

copy thereof was delivered to the Appellant on May 14, 2019.

Against this, an appeal against the examiner's decision of refusal was made on August 5, 2019. A written amendment was submitted on the same day.

No. 2 Decision to dismiss amendment on the written amendment submitted on August 5, 2019

[Conclusion of Decision to Dismiss Amendment]

The written amendment (hereinafter referred to as "the Amendment") submitted on August 5, 2019 shall be dismissed.

[Reason for Decision to Dismiss Amendment]

The Amendment is to amend the scope of claims. A part of the amendment includes an amended matter (hereinafter referred to as "the Amended Matter") which amends the recitation of Claim 1 before the Amendment, as recited after the Amendment.

1 Recitation of Claim 1 before the Amendment

"[Claim 1]

A game server which provides a game to a plurality of terminals connected over a communication line comprising:

determination means which determines, on receipt of a request from a terminal to select a quest to be executed by a group formed of a plurality of terminals and to receive an order of the quest for a cooperative play, whether to permit execution of the quest; and

transmission means which transmits to the terminal, when the determination means determines not to permit execution of the quest, predetermined information indicating that execution of the quest is not permitted; wherein

the determination means

determines to permit, when at least some of a plurality of terminals including the above terminal satisfy a condition for executing the quest, the terminals to execute the quest, and

determines not to permit the above terminal to execute the quest when requests from a predetermined number of other terminals corresponding to the quest for receiving an order of the quest that defines the above terminal as a member of the group are not received,

the transmission means

transmits, when the determination means determines not to permit the above terminal to execute the quest, as the predetermined information, not information about whether the condition for executing the quest is satisfied or not, but information of inviting to receive an order of the quest in cooperation with other terminals,

the condition for executing the quest relates to a matter that a quest which is to be executed before the above quest has been executed."

2 Recitation of Claim 1 after the Amendment

"[Claim 1]

A game server which provides a game to a plurality of terminals connected over a communication line comprising:

determination means which determines, on receipt of a request from a terminal to select a quest to be executed by a group formed of a plurality of terminals and to receive an order of the quest for a cooperative play, whether to permit execution of the quest; and

transmission means which transmits to the terminal, when the determination means determines not to permit execution of the quest, predetermined information indicating that execution of the quest is not permitted; wherein

the determination means

determines to permit, when at least some of a plurality of terminals including the above terminal satisfy a condition for executing the quest, the terminals to execute the quest, and

determines not to permit the above terminal to execute the quest when requests from a predetermined number of other terminals corresponding to the quest for receiving an order of the quest that defines the above terminal as a member of the group are not received,

the transmission means

transmits, when the determination means determines not to permit the above terminal to execute the quest, as the predetermined information, not information about whether the condition for executing the quest is satisfied or not, but information of inviting a user of the above terminal to receive an order of the quest in cooperation with other terminals,

the condition for executing the quest relates to a matter that a quest which is to be executed before the above quest has been executed." (The underline was added by the body for indicating the amended portion.)

3 Regarding the purpose of the Amendment

The Amended Matter is to modify the matters specifying the invention of Claim 1 before the Amendment, "information of inviting to receive an order of the quest in cooperation with other terminals", to the matters specifying the invention of Claim 1 after the Amendment, "information of inviting a user of the above terminal to receive an order of the quest in cooperation with other terminals". The object to receive "the information" in the matters specifying the invention of Claim 1 before the amendment is limited to "a user of the above terminal". Thus, the Amendment falls under the restriction of the scope of claims stipulated in Article 17-2(5)(ii) of the Patent Act.

The Amended Matter does not violate the provisions of Article 17-2(3) and (4).

4 Consideration on requirement for independent patentability

We will examine below whether the Appellant can be granted a patent independently at the time of patent application for the invention according to Claim 1 after the Amendment (hereinafter referred to as "the Amended Invention") (whether the Amended Invention falls under the provisions of Article 126(7) of the Patent Act which is applied mutatis mutandis in the provisions of Article 17-2(6) of the Patent Act).

(1) The Amended Invention

The Amended Invention is specified by the matters specifying the invention as indicated in 2.

