

## Appeal Decision

Appeal No. 2019- 892

Appellant                      GREE, Inc.

Patent Attorney              MURAKOSHI, Satoshi

The case of appeal against the examiner's decision of refusal of Japanese Patent Application No. 2018-144682, entitled "VIDEO DISTRIBUTION SYSTEM, VIDEO DISTRIBUTION METHOD AND VIDEO DISTRIBUTION PROGRAM FOR DISTRIBUTING VIDEO INCLUDING ANIMATION OF CHARACTER OBJECT GENERATED BASED ON MOTION OF ACTOR" [Number of claims (14)] has resulted in the following appeal decision.

### Conclusion

The appeal of the case was groundless.

### Reason -

#### I History of the procedures

The present application is filed as a divisional patent application on August 1, 2018, which is a part of Japanese Patent Application No. 2018-89612 filed on May 8, 2018. The details of the procedure are as follows.

September 12, 2018	: Notification of reasons for refusal
November 6, 2018	: Submission of Written Opinion
November 28, 2018	: Decision for Refusal by a examiner
January 23, 2019	: Submission of the Notice of Appeal
February 25, 2019	: Notification of reasons for refusal by the body
April 25, 2019	: Submission of Written Opinion and Amendment

#### II Invention as Claimed in the Present Application

The invention claimed in the present application is specified by the matters described in Claims 1 to 4 of the scope of claims amended by the procedural amendment (hereinafter, "the Amendment") made on April 25, 2019. The invention according Claim 1 (hereinafter, "the Invention") is as follows.

The codes (A) to (D) for the component of the Invention are assigned by the panel for the purpose of explanation and are hereinafter referred to as Component A to Component D.

(The Invention)

(A) A video distribution system for distributing a video containing an animation of a character object generated based on a motion of an actor, comprising:

(B) one or more computer processors,

(C) wherein the one or more computer processors, by executing computer-readable instructions,

(D1) sends a first display request for requesting display of a decorative object on the video during distribution of the video from a viewer user viewing the video,

(D2) and when the decorative object is selected by the actor or a supporter who supports distribution of a video during the distribution of the video,

(D3) in association with a part of the character object determined based on the wearing position information set in the decorative object,

(D4) displays the decorative object in the video.

### III Reasons for Refusal by the body

Reason 2 of the reasons for refusal notified by the body on February 25, 2019, regarding the inventions as claimed in Claims 1 to 4 before the Amendment, was that the inventions according to Claims 1 to 4 of the application would have easily made by a person of skilled in the prior art based on an invention described in Cited Document 1, technical knowledges described in Cited Document 2, and well-known techniques (described in Cited Document 3), which were made available for the public through distribution of publications or telecommunication lines in Japan or foreign countries before the application date, therefore the inventions cannot be granted a patent under the provisions of Article 29(2) of the Patent Act.

Cited Document 1. Japanese Patent Application Publication No. 2015-184689

Cited Document 2. "Let's make a broadcast with fans! User Gifting Function Added to "AniCast", [online], April 5, 2018, XVI Inc., Internet <URL: <http://www.xvi.co.jp/wp-content/uploads/2018/04/AniCast-PressRelease.pdf> in <http://www.xvi.co.jp/news/>>

Cited Document 3. Japanese Patent Application Publication No. 2010-33298

### IV Description in Cited Documents and Cited Invention

## 1. Matters described in Cited Document 1

Cited Document 1 (Japanese Patent Application Publication No. 2015-184689) has the following description along with drawings. The underlines are added by the panel for the purpose of explanation.

(1) "[0012]

Fig. 1 schematically shows an example of an interactive system 5 in one embodiment. The interactive system 5 includes a video generation and output system 10, a user terminal 80, and a user terminal 81.

[0013]

The video generation and output system 10 communicates with the user terminal 80 and the user terminal 81 through a network 9. The network 9 includes the Internet, cellular phone networks, etc. The user terminal 80 and the user terminal 81 are, for example, portable devices such as smartphones, personal computers, etc. A user 90 is a user of the user terminal 80. A user 91 is a user of the user terminal 81.

