Appeal Decision

Appeal No.2017-13961

Appellant Bandai Namco Entertainment

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The case of appeal against the Decision of Refusal for Japanese Patent Application No. 2013-163415 entitled "PROGRAM AND SERVER" (application published on February 16, 2015, Japanese Unexamined Patent Application No. 2015-29837) has resulted in the following appeal decision.

Conclusion

The appeal of the case was groundless.

Reason

I History of the procedures

The present application was filed on August 6, 2013. A Notice of Reasons for Refusal was issued on September 29, 2016, and a Written Opinion and a Written Amendment were submitted on December 1, 2016. A Notice of Reasons for Refusal was issued on February 9, 2017, and a Written Opinion was submitted on April 24, 2017. On June 13, 2017, a decision of refusal was made based on Reason 1 notified in the Notice of Reasons for Refusal dated February 9, 2017 (hereinafter reffered to as "reason for refusal of the examiner's decision"), and a certified copy thereof was served to the appellant on June 21, 2017.

In response, an appeal against the decision of refusal was filed on September 20, 2017.

II Summary of Reason for refusal of the Examiner's Decision

A summary of the reason for refusal of the examiner's decision is as follows.

1. The inventions as claimed in Claims 1 to 16 of the present application could have been easily made by a person who has common knowledge in the technical field to which the inventions belongs (hereinafter, "a person skilled in the art") based on the following Cited

Documents 1 to 3, and thus cannot be granted a patent under the provisions of the Patent Act Article 29 (2).

<The list of cited documents>

1 Japanese Unexamined Patent Application Publication No. 2011-56129

2 "FINAL FANTASY XI, LIGHTNING BRIGADE, Official Vana'diel World Guide, Champion of the Dawn, 080501 version upgrade compatible", First edition, ASCII Media Works, Inc., May 30, 2008, pages 12 and 13

3 Japanese Unexamined Patent Application Publication No. 2003-88680

III The Invention as Claimed in the Present Application

The invention according to Claim 1 of the present application (hereinafter referred to as "the Invention") should be specified by the matters recited in Claim 1 in the scope of claims amended on December 1, 2016 and is as follows.

"[Claim 1]

A program of a server that performs matching processing, the program causing a computer to function as:

a storage processing unit that performs a process of storing player character information in a storage unit; and a matching processing unit that performs a setting process of selecting a third party character from a plurality of characters that are able to participate in a battle game in which a first player character and a second player character appear, and matching the third party character with the first player character and the second player character, wherein

the matching processing unit selects the third party character before the battle game is started, based on a combination of information on the first player character and information on the second player character."

IV Cited Documents, Cited Invention, Etc.

1 Regarding Cited Document 1 (Japanese Unexamined Patent Application Publication No. 2011-56129)

Cited Document 1 cited in the reason in the examiner's decision describes the following matters along with the drawings. (The underlines are added by the body. The same shall apply hereinafter.)

(1) "[0034]

Fig. 3 is a hardware configuration diagram showing an embodiment of the game terminal 1. The control unit 16 controls the overall operation of the game terminal 1 and includes

an information processing unit (CPU) 161 that performs various information processing in addition to processing related to general game progress and image display processing, a RAM 162 which temporarily stores information during processing, and a ROM 163 in which predetermined image information, game programs, and other such data are stored in advance."

(2) “[0041]

Fig. 4 is a functional configuration diagram of the control unit 16 of the game terminal 1. By executing the game program and the control program stored in the RAM 162, the CPU 161 of the control unit 16 functions as a reception processing unit 161a that receives participation in a game from a player, a game progress control unit 161b that controls a chain of progress from a start to an end of the game to advance the shooting game, and an image display control unit 161c that displays a reception image, a game image, and the like on a monitor 11. By executing the game program and the control program stored in the RAM 162, the CPU 161 functions as a virtual camera control unit 161d that controls a position and a line-of-sight direction of a virtual camera 60 installed in the virtual game space, a character movement processing unit 161e that processes a movement of the player’s character in the virtual game space, an attack processing unit 161f that processes an attack performed by the player’s character using a weapon that it wields virtually, a stance processing unit 161g that performs a stance to prepare for an attack which is performed prior to the attack action, an aim display unit 161h that displays an aim indicating a direction of attack that is performed along with the execution of the stance action, a score processing unit 161i that monitors during the game whether or not the player’s character is attacking the opponent player’s character, and gives a predetermined score when the attack is successful, for example, when a target is hit by shot with a gun, a score comparison unit 161j that compares scores between the opponent player’s character and the player’s character, an NPC control unit 161k that makes an NPC (Non player Character) controlled by the computer appear in the virtual game space as a character of a third force to balance the superiority in the battle game, and a communication control unit 161m that controls communication of various information before and after the game starts and during the game.”

