to [0302] to [0306], and FIG. 21. The display mode of the variation icon 805 being "red" corresponds to "suggestion performance". When the super reach B (confrontation of master swordsmen) starts, the variation icon 805 is deleted, and, when the super reach B (confrontation of master swordsmen) is completed, the variation icon 805 is displayed once again); and Japanese Patent No. 5681306 (in particular, refer to [0701] to [0713], and FIG. 44.) The display mode of the hold icon 902 being green color of a round shape corresponds to "suggestion performance". When a super reach of the confrontation performance between Yoshimune and a master swordsman (confrontation of master swordsmen) is started, the variation icon display area 870 and the hold icon display area 890 are terminated, the variation icon 882 and the hold icon 902 are deleted, and, when the super reach is completed, the variation icon 882 and the hold icon 902 are displayed once again).

(B) The problems to be solved of the Amended Invention and Same-day Invention are, as mentioned above, to give a sense of expectation during the period of the temporary-stop mode, the specification of the Amended Invention that "a suggestion performance suggesting control into the advantageous state after start of variable display until a reach performance starts is displayed, the suggestion performance is eliminated after start of the reach performance, and the suggestion performance is displayed once again when the reach performance ends" has no direct relation to the essential matters specifying the invention that correspond to the means for solving the problems to be solved, and, therefore, does not have an influence on solving the problem to be solved.

Then, in Same-day Invention, it is a very minor difference (just addition of a

well-known art) in the means for solving the problem to be solved to add Well-known art 3 to display a suggestion performance suggesting control into an advantageous state after beginning of variable display until beginning of reach performance, eliminate the suggestion performance after the beginning the reach performance, and display the suggestion performance once again at the time when the reach performance is ended, and it is not one that has a new effect, and, therefore, the above-mentioned Different Feature 3 is not a substantive different feature.

Therefore, the Amended Invention (later application) and Same-day Invention (prior application) are substantially identical inventions.

(5) Judgment will be made when it is supposed that the Amended Invention is the prior application and Same-day Invention is the later application.

A Regarding Different Feature 1

As mentioned above, the problems to be solved of the Amended Invention and Same-day Invention are to give a sense of expectation during the period of the temporary-stop mode, the specification of "comprising" "a corresponding display execution means" "capable of displaying an indication that corresponds to variable display during a period from beginning of the variable display to definitely stop of the specific display result" of Same-day Invention has no direct relation to the essential matters specifying the invention that correspond to means for solving the problems of the problem to be solved, and therefore does not have an influence on solving the problem to be solved.

Then, in the Amended Invention, addition of Well-known art 1 that makes it possible to display an indication corresponding to variable display in a period from beginning of the variable display to definite stop of a specific display result is a very minor difference in the means for solving the problem to be solved (just addition of a well-known art), and it is not one that has a new effect, and, therefore, the above-mentioned Different Feature 1 is not a substantive different feature.

B Regarding Different Feature 2

(A) Same-day Invention is one that does not have the specifying matter of the Amended Invention that "regardless of a type of a variable display pattern, temporary stop is possible by a temporary-stop mode including a common operation", and, in this point, is one in which the specifying matter of the Amended Invention is generically conceptualized, and thus the specifying matter of the Amended Invention (prior application) concerning the above-mentioned Different Feature 2 is included also in

Same-day Invention (later application).

(B) When further consideration is made, the problems to be solved of the Amended Invention and Same-day Invention are to give a sense of expectation during the period of the temporary-stop mode, the specifying matter of the Amended Invention that "regardless of a type of a variable display pattern, temporary stop is possible by a temporary-stop mode including a common operation" does not have an influence on solving the problem to be solved because it can be said that, in the temporary-stop mode, the common operation is carried out in any situation.

Then, in the Amended Invention, deletion of Well-known art 2 that "regardless of a type of a variable display pattern, temporary-stop is possible by a temporary-stop mode including a common operation" is a very minor difference in the means for solving the problem to be solved (deletion of a well-known art), and it is not one that has a new effect.

C Regarding Different Feature 3

(A) Same-day Invention is one that does not have the specifying matter of the Amended Invention that "a suggestion performance suggesting control into the advantageous state after start of variable display until a reach performance starts is displayed, the suggestion performance is eliminated after start of the reach performance, and the suggestion performance is displayed once again when the reach performance ends", and, in this point, is one in which the specifying matter of the Amended Invention is generically conceptualized, and thus the specifying matter of the Amended Invention (prior application) concerning the above-mentioned Different Feature 3 is included also in Same-day Invention (later application).

(B) When further consideration is made, the problems to be solved of the Amended Invention and Same-day Invention are to give a sense of expectation during the period of the temporary-stop mode, the specifying matter of the Amended Invention that "a suggestion performance suggesting control into the advantageous state after start of variable display until a reach performance starts is displayed, the suggestion performance is eliminated after start of the reach performance, and the suggestion performance is displayed once again when the reach performance ends" has no direct relation to the essential matters specifying the invention that correspond to means for solving the problems of the problem to be solved, and therefore does not have an influence on solving the problem to be solved.

Then, in the Amended Invention, deletion of Well-known art 3 that "a suggestion performance suggesting control into the advantageous state after start of variable display until a reach performance starts is displayed, the suggestion performance is eliminated after start of the reach performance, and the suggestion performance is displayed once again when the reach performance ends" is a very minor difference in the means for solving the problem to be solved (deletion of a well-known art), and it is not one that has a new effect.