[0014]

The video generation and output system 10 detects actions of a voice actor 60 and a voice actor 61 in real time. The actions include facial expressions, facial motions, motions of arms and legs, etc. The video generation and output system 10 also acquires voices of the voice actors 60 and 61 in real time. The video generation and output system 10 generates in real time a character animation, that include motions according to the actions made by the voice actor 60 and voice actor 61, and then combines the voice of the voice actors 60 and 61 in real time into the character animation and distributes it via the network 9.

[0015]

The user terminal 80 and the user terminal 81 receive the distributed video from the video generation and output system 10 through the network 9. In addition, the user terminal 80 sends data such as text messages input by the user 90 to the video generation and output system 10 through the network 9. The user terminal 81 sends data such as text messages input by the user 91 to the video generation and output system 10 through the network 9.

[0016]

When the video generation and output system 10 receives a text message at least from either the user terminal 80 or the user terminal 81, the received text message is displayed. The voice actors 60 and 61 see the message displayed by the video generation

and output system 10 and react to the message with their actions and voice. When the voice actors 60 and 61 react to the message with their actions and voice, the video generation and output system 10 generates a character animation that includes motions according to the actions made by the voice actors 60 and 61 and the voices made by the voice actors 60 and 61 and distributes the character animation through the network 9.

[0017]

According to the interactive system 5, the video generation and output system 10 can distribute live videos in which characters respond in real time to messages sent by the user 90 and the user 91 using the actions and voice. This enables the user 90 and the user 91 to enjoy chatting as if they were having a conversation with the characters."

(2) "[0018]

Fig. 2 schematically shows an example of a block component of the video generation and output system 10. The video generation and output system 10 includes a camera 20, a camera 21, a motion sensor 30, a motion sensor 31, a camera 40, a display device 50, a display device 51, a video processing unit 100, a video processing unit 200, and a server 300."

(3) "[0023]

The video processing unit 100 includes a face motion detection unit 110, a body motion detection unit 120, a storage unit 140, an audio acquisition unit 150, a camera information acquisition unit 160, and a video generation and output unit 180. The video generation and output unit 180 includes a video generation unit 130 and a video output unit 170. The face motion detection unit 110, the body motion detection unit 120, the video generation unit 130, the audio acquisition unit 150, the camera information acquisition unit 160, and the video output unit 170 are embodied by a processor such as, for example, an MPU. The storage unit 140 is embodied by a non-volatile storage medium such as a hard disk."

(4) "[0034]

The server 300 distributes the character animation output by the video output unit 170 to the user terminal 80 and the user terminal 81 via the network 9. In addition, the server 300 also receives a text message from the user terminal 80 and the user terminal 81 via the network 9. The display device 50 is installed in a location where the voice actor 60 can see the display device 50. The server 300 displays the messages obtained from the user terminal 80 and the user terminal 81 on the display device 50.

[0035]

According to the video processing unit 100 described above, the voice actor 60 sees the message input from the user terminal 80 and reacts to it, the reaction is then reflected in the character animation in real time and sent to the user terminal 80. Therefore, the users 90 and 91 can enjoy a live chat."

(5) "[0056]

In the above description, the processes described for the operation of the video processing unit 100 is embodied by a processor controlling all hardware (e.g., hard disk, memory, etc.) of the video processing unit 100 according to a program. Thus, at least some processes of the video processing unit 100 described in relation to the video processing unit 100 in the embodiment are embodied by a processor operating in accordance with a program to control each piece of hardware, and the program and each piece of hardware which includes the processor, the hard disk, the memory, and the like operating in cooperation with each other. In other words, the process can be embodied by a common computer. The computer loads the program for controlling the execution of the process mentioned above, and execute the process by operating according to the loaded program. A computer can load the program from a computer-readable storage medium that stores the program."

## 2. Cited Invention

From the above description, the following technical matters are found to be described in Cited Document 1.

(1) According to 1(1) above, the interactive system 5 includes the video generation and output system 10 and the user terminal 80.

(2) According to 1(2) above, the video generation and output system 10 includes the camera 20, the motion sensor 30, the camera 40, the display device 50, and the video processing unit 100. Further, according to 1(3) above, the video processing device 100 is embodied by a processor.