(2) Consideration on retroactive filing date of the present application

Regarding the Parent Application (Japanese Patent Application No. 2015-117691), which is an original application of the Application, a notice of reasons for refusal (Notice of reasons for refusal dated December 8, 2016) as follows is issued: "The requirements for division are not satisfied. Retroaction of the filing date is not approved. The actual filing date, June 10, 2015, is treated as a filing date". After that, a written opinion and a written amendment were submitted on February 17, 2017. The written amendment was dismissed on July 31, 2017 and an examiner's decision was made with the above reasons for refusal (dispatch date: August 22, 2017). An appeal against the examiner's decision of refusal was not made within the period of appeal. The examiner's decision on the Parent Application has become final and binding.

The Appellant alleges in the written appeal of the present application as follows: "The reason why the requirements for division are not satisfied in the reasons for refusal

(Notice of reasons for refusal dated December 8, 2016) for the Parent Application is improper. The Parent Application satisfies the requirements for division, and retroaction of the filing date of the present application should be approved to the filing date of the Great-Grandparent Application."

However, as described above, in the procedure of the Parent Application, for the reason that the Parent Application does not satisfy the requirements for division, Article 44(2) of the Patent Act is not applied, and as a result, the examiner's decision based on the actual filing date of the Parent Application, June 10, 2015, has become final and binding. In the procedure of the present application, it is unacceptable to judge invalidity of divisional application of the Parent Application that has already become final, since it leads a disposition which has already become final and binding, to be overruled by other procedures (See Japanese Supreme Court Decision 1988 (Gyo-tsu) No. 164 on July 20, 1990 by Second Petty Bench).

Accordingly, the Parent Application has been judged as an illegal divisional application due to the validity of the examiner's decision which has become final and binding, and the filing date thereof must be June 10, 2015, which is the actual filing date, without retroaction to the filing date of the Great-Grandparent Application. Thus, it is recognized that the filing date of the present application, which is a divisional application from the Parent Application, is June 10, 2015, which is the filing date of the Parent Application.

(3) Cited Document and Cited Invention

A Japanese Unexamined Patent Application Publication No. 2012-115534 (which is a publication of the unexamined patent application of the Great-Grandparent application, and hereinafter referred to as "Cited Document"), which is cited as Cited Document 1 in the reasons for refusal stated in the examiner's decision and was distributed before the filing date of the Parent Application (June 10, 2015), which is considered the filing date of the present application as examined in (2), describes the following matters. (Different types of punctuation marks "," and "、" in the Cited Document are unified to ",".)

(A) "[0019]

FIG. 1 shows two or more game terminals 1A, 1B, 1C (actually, extremely many game terminals 1 exist although FIG. 1 exemplarily shows only three game terminals 1) and a game server 3 connected with the game terminals 1A, 1B, 1C via a

public communication line 2, such as the Internet and a public telephone line. Each of the game terminals 1A, 1B, 1C has a main body 1a housing a computer therein and a controller 1b as an input device is connected with the main body 1a." (The underlines were added by the body for emphasis. The same applies hereinafter.)

(B) "[0022]

The game terminal 1 and the game server 3 have the above-mentioned structures. In order to play an online game, such as a MMORPG for players, each player operates his (her) own game terminal 1 so as to connect with the game server 3 through the public communication line 2, and executes the game in such a manner that the player operates to move an operation character that is set corresponding to each player in a virtual space formed in a memory in the game server 3 so that the operation character take actions according to a predetermined scenario controlled by the game server 3. The game program executed by the game server 3 is stored in the game program memory 10 in the game server 3, and performs main controls in the online game. In each game terminal 1, the game program for controlling the terminal for executing a desired online game by connecting with the game server 3 is stored in a predetermined memory."

(C) "[0025]

Among the quests, 'cooperation play' to be done through two or more players cooperating with each other is set, and the succeeding quest A as shown in FIG. 5 is set as 'cooperation play' to be done by three players in cooperation with each other according to the game program. Then, if the player selects to execute the succeeding quest A; that is, if the order entry of the succeeding quest A is notified (order entry notice) to the game server 3 from some game terminal (such as the game terminal 1A), the game proceeding controller 8 judges whether the order entries of the succeeding quest of a group including the game terminal 1A have been notified from the other game terminals 1 (players), and if the order entry of the succeeding quest has been notified from the other game terminals (such as the game terminals 1B, 1C), the game proceeding controller 8 reads information of attainment states of the succeeding quest for every player out of the quest execution control table of each player ID that corresponds to the game terminals 1A, 1B, and 1C from which the order entry notice of the quest has been outputted, by searching the quest control memory 11 at once.

[0026]

If the order entry of the quest of the group including the game terminal 1A has

not been notified from the other game terminal 1 (player), the game proceeding controller 8 sends a message of inviting to receive the order of the quest in cooperation with the other game terminals 1 to the game terminal 1A that outputted the order entry notice so as to secure a proper scenario proceeding.