(3) "[0062]

Returning to Fig. 4, the RAM 162 of the control unit 16 includes a progress information storage unit 162a in which game progress information during the battle game in the same virtual game space is sequentially stored for each player, i.e. the information of the player, of all the ally players and of all the opponent players, obtained via the network communication unit 18 in an updated manner, and a setting information storage unit 162b

that stores setting information set by various switches and buttons, and score information. Each time the game ends, the communication control unit 161m sends, to the server 3, the score information together with the player's user ID and the identification information of the game terminal 1 and of the store.

[0063]

The score comparison unit 161j counts the scores of the ally characters and the opponent characters in a group battle game and compares the amount of the total score for both sides. Since the scores are all 0 at the start of the game, the score comparison unit 161j acquires the scores of the ally characters and the opponent characters in past group battle games from the server 3, aggregates the scores of the ally characters and the opponent characters, and compares the amounts thereof. Further, after the start of the game, for example, after a predetermined time elapses from the start of the game, for example after one minute elapses, the score comparison unit 161j aggregates the scores acquired during this one minute period, and compares the score amount between the allies and the opponents. In other words, in this example, for the first minute from the start of the game, the score is aggregated from the score acquisition history in the past game, and after that, until the end of the game, the score acquired in units of one minute in the current game is aggregated.

[0064]

The NPC control unit 161k executes processing for NPC appearance in the virtual game space or participation in the battle, based on the comparison result of the score comparison unit 161j. In the present embodiment, the NPC control unit 161k causes an NPC to appear when a difference between the aggregated scores obtained by the score comparison unit 161j is greater than or equal to a predetermined threshold value. The NPC participation processing is an adjustment of the battle situation and is designed to realize an interesting or tense game development through group battles that are as competitive as possible by making NPCs appear as third party forces that support the group (team) with a lower score (weaker side). The predetermined threshold value is set, because when there is only a slight difference in the superiority or inferiority in the groups, deliberately making NPCs appear for support will increase the burden on the NPC control software, and it may cause a direct reversal of the superior and inferior relationship between the groups, which can also be considered to be unnatural. For example, assuming that the score that can be obtained when an attack with a single shot is successful is 1000 points, and the total scores of the ally players and the opponent players are 40,000 points and 60,000 points, if the

threshold value is 12,000 points, the NPC will appear, on the other hand, if the threshold value is 24,000 points, the NPC will not appear. The number of NPCs that appear may be one character, or the same number as the number of the ally or opponent characters, or any suitable number in between. A score ratio (4 vs. 6 in the above example) may be obtained from both aggregated scores, and the amount of difference in this ratio (2 (=6-4) in the above example) may be compared with a threshold value (for example, 1.2 or 2.4) for the appearance of NPCs. The two methods are similar in that they both use the difference between the two aggregated scores.

[0065]

The NPC control unit 161k sets a degree of support of the NPCs for the group with the smaller aggregate score, according to the difference between the aggregate scores of the ally side and the opponent side. More specifically, the degree of support corresponds to the ratio of qualitative and quantitative attacks for each character on the ally side and the opponent side, which is set according to the difference between the aggregated scores. The relation between the difference in the aggregated score and the degree of support can be arbitrarily set, but generally, it is preferable to set the relation in proportion. For example, the degree of support may be minimal when the difference between the two aggregated scores is a minimum value exceeding the threshold value, and the degree of support may be increased at the predetermined ratio as the difference increases. More specifically, the minimum degree of support for the inferior group is set to 6:4, the maximum degree is saturated at 10:0, and the degree of support may be set between the two ratios according to the difference. It should be noted that 6:4 means that the ratio of attacks to the characters of the superior group is 60% and the ratio of attacks to the characters of the inferior group is 40%. Therefore, 10:0 means that the ratio of attacks to the characters in the superior group is 100%."