(3) According to 1(5) above, the processing of the video processing unit 100 is embodied by the processor controlling the video processing unit 100 according to a program.

(4) According to 1(1) above, the video generation and output system 10 communicates with the user terminal 80 through the network 9.

(5) According to 1(1) above, the user 90 is a user of the user terminal 80.

(6) According to 1(1) above, the video generation and output system 10 generates a character animation, which includes motions in response to the actions of the voice actor 60, then combines the voice of the voice actor 60 into the character animation in real time and distributes the video. Further, according to 1(4) above, Cited Document 1 describes distributing the character animation to the user terminal 80.

(7) According to 1(1) above, the user terminal 80 receives the distributed video from the video generation and output system 10 through the network 9.

(8) According to 1(1) above, the user terminal 80 sends data such as text messages input by the user 90 to the video generation and output system 10.

(9) According to 1(1) above, when the video generation and output system 10 receives a text message obtained from the user terminal 80, the received text message is displayed. According to 1(4) above, Cited Document 1 states that the message obtained from the user terminal 80 is displayed on the display device 50 that is installed at a position where the voice actor 60 can see the display device 50.

(10) According to 1(1) above, when the voice actor 60 sees the displayed message and reacts to the message with actions and voices, the video generation and output system 10 generates a character animation including motions according to the actions made by the voice actor 60 and the voice made by the voice actor 60, and distributes the character animation through the network 9.

Further, according to 1(4) above, Cited Document 1 states that when the voice actor 60 sees the message input using the user terminal 80 and reacts to it, the reaction is reflected in the character animation in real time and distributed to the user terminal 80.

(11) According to (1) above, the video generation and output system 10 can distribute a live video in which a character responds in real time to the message sent by the user 90, and enable the user 90 to enjoy chatting as if they were having a conversation with the characters.

(12) Based on the above, it is specified that the following invention (hereinafter, "Cited Invention") is described in Cited Document 1.

The codes (a) to (k) for Cited Invention are assigned by the panel for the purpose of explanation and are hereinafter referred to as Component a to Component k.

(Cited Invention)

- (a) An interactive system 5 comprising: a video generation and output system 10; a user terminal 80; and a user terminal 81,
- (b) wherein the video generation and output system 10 includes a camera 20, a motion sensor 30, a camera 40, a display device 50, and a video processing device 100, and the video processing device 100 is embodied by a processor,
- (c) wherein the processing of the video processing device 100 is embodied by a processor controlling the video processing device 100 according to a program,
- (d) wherein the video generation and output system 10 communicates with the user terminal 80 through a network 9,
- (e) wherein a user 90 is a user of the user terminal 80,
- (f) wherein the video generation and output system 10 generates a character animation, which includes motions according to an action of a voice actor 60, combines the voice of the voice actor 60 into the character animation in real time and then distributes the character animation to the user terminal 80,
- (g) wherein the user terminal 80 receives the distributed video from the video generation and output system 10 through the network 9,
- (h) wherein the user terminal 80 sends data such as a text message input by the user 90 to the video generation and output system 10,
- (i) wherein when the video generation and output system 10 receives the text message obtained from the user terminal 80, the video generation and output system 10 displays the received text message on the display device 50 that is installed at a position where the voice actor 60 is able to see the display device 50,
- (j) wherein when the voice actor 60 sees the displayed message and reacts to the message with an action and a voice, the video generation and output system 10 generates the character animation including motions according to the action made by the voice actor 60 and the voice made by the voice actor 60, and distributes the character animation to the user terminal 80 through the network 9, and
- (k) wherein the video generation and output system 10 is configured to distribute a live video in which a character responds in real time to the message sent by the user 90, and

enable the user 90 to enjoy chatting as if they were having a conversation with the character.

### 3. Matters described in Cited Document 2

Cited Document 2 ("Let's make a broadcast with fans! User Gifting Feature Added to "AniCast", [online], April 5, 2018, XVI Inc., Internet link <URL: <http://www.xvi.co.jp/wp-content/uploads/2018/04/AniCast-PressRelease.pdf> in <http://www.xvi.co.jp/news/>>) has the following description along with drawings. The underlines are added by the panel for the purpose of explanation.