[0027]

After the order entry notices of the quest have been outputted from the game terminal group of the game terminals 1A, 1B, and 1C to the game server 3 and the information of attainment of the corresponding succeeding quest has been read out of the quest execution control table, the quest proceeding controller 9 prepares a succeeding quest control table QCT for respective player IDs corresponding to the game terminals 1A, 1B, and 1C through which the order entry notices of the succeeding quest A were outputted to the game server 3 according to the game program, as shown in FIG. 2. The succeeding quest control table QCT is made by editing the information of attainment of the partial quests constituting the succeeding quest A for each player ID read out of the quest execution control table, and the quest proceeding controller 9 controls execution of the quest in the respective game terminals 1A, 1B, and 1C, while referring to the states of attainment of the partial quests shown in the succeeding quest control table QCT.

[0028]

That is, the quest proceeding controller 9 judges the order of receipt of partial quest of the succeeding quest A in the order entry notice outputted this time through each of the game terminals 1A, 1B, and 1C, based upon the player ID (in FIG. 2, the player ID of the game terminal 1A is "12345", the player ID of the game terminal 1B is "23456", and the player ID of the game terminal 1C is "78901") of each game terminal 1 that outputted the order entry notice of the succeeding quest A, by referring to the state of attainment of the partial quests 1 to 5 of each game terminal 1 (player) in the succeeding quest A. The order entry notice from each game terminal 1 stores the partial quest that receives the order this time and information for specifying the other game terminals 1 that receive the order of the partial quest 2 together (that perform the cooperation play) together with a cooperation play execution flag, and such a judgment is made easy thereby.

[0029]

And, the quest proceeding controller 9 judges the partial quest that the respective game terminals 1A, 1B and 1C can receive in the order based upon the succeeding quest control table QCT. According to the game program, the quest proceeding controller 9 performs control such that the partial quests should be executed in order starting from 1,

and the partial quest that has already been cleared is not possible to be executed again, but the game program includes such a cooperation play procedure that the partial quest to be executed with other players in cooperation with each other is temporarily allowed to be executed even if the partial quest has already been cleared.

[0030]

In FIG. 2 for example, in a normal control the player is receiving the order of the partial quest 5 in the game terminal 1A (the player ID is "12345") and it is not possible to receive a new order of the partial quest in the succeeding quest A and it is possible to execute only the partial quest 5 whose order is being received. In the game terminal 1B (the player ID is "23456"), only the partial quest 1 has been cleared and it is possible to receive the order of only partial quest 2 next. In the game terminal 1C (the player ID is "78901"), the partial quests 1 through 3 have been cleared and it is possible to receive the order of only partial quest 4 next.

[0031]

If the order entry notices outputted from the game terminals 1A, 1B, and 1C are ones of receiving the order of the partial quest 2 as the cooperation play, the quest proceeding controller 9 judges which of the game terminals 1A, 1B, and 1C that outputted the order entry notices has a qualification for receiving the order of the partial quest 2, from the information of attainment of the partial quests of the succeeding quest A. In such a case, the judgment is that the game terminal 1B can receive the order of the partial quest 2 (can execute the partial quest 2), and the other game terminals 1A and 1C are not able to receive the order of the partial quest 2. If the judgment is that the order entry notice includes a notice showing that the cooperation play is done and at least one of the game terminals 1 has a qualification for receiving the order of the partial quest shown in the order entry notice, the quest proceeding controller 9 starts the cooperation play procedure based upon the cooperation play execution flag shown in each order entry notice."

(D) Based on the description "[0019] ... two or more game terminals 1A, 1B, 1C (FIG. 1 exemplarily shows only three game terminals 1)", considering the description "[0022] ... each player operates his (her) own game terminal 1 so as to connect with the game server 3 through the public communication line 2", the description "each player operates his (her) own game terminal 1" is considered to mean that "each player operates one of his (her) own game terminals 1A, 1B, 1C".

(E) According to the description "[0025] ... the other game terminals (such as the game

terminals 1B, 1C", "the other game terminals 1" described in "[0025] ... the other game terminals 1 (players)" and "[0026] ... from the other game terminal 1 (player) ... sends a message of inviting to receive the order of the quest in cooperation with the other game terminals 1" are considered to be "game terminals 1B, 1C".