(4) "[0079]

Next, Fig. 12 is a flowchart for explaining a procedure of the game processing executed by the game program of the CPU 161 of the game terminal 1. First, it is determined whether player selection (matching) is complete in the group battle game (step S1). If matching is not complete, the process exits from this flow chart. On the other hand, if matching is complete, the player information of the player with whom the match has been established and the predetermined score information sent from the server 3 are received (step S3). Next, the setting process for the degree of support is executed based on the received score information (step S5). Specifically, a score for each player is calculated

from the score information of each player, then the scores of the ally players and the opponent players are aggregated, the aggregated scores are then compared with each other (it can be either an absolute value or a ratio). If the difference in the comparison is greater than or equal to the threshold value, the degree of support is set according to the difference and the process to make the NPCs appear is executed. Otherwise, the degree of support is not set, and the process to make the NPCs appear is not executed. The process of calculating a score for each player from the score information of each player means, for example, calculating a total value or an average value of scores of the most recent predetermined number of games."

(5) "[0084]
According to this, at the start of the game, the degree of support is set for the first 1 minute from the start of the game. The degree of support is then renewed for 1 to 2 minutes, for 2 to 3 minutes, and for the last 3 to 4 minutes of the game. The degree of support is renewed for three times. This renewing allows the NPCs to appear or disappear in the middle of the game, or even not to appear, which leads to provide a game that is more interesting."

(6) "[0092]
(5) The number of NPCs may be increased or decreased according to the degree of support. A comparison table of the number of NPCs to appear corresponding to the difference is prepared in advance, and the number of NPCs may be set according to the calculated difference. In this case, the number of NPCs changes corresponding to the degree of support, and the strength of each NPC can be set uniform."

(7) [0095]
The group battle game is described in the present embodiment, but it can also be applied to a one-to-one game. In this case, with the appearance of NPC, the game becomes a three-way battle game.

"According to the above matters described in Cited Document 1, it is recognized that Cited Document 1 describes the following matter (hereinafter, "Cited Invention 1".).
"A game program, which is also applicable to one-on-one games, whereby:
a control unit 16 of a game terminal 1 controls the overall operation of the game terminal 1, and includes an information processing unit (CPU) 161 that performs various information processing in addition to processing related to general game progress and

image display processing, a RAM 162 which temporarily stores information during processing, and a ROM 163 in which predetermined image information, game programs, and a required number of third party character images are stored in advance, wherein;
by executing the game program and the control program stored in the RAM 162, the CPU 161 of the control unit 16 functions as a reception processing unit 161a that receives participation in a game from a player, a game progress control unit 161b that controls a chain of progress from a start to an end of the game to advance a shooting game, a score comparison unit 161j that compares scores between the opponent player's character and the player's character, and an NPC control unit 161k that makes an NPC (Non player Character) controlled by the computer appear in a virtual game space to balance the superiority in the battle game,
the RAM 162 of the control unit 16 includes a progress information storage unit 162a in which game progress information during the battle game in the same virtual game space is sequentially stored for each player in an updated manner, and a setting information storage unit 162b that stores the score information,
the score comparison unit 161j counts the scores of the ally characters and the opponent characters in a group battle game and compares the amount of the total score for both sides, and since the scores are all 0 at the start of the game, the score comparison unit 161j acquires the scores of the ally characters and the opponent characters in past group battle games from a server 3, aggregates the scores of the ally characters and the opponent characters and compares the total amounts thereof,
the NPC control unit 161k executes processing for NPC appearance in the virtual game space or participation in the battle, based on the comparison result of the score comparison unit 161j, wherein participation processing is an adjustment of the battle situation and is designed to realize an interesting or tense game development through group battles that are as competitive as possible by making NPCs appear as third party forces that support the group (team) with a lower score (weaker side), and the NPC control unit 161k functions as a unit that causes the NPCs to appear when the difference in the comparison between the two aggregated scores counted by the score comparison unit 161j is equal to or greater than a predetermined threshold value,
the NPC control unit 161k also sets a degree of support of the NPCs for the group with the smaller aggregate score according to the difference between the aggregate scores of the ally side and the opponent side,
wherein the game processing procedure executed by the game program of the CPU 161 of the game terminal 1 is as follows:
when player selection is complete in the group battle game, receiving the player