(1) "XVI Corporation (Head office: Chuo-ku, Tokyo; Board Director: Yoshihito Kondo) has added a user-gifting function to "AniCast", a VR animation production tool that can also be used for distribution." (p.1)

(2) "User-gifting means that gifts created by viewers and distributors will appear in the VR space. The distributor can perform a various expressions in the VR space, such as holding, moving, wearing, and zooming." (p.1)

(3) "Usage example using Megu Shinonome "Megu Shinonome" not only introduces illustrations from viewers in the broadcast using the user-gifting function, but also wears those illustrations as #Megu accessories and does a puppet show featuring those illustrations as characters." (p.2)

(4) "AniCast "AniCast" is a VR animation production tool that allows anyone to animate 3DCG characters with the minimum configuration using Oculus Rift and Oculus Touch, with no need for large-scale equipments or motion capture studios. Virtual gifting, which is officially linked to the gifting in the SHOWROOM, is also possible." (p.2)

(5) "Megu Shinonome is the main character in "Utate Onpukko," a 3DCG animation distributed on YouTube, SHOWROOM, and the like by CS Reporters Inc.'s (Head Office: Niigata City, Niigata Prefecture; President and CEO: Kenichi Nakayama) anime VR/AR brand "Gugenka? from CS-REPORTERS.INC" in 2018." (p.2)



(6) "SHOWROOM is a live streaming platform operated by SHOWROOM Co., Ltd (Head office: Shibuya-ku, Tokyo; President: Yuji Maeda) that allows anyone to distribute live-streaming videos and watch for free within a virtual live space." (p.2)

#### 4. Technology described in Cited Document 2

From the above, the following technology described in Cited Document 2.

(Technology described in Cited Document 2)

A technology that adds a user-gifting function in a live streaming platform for live-streaming 3DCG characters, that allows viewers to create their own gifts and have them appear in the VR space, and the distributor uses expressions to put on the gifts in VR space and the 3DCG animation main character uses the user-gifting function to wear the work from the viewers in the broadcast.

#### V Comparison

Comparison is made between the Invention and the Cited Invention above.

##### 1. Regarding Component A

The "voice actor 60", "action", "character", "animation", and "character animation" in Component f correspond respectively to the "actor", "motion", "character object", "animation", and "animation" in Component A.

The "character animation" in Component f is "an animation of a character moving in response to the actions of the voice actor 60", and thus corresponds to "a video containing animation of a character object generated based on a motion of an actor" in Component A.

Therefore, the "interactive system 5" of Cited Invention corresponds to Component A in that it is a "video distribution system for distributing a video including an animation of a character object generated based on a motion of an actor".

##### 2. Regarding Component B

The "processor" of the video processing device 100 of Component b corresponds to the "computer processor" of Component B.

Thus, the "interactive system 5" of Cited Invention corresponds to Component B in that it includes "one or more computer processors".

### 3. Regarding Component C

Since "processing of the video processing device 100" in Component c equates to "controlling the video processing device 100 according to a program", it can also be equated with "executing computer-readable instructions".

Thus, the "processor" of the video processing device 100 in Component c corresponds to Component C in that "one or more computer processors execute computer-readable instructions".

### 4. Regarding Component D1

Since the "user 90" in Component e is the "user of the user terminal 80" and the "user terminal 80" in Component g receives "the distributed video from the video generation and output system 10", and the "user 90" in Cited Invention corresponds to "the user viewing the video" in Component D1.

As the "video generation and output system 10" in Component i displays the "received text message" on the display device 50, and the "video generation and output system 10" in Component k can "distribute a live video in which the character responds in real time to the message sent by the user 90", and the "receives the text message" in Component i is performed "during the distribution of the video".

Therefore, the "data such as a text message" in Component h has a common feature "first display request" in Component D1, in that it the "first display request is made during the distribution of the video from the user viewing the video".