(6) Summary

As described above, it can be said that the Amended Invention and Same-day Invention are substantially identical even when focusing attention on any of the inventions, and, therefore, the Amended Invention and Same-day Invention are mutually identical.

(7) Appellant's allegation

The Appellant alleges, in "2. Comparison between the Invention and Cited Invention and the like" of "The reason that the Invention should be patented" of the written request for appeal, that "Such differences in the features are not ones that can be applicable to addition, deletion, conversion, and the like of a well-known art or a commonly used art. In particular, during the reach performance, visibility of the reach performance comes to be not inhibited by deleting the display of the suggestion performance. Therefore, it is possible to make the reach performance be focused on. In addition, when the reach performance is completed, the suggestion performance is displayed once again, and thus it is possible to accurately inform the player of when the variable display is finished."

However, the effect alleged by the Appellant is just the effect of Well-known art 3, is an effect that is naturally concomitant with addition of Well-known art 3, and is not recognized as a new effect; therefore, the above-mentioned allegation cannot be adopted.

Accordingly, the above-mentioned allegation cannot be adopted.

(8) Summary

As above, it is recognized that the Amended Invention and Same-day Invention are identical inventions, and, within a period designated by the written directive, there was no notification of determining any one of the applications, and thus it shall be deemed that the consultation have not been established under the provisions of Article 39(7) of

the Patent Act, and, therefore, a patent should not be granted independently at the time of patent application under the provisions of Article 39(2) of the same Act.

4 Closing

Therefore, the Amendment violates the provisions of Article 126(7) of the Patent Act as applied mutatis mutandis pursuant to Article 17-2(6) of the same Act, and, therefore, it should be dismissed under the provisions of Article 53(1) of the same Act which is applied mutatis mutandis by replacing certain terms pursuant to the provisions of in Article 159(1) of the same Act.

No. 3 Regarding the invention

1 The Invention

Since the Amendment was dismissed as above, the inventions according to Claims 1 and 2 of the Present Application are ones as shown in Claims 1 and 2 of the scope of claims amended by the written amendment dated Mar. 5, 2019, and the invention according to Claim 1 thereof (hereinafter, referred to as "the Invention") is as follows.

"M A game machine

A to perform variable display, the game machine capable of controlling a game into an advantageous state that is advantageous for a player based on a specific display result being displayed, the game machine comprising

B a variable display execution means to perform variable display by any of a plurality of variable display pattern types, wherein

D the variable display execution means comprises:

a first means to start variable display and make the variable display be definitely stopped via a temporary-stop mode involving a predetermined operation; and

E a second means to start variable display and make the specific display result be definitely stopped after executing a specific performance via a temporary-stop mode, wherein

F a period of the temporary-stop mode differs according to a type of a variable display pattern,

G regardless of a type of a variable display pattern, temporary stop is possible by a temporary-stop mode including a common operation,

H a temporary-stop mode includes a first temporary-stop mode that suggests to be controlled into the advantageous state, and a second temporary-stop mode that suggests not to be controlled into the advantageous state, wherein

I in a case of the first temporary-stop mode, change to the second temporary-stop mode is not made, whereas

J in a case of the second temporary-stop mode, there are a case where change into the first temporary-stop mode is made, and a case where change into the first temporary-stop mode is not made, wherein

K at a time when change into the first temporary-stop mode is made in the second temporary-stop mode, a period of the second temporary-stop mode is longer than a period of the second temporary-stop mode when change into the first temporary-stop mode is not made." (the collegial body separately described into A to M)

2 Outline of reasons for refusal stated in the examiner's decision

The reason for refusal stated in the examiner's decision is that it is recognized that the invention according to Claim 1 of this application amended by the written amendment submitted on Mar. 5, 2019 is identical with the invention according to Claim 1 of the Same-day application (Same-day Invention) amended by the written amendment submitted on Mar. 5, 2019, and, in addition, it shall be deemed that consultation has not been established between the respective applicants, and thus the Appellant should not be granted a patent for that in accordance with the provisions of Article 39(2) of the Patent Act.

<List of Cited Documents, etc.>

1. Japanese Patent Application No. 2017-149926 (Japanese Unexamined Patent Application Publication No. 2017-192819) (the application filed on the same date)
2. Japanese Unexamined Patent Application Publication No. 2001-321516 (a document indicating a well-known art)
3. Japanese Unexamined Patent Application Publication No. 2015-39494 (a document indicating a well-known art)

3 Application filed on the same date

Same-day Invention cited in the reasons for refusal stated in the examiner's decision is as indicated in the above-mentioned No. 2, 3(2).

4 Comparison / judgment

The Invention is one that is made by deleting the limitation matter that is a matter necessary for specifying the Amended Invention that "L a suggestion performance suggesting control into the advantageous state after start of variable display until a reach

performance starts is displayed, the suggestion performance is eliminated after start of the reach performance, and the suggestion performance is displayed once again when the reach performance ends".

Then, when the Invention and Same-day Invention are compared, the different features are similar to Different Features 1 and 2 mentioned in the above No. 2, 2(3), and thus as mentioned in the above No. 2, 2(4) to (6), the Invention and Same-day Invention are identical inventions.

5 Closing

As described above, the Appellant should not be granted a patent for the Invention in accordance with the provisions of Article 39(2) of the Patent Act.

For this reason, without examining the inventions according to the other claims, the Present Application should be rejected.

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

June 30, 2020

Chief administrative judge:	SETSU, Taro
Administrative judge:	TETSU, Toyoo
Administrative judge:	WASHIZAKI, Ryo