information of the player with whom the match has been established and the predetermined score information sent from the server 3, setting the degree of support based on the received score information, and if the difference in the comparison is greater than or equal to the threshold value, setting the degree of support based on the difference and executing a process to make NPCs appear,

at the start of the game, the degree of support is set for the first 1 minute from the start of the game.

the number of NPCs may be increased or decreased according to the degree of support, with a comparison table prepared in advance of the number of NPCs to appear corresponding to the difference, the number of NPCs may be set according to the calculated difference, accordingly the number of NPCs changes corresponding to the degree of support, and the strength of each NPC can be set uniform".

V Comparison and Judgment

1 Comparison

The Invention andthe Cited Invention 1 are compared as follows;

The "ally character" and the "opponent character" in Cited Invention 1 correspond to the "first player character" and the "second player character" in the Invention, respectively.

In the Cited Invention 1, since the "progress information storage unit 162a" is a unit "in which game progress information during the battle game in the same virtual game space is sequentially stored for each player in an updated manner" and the "setting information storage unit 162b" is a units "that stores the score information", and since these storage units are controlled by the "control unit 16", the "progress information storage unit 162a" and the "setting information storage unit 162b" of the Cited Invention 1 can be said to be "storage units", and the "control unit 16" of the Cited Invention 1 can be said to be a "control unit". Further, the game progress information and score information are nothing but "player character information". Therefore, the Invention and the Cited Invention 1 are common in that they both have a "storage processing unit that performs a process of storing player character information in a storage unit".

The "group battle game" of the Cited Invention 1 corresponds to the "battle game" of the Invention.

The "Non player Character (NPC)" of the Cited Invention 1 "appear in the virtual game space as a character of a third force to balance the superiority in the battle game". It is obvious that a plurality of NPCs are prepared from the descriptions stating "the number of NPCs may be increased or decreased" and " a comparison table prepared in advance of the number of NPCs to appear corresponding to the difference ", and it can be said that

there are "a plurality of characters that are able to participate in a battle game". In addition, concerning the “Non player Character (NPC)” in the Cited Invention 1, since " the number of NPCs may be increased or decreased according to the degree of support, with a comparison table prepared in advance of the number of NPCs to appear corresponding to the difference, the number of NPCs may be set according to the calculated difference ", the "number of NPCs" "set" can be said to be "selected NPCs."

Further, in the Cited Invention 1, since the “NPC control unit 161k” “executes processing for NPC appearance in the virtual game space or participation in the battle” “based on the comparison result of the score comparison unit 161j” wherein the unit “aggregates the scores of the ally characters and the opponent characters and compares the total amounts”, it is obvious that the the Cited Invention 1 performs "a setting process to match a set number of NPCs for the ally characters and the opponent characters", and the "score comparison unit 161j" and the "NPC control unit 161k" work together to function as a processing unit that processes the setting process.

Therefore, the Invention and the Cited Invention 1 are common in that they both have "a matching processing unit that performs a setting process of selecting a third party character that are able to participate in a battle game in which a first player character and a second player character appear, and matching the third party character with the first player character and the second player character ".

As mentioned above, in the Cited Invention 1, since the "NPC control unit 161k" "executes processing for NPC appearance in the virtual game space or participation in the battle" "based on the comparison result of the score comparison unit 161j" wherein the score comparison unit "counts the scores of the ally characters and the opponent characters in a group battle game and compares the amount of the total score for both sides", it can be said that "a set number of NPCs are selected based on the combination of the information of the ally characters and the information of the opponent characters".