The "character animation including motions according to the actions made by the voice actor 60 and the voice made by the voice actor 60" in Component j is "displayed" on the user terminal 80. "Distribute a live video in which the character responds in real time" and "enjoy chatting as if they were having a conversation with the character " in Component k bring about the same result. Then, the "data such as a text message" in Component h can be said to request the display of a "character animation" that responds in real time.

Therefore, "data such as a text message" in Component h is common to "first display request to display a decorative object on the video" in Component D1 in that it is a display request requesting display an animation that responds in real time.

Based on the above, Cited Invention and Component D1 have a common feature in which "the user viewing the video makes a first display request requesting display on

the video during the distribution of the video".

However, the difference of them is that the object of the display is "decorative object" in the Invention, whereas it is "character animation" that responds in real time in Cited Invention.

#### 5. Regarding Component D4

"Character animation including motions according to the actions made by the voice actor 60 and the voice made by the voice actor 60" in Component j is displayed on the user terminal 80, and therefore it corresponds to "video" in Component D4. Thus, Component j and Component D4 have a common feature "displayed in the video".

However, as discussed in 4 above, the difference of them is that the object requested to the display is "decorative object" in the Invention, whereas it is "character animation" that responds in real time in Cited Invention.

#### 6. Regarding Component D2

As described in 4 above, "character animation including motions according to the actions made by the voice actor 60 and the voice made by the voice actor 60" in Component j is "displayed" on the user terminal 80.

Moreover, the process of distributing the "character animation including motions according to the actions made by the voice actor 60 and the voice made by the voice actor 60" in Component j to the user terminal 80 is caused by "voice actor 60 sees the displayed message and reacts to the message with actions and voice".

Further, the "video generation and output system 10" in Component k can "distribute a live video in which the character responds in real time to the message sent by the user 90", and therefore the process where the "voice actor 60 sees the displayed message and reacts to the message with actions and voice" in Component j is performed "during the distribution of the video".

Therefore, comparing Component j and Component D2, each component has in common that the process of "display on the video" is performed when "the prescribed action is performed by the actor or supporter who supports the distribution of the video during the distribution of the video".

However, the difference of them is that the action performed "by the actor or supporter who supports the distribution of the video during the distribution of the video" is "selection of a decorative object" in the Invention, whereas it is "reaction" in Cited

Invention.

#### 7. Regarding Component D3

As described in 5 above, the Component j and the Component D4 have a common feature "display on the video", and are different in terms that the object of display is a "decorative object" in the Invention, whereas it is the "character animation" that reacts in real time in Cited Invention.

Furthermore, according to the difference, the process of "displaying the decorative object on video" is performed in "association with the part of the character object that is determined based on the wearing position information set in the decorative object" in the Invention, whereas no such association is made in Cited Invention.

#### 8. Summary of the comparison

Based on the above comparisons 1 to 7, commonality and differences between the Invention and Cited Invention are as follows.

##### (Corresponding Features)

A video distribution system for distributing a video including an animation of a character object generated based on a motor of an actor, the video distribution system comprising:

one or more computer processors,

wherein the one or more computer processors, by executing a computer-readable instruction,

issues a first display request requesting display on the video during distribution of the video from a user viewing the video,

and when a predetermined action is performed by the actor or a supporter who supports distribution of a video during the distribution of the video, displays it on the video.

##### (Difference 1)

The object requested to display is "decorative object" in the Invention, whereas it is "character animation" that responds in real time in Cited Invention.

##### (Difference 2)

The action performed "by the actor or supporter who supports the distribution of the video" is "selection of a decorative object" in the Invention, whereas it is "reaction" in Cited Invention.

(Difference 3)

In related to the above Difference 1, the process of "displaying the decorative object on the video" is performed "in association with the part of the character object that is determined based on the wearing position information set in the decorative object" in the Invention, whereas no such association is made in Cited Invention.

VI Judgment by the body

Each of the above differences are discussed below.

#### 1. Regarding Difference 1

The technology as described in Cited Document 2 is a technology in which a user-gifting function is added in a live streaming platform for live-streaming 3DCG characters, gifts created by a viewer appear in the VR space, the distributor uses expressions to wear the gift in the VR space and the 3DCG animation main character uses the user-gifting function to wear the work from the viewer within the broadcast.