(F) Based on the consideration in (D), the description "[0031] ... at least one of the game terminals 1" is considered to mean "at least one of the game terminals 1A, 1B, 1C".

(G) According to the description "[0031] ... If the order entry notices outputted from the game terminals 1A, 1B, and 1C are ones of receiving the order of the partial quest 2 as the cooperation play, the quest proceeding controller 9 judges which of the game terminals 1A, 1B, and 1C that outputted the order entry notices has a qualification for receiving the order of the partial quest 2, from the information of attainment of the partial quests of the succeeding quest A. In such a case, the judgment is that the game terminal 1B can receive the order of the partial quest 2 (can execute the partial quest 2)", it can be said that the game terminal B has a qualification for receiving the order of the partial request 2.

B According to the matters indicated in A (A) to (C) and the matters examined in A (D) to (G), it is recognized that the Cited Document describes the following invention (hereinafter referred to as "Cited Invention").

"A game server 3 wherein each player operates one of his (her) own game terminals 1A, 1B, 1C so as to connect with the game server 3 through the public communication line 2, configured to:

judge, if the order entry of the succeeding quest A, which is to be done by three players in cooperation with each other, is notified from the game terminal 1A, whether the order entries of the succeeding quest (order entry notice) of a group including the game terminal 1A have been notified from the game terminals 1B, 1C;

send, if the order entry of the quest of the group including the game terminal 1A has not been notified from the game terminals 1B, 1C, a message of inviting to receive the order of the quest in cooperation with the game terminals 1B, 1C to the game terminal 1A that outputted the order entry notice;

receive the order entry notices of the quest outputted from the game terminal group of the game terminals 1A, 1B, and 1C; and

if the order entry notices outputted from the game terminals 1A, 1B, and 1C are ones of receiving the order of the partial quest 2 as the cooperation play, perform as

follows:

the quest proceeding controller 9 judges which of the game terminals 1A, 1B, and 1C that outputted the order entry notices has a qualification for receiving the order of the partial quest 2, from the information of attainment of the partial quests of the succeeding quest A,

if the judgment is that the game terminal 1B, which has cleared only the partial quest 1 and can receive the order of only partial quest 2 next, has a qualification for receiving the order of the partial quest 2, and

if the order entry notice includes a notice showing that the cooperation play is done and at least one of the game terminals 1A, 1B, 1C has a qualification for receiving the order of the partial quest shown in the order entry notice, the quest proceeding controller 9 starts the cooperation play procedure."

(4) Comparison between Amended Invention and Cited Invention

A The "game terminals 1A, 1B, 1C", the "public communication line 2", the "game server 3", the "succeeding quest A" "quest", and the "cooperation play" in the Cited Invention correspond to "a plurality of terminals", the "communication line", the "game server", the "quest", and the "cooperative play" in the Amended Invention, respectively.

B The matter in the Cited Invention "the order entry of the succeeding quest A, which is to be done by three players in cooperation with each other, is notified from the game terminal 1A" corresponds to the matter in the Amended Invention "a request to select a quest to be executed by a group formed of a plurality of terminals".

C In the Cited Invention, "if the order entry of the succeeding quest A, which is to be done by three players in cooperation with each other, is notified from the game terminal 1A" and "if the order entry notices outputted from the game terminals 1A, 1B, and 1C are ones of receiving the order of the partial quest 2 as the cooperation play" (hereinafter referred to as "Case 1"), or "if the order entry notice includes a notice showing that the cooperation play is done and at least one of the game terminals 1A, 1B, 1C has a qualification for receiving the order of the partial quest shown in the order entry notice" (hereinafter referred to as "Case 2"), "(the quest proceeding controller 9) starts the cooperation play procedure". Thus, the cooperation play procedure is not started unless Case 1 or Case 2 is satisfied, and the Cited Invention obviously includes determination means for determining whether to start the "cooperation play procedure"

"if the order entry of the succeeding quest A, which is to be done by three players in cooperation with each other, is notified from the game terminal 1A". Therefore, the determination means corresponds to the "determination means which determines, on receipt of a request from a terminal to receive an order of the quest for a cooperative play, whether to permit execution of the quest" in the Amended Invention.