In addition, in the Cited Invention 1, "at the start of the game, the degree of support is set for the first 1 minute from the start of the game " that is based on "since the scores are all 0 at the start of the game, the score comparison unit 161j acquires the scores of the ally characters and the opponent characters in past group battle games from a server 3, aggregates the scores of the ally characters and the opponent characters and compares the total amounts thereof",and the number of NPCs is increased or decreased depending on the degree of support. Therefore, the Cited Invention 1 "selects NPCs before the battle game is started".

Therefore, the Invention and the Cited Invention 1 are common in that they "select the third party character before the battle game is started, based on a combination of

information on the first player character and information on the second player character".
In the Cited Invention 1, the "setting process to match a set number of NPCs for the ally characters and the opponent characters" is performed by the "score comparison unit 161j" and the "NPC control unit 161k" of the CPU 161 of the control unit 16, and the CPU 161 of the control unit 16 executing the game program and the control program stored in the RAM 162.
Thus, the Invention and the Cited Invention 1 are common in that "a program for performing the matching processing, causing a computer to function".
Therefore, the corresponding features and the different features between the Invention and the Cited Invention 1 can be said to be as follows.

(Corresponding features)
"A program that performs matching processing, the program causing a computer to function as:
a storage processing unit that performs a process of storing player character information in a storage unit; and a matching processing unit that performs a setting process of selecting a third party character able to participate in a battle game in which a first player character and a second player character appear, and matching the third party character with the first player character and the second player character, wherein
the matching processing unit extracts the third party character before the battle game is started, based on a combination of information on the first player character and information on the second player character."

(Different features)
(Different feature 1)
With respect to the setting process of matching the third party character with the first player character and the second player character, which is selecting the third party character based on a combination of information on the first player character and information on the second player character, the Invention mentions "selecting a third party character from a plurality of characters", whereas the Cited Invention 1 mentions "the number of NPCs may be increased or decreased".

(Different feature 2)
In the Invention, the program of the server makes the computer function as a “matching processing unit”, whereas in the Cited Invention 1, concerning the configuration corresponding to the “matching processing unit”, the game program in the game terminal

1 makes the computer function.

2 Judgment Regarding the Different features
(1) Different feature 1 is discussed below.
The matter specifying the Invention relating to Different feature 1 is to select a specific character from a plurality of characters based on the combination of the information on the first player character and the information on the second player character, but in the technical field of games, selecting a specific character from a plurality of characters according to the information on the characters in the game is merely a well-known art (hereinafter, "Well-known Art 1").
"The number of NPCs may be increased or decreased" in the Cited Invention 1 means that the ability (strength) of the NPCs as a whole is set by the number of NPCs corresponding to the degree of support determined by the difference between the scores of the ally characters and the opponent characters. The Cited Invention 1 and the Well-known Art 1 are common in that they both belong to the technical field of games, and that they both deal with an inherent problem of selecting a character corresponding to the level of the user and other such factors. Therefore, a person skilled in the art would have easily conceived of applying the Well-known Art 1 to "increasing or decreasing the number of NPCs" of the Cited Invention 1 to achieve the matter specifying the Invention related to Different feature 1.
If necessary, see Cited Documents 2 to 4 below as documents showing the Well-known Art 1.
Cited Document 2: Japanese Unexamined Patent Application Publication No. 2008-206800
"[0050]
In the 'detection mode', the character to be detected changes according to the 'level' of the player. More specifically, even if the same beacon signal transmitted from the same AP device is received, the character may or may not appear depending on the level of the player. The level of the player is a parameter that changes according to, for example, the total number of characters captured so far, the battle results in the 'battle mode', and other such factors.
[0051]
Fig. 6 is a diagram for explaining whether a character appears or does not appear according to the level of the player. As shown in the figure, when the game devices 1000 held by two players P1 and P2 having different levels receive a beacon signal transmitted from the AP device 90, in the game device 1000 of the player P1 at the level '5', the screen

during detection remains displayed, but in the game device 1000 of the player P2 at the level '10', the character is detected, a screen of an analysis result is displayed, and the character CR appears."