Here, "gift" in the technology described in Cited Document 2 is used for "the expression of wearing" and thus corresponds to the "decorative object" of the Invention.

Moreover, in the live streaming platform for live streaming 3DCG characters in the technology described in Cited Document 2, the expression of wearing a gift is nothing more than having the "gift" appear in the video being live streamed.

In other words, the technology described in Cited Document 2 is to display the "decorative object".

Because the technologies described in Cited Invention and Cited Document 2 are common in a way that they relate to a video distribution system that distributes character animations, it is easily conceivable for a person skilled in the art to apply the technology described in Cited Document 2 to Cited Invention and to display the "decorative object" of the technology described in Cited Document 2 in Cited Invention, similar to the "character animation" that reacts in real time in Cited Invention.

Therefore, it is easy for a person skilled in the art to conceive the Difference 1 between Cited Invention and the Invention by applying the technology described in Cited Document 2 to Cited Invention.

#### 2. Regarding Difference 2

The "voice actor 60" of Cited Invention corresponds to the "actor" in the Invention.

As described in 1 above, in the live streaming platform for live streaming 3DCG characters in the technology described in Cited Document 2, the expression of wearing a gift is nothing more than having the "gift" appear in the video being live streamed.

In the technology described in cited document 2, the meaning of "the distributor uses expressions of wearing the gift in VR space" is clarified as the distributor who performs live distribution using the live streaming platform "puts a gift created by the viewer" onto "the character." Consequently, in the live streaming platform, "putting onto a character" means that the distributor decides whether to "put a gift onto a character" and executes the action to put on the gift. Therefore, it can be said that "a gift to be put on by the distributor has been selected."

Accordingly, the technology described in Cited Document 2 is the process of "displaying on the video" when a "decorative object is selected" by the "distributor".

The technologies described in Cited Invention and Cited Document 2 are common in a way that they relate to a video distribution system that distributes character animations. The "voice actor 60" in Cited Invention and the "distributor" in the technology described in Cited Document 2 are common in a way that they both are persons who distribute videos. Because of this, it is easily conceivable for a person skilled in the art to apply the technology described in Cited Document 2 to Cited Invention to make the action performed by the actor into the action to "select the decorative object" to perform the process of "display on the video" in Cited Invention.

Therefore, it is easy for a person skilled in the art to conceive the Difference 2 between Cited Invention and the Invention by applying the technology described in Cited Document 2.

### 3. Regarding Difference 3

As mentioned in 1 above, it is easily conceivable for a person skilled in the art to display "decorative objects" of the technology described in Cited Document 2 in Cited Invention, similar to "character animation" that responds in real time given in Cited Invention.

In doing so, it is possible for a person skilled in the art to perform the process of "displaying a decorative object on a video" in Cited Invention in "association with the part of the character object that is determined based on the wearing position information set in the decorative object" by adopting the well-known technique described in Cited Document 3 (paragraphs 0060 to 0086, Figs. 2 to 5 and the like) of displaying an object at a site determined based on the wearing position information set on the object.

Therefore, it is easy for a person skilled in the art to conceive the Difference 3

between Cited Invention and the Invention by applying the technology described in Cited Document 2.

#### 4. Regarding the Effects

As the above mentioned, components of the invention is easily conceivable by a person skilled in the art, the effect of the invention is within the range that can be easily predicted by a person skilled in the art from the easily conceivable components mentioned above, and there is nothing remarkable beyond that range.

#### 5. Summary

As described above, the Invention could have been easily invented by a person skilled in the art based on Cited Invention, the technology described in Cited Document 2, and the well-known technology.

### VII Conclusion

As described above, the Invention according to Claim 1 is not patentable under the provisions of Article 29(2) of the Patent Act.

Accordingly, the present application should be rejected without examining the remaining claims.

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

July 16, 2019

Chief administrative judge: TORII, Minoru  
Administrative judge: FUJIWARA, Takatoshi  
Administrative judge: KASHIMOTO, Tsuyoshi