Cited Document 3: Japanese Unexamined Patent Application Publication No. 2002-18142

"[0009] For a second method of the present invention, the game execution status in the first method is the game player character status, and the game settings are for determining the appearance of enemy characters.

[0010] Accordingly, by determining the enemy characters that appear according to the status of the player character, the tension in the battle can be maintained. Particularly, the player can continue playing without getting bored by making enemy characters appear with a strength corresponding to the strength of the player character."

"[0029] Fig. 5 shows an example of an encounter screen with an enemy character. Fig. 5 (a) shows a case where the power of the player character 31 is low, and a comparatively weak enemy character 34, 'rotting corpse' appears. On the other hand, Fig. 5 (b) shows a case where the power of the player character 31 is high, and a comparatively strong 'rotting dragon' appears as the enemy character 35."

Cited Document 4: Japanese Unexamined Patent Application Publication No. 2001-243153

"[Means for Solving Problems] As recited in Claim 1, the above objective is achieved by an online game server that provides a battle game service to a user logging in from a user computer via a computer network, the online game server comprising: a rank acquisition means to acquire a game rank of each logged-in user; an opponent specifying means to specify another logged-in user having a game rank that is suitable for the game rank of the logged-in user as an opponent of the one user; a means to provide a game service that provides a battle game service to the one user and the other user via a computer network; and a means to update the rank to update the game ranks of the one user and the other user based on a battle result of the one user and the other user.

[0006] As recited in Claim 7, the above objective is achieved using a method to provide a battle game service to a user logging in from a user computer by a game server connected to a computer network, wherein the method for providing the online game service comprises: a rank acquisition step to acquire a game rank for each logged-in user; an opponent specifying step to specify the other logged-in user having a game rank suitable for the game rank of the logged-in user as an opponent of the one user; a game

service providing step to provide a battle game service to the one user and the other user via a computer network; and a rank updating step to update the game ranks of the one user and the other user based on a battle result of the one user and the other user.
[0007] According to the invention as claimed in Claims 1 and 7, the game rank of each user is updated based on the battle result of the game, because of which an objective game rank of each user can be obtained. Since a game rank suitable for this objective game rank is selected as an opponent, it is possible to prevent the opponent from being too weak or too strong."

(2) Different feature 2 is discussed below.
A game system in which a (game) server and a (player's) game terminal can be connected to a network such as the Internet is widely known. In such a game system, it is obvious that both the (game) server and the (player's) game terminal are equipped with computers, and that a program makes a computer perform some processing, that is, it makes the computer function as a processing unit for some process.

In addition, in the technical field of games, executing a game program including a matching process on a (player') game terminal or on a (game) server, meaning "the program on the (player's) game terminal causes the computer to function" and "the program on the (game) server causes the computer to function" are both well-known art (hereinafter, "Well-known Art 2" and "Well-known Art 3"), without citations.
Then, in making a computer function with a game program, a person skilled in the art could have appropriately selected the "computer of the (player's) game terminal 1", of Well-known Art 2, or the "computer of the (game) server", of Well-known Art 3. And selecting the "computer of the (game) server" of Well-known Art 3 as in the Invention to constitute the matter specifying the Inventionrelated to Different feature 2, is an adoption of a design matter in configuration to solve the problem, and within the ordinary creativity of a person skilled in the art, and thus could have been easily conceived by a person skilled in the art.

In addition, the functions and effects exerted by the matters specifying the Invention as a whole can also be predicted by a person skilled in the art from the Cited Invention and Well-known Art 1 to 3.
Therefore, the Invention could have been easily made by a person skilled in the art based on the Cited Invention and Well-known Art 1 to 3.

3 Conclusion

As described above, the Invention could have easily been made by a person skilled

in the art based on the Cited Invention 1 and Well-known Art 1 to 3, and thus cannot be granted a patent under the provisions of the Patent Act Article 29 (2).

Thus, the present application should be rejected without considering the inventions claimed in the other claims.

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

October 12, 2018

Chief administrative judge: OZAKI, Atsuchi
Administrative judge: YOSHIMURA, Hisashi
Administrative judge: MORITSUGU, Ken