D As examined in C, the Cited Invention is configured not to start the cooperation play procedure "if the order entry of the quest of the group including the game terminal 1A has not been notified from the game terminals 1B, 1C" (Note by the body: the case other than "Case 1"), but to "send a message of inviting to receive the order of the quest in cooperation with the game terminals 1B, 1C to the game terminal 1A that outputted the order entry notice". The above matter corresponds to the following matters in the Amended Invention: "transmits to the terminal, when the determination means determines not to permit execution of the quest, predetermined information indicating that execution of the quest is not permitted", and "determines not to permit the above terminal to execute the quest when requests from a predetermined number of other terminals corresponding to the quest for receiving an order of the quest that defines the above terminal as a member of the group are not received,

the transmission means transmits, when the determination means determines not to permit the above terminal to execute the quest, as the predetermined information, not information about whether the condition for executing the quest is satisfied or not, but information of inviting to receive an order of the quest in cooperation with other terminals".

The Cited Invention which "sends a message" includes "transmission means", obviously. The "transmission means" corresponds to the "transmission means which transmits predetermined information" in the Amended Invention.

E The matter in the Cited Invention "if the order entry notice includes a notice showing that the cooperation play is done and at least one of the game terminals 1A, 1B, 1C has a qualification for receiving the order of the partial quest shown in the order entry notice, the quest proceeding controller 9 starts the cooperation play procedure" corresponds to the matter in the Amended Invention "determines to permit, when at least some of a plurality of terminals including the above terminal satisfy a condition for executing the quest, the terminals to execute the quest".

F The matter specifying the invention in the Cited Invention "the game terminal 1B,

which has cleared only the partial quest 1 and can receive the order of only partial quest 2 next, has a qualification for receiving the order of the partial quest 2" corresponds to the matter in the Amended Invention "the condition for executing the quest relates to a matter that a quest which is to be executed before the above quest has been executed".

G Accordingly, the Amended Invention and the Cited Invention are completely identical. There is no difference between them.

H Summary

As examined above, the Amended Invention is identical with the invention described in the Cited Invention. The Appellant should not be granted a patent for the invention under the provision of Article 29(1)(iii) of the Patent Act. Thus, the Appellant cannot be granted a patent for the invention independently at the time of patent application.

The Appellant cannot be granted a patent for the Amended Invention independently at the time of patent application. Thus, the Amendment violates the provisions of Article 126(7) of the Patent Act which is applied mutatis mutandis in the provisions of Article 17-2(6) of the Patent Act.

(4) Summary of Decision to Dismiss Amendment

As examined above, the Amended Invention violates the provisions of Article 126(7) of the Patent Act which is applied mutatis mutandis in the provisions of Article 17-2(6) of the Patent Act. Thus, the Amendment should be dismissed under the provisions of Article 53(1) of the Patent Act which is applied mutatis mutandis in the provisions of Article 159(1) of the Patent Act.

Therefore, the decision is made in accordance with the Conclusion of Decision to Dismiss Amendment.

No. 3 Regarding the invention

1 The Invention

The Amendment was dismissed as discussed in No. 2. The inventions according to Claims 1 to 3 of the present application are specified by the matters recited in Claims 1 to 3 of the scope of claims after the amendment which was amended by the written amendment submitted on January 15, 2019. The invention according to Claim 1 (hereinafter referred to as "the Invention") is as indicated in No. 2 1.

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

A part of the reasons for refusal stated in the examiner's decision for the Invention is as follows: The Invention is identical with the invention described in the Cited Document (Japanese Unexamined Patent Application Publication No. 2012-115534) distributed in Japan before the filing date of the Parent application, and the Appellant should not be granted a patent for the invention under the provision of Article 29(1)(iii) of the Patent Act.

3 Cited Document and described matters thereof

The invention described in the Cited Document (Cited Invention) cited in the examiner's decision is as indicated and acknowledged in No. 2 4 (3) B.

4 Comparison between the Invention and the Cited Invention, and Judgment

As indicated in No. 2 3, the matter in the Invention "information of inviting to receive an order of the quest in cooperation with other terminals" is formed by deleting the matters specifying the invention "a user of the above terminal" from the matters specifying the invention of the Amended Invention "information of inviting a user of the above terminal to receive an order of the quest in cooperation with other terminals".

In light of the comparison between the Amended Invention and the Cited Invention in No. 2 4, the Invention and the Cited Invention are completely identical and there is no difference between them.

As described above, the Invention is identical with the invention described in the Cited Document (Cited Invention). The Appellant should not be granted a patent for the invention under the provisions of Article 29(1)(iii) of the Patent Act.

5 Closing

As examined above, the Invention is the invention described in the Cited Document which is a publication distributed before the filing date of the Parent application. The Appellant should not be granted a patent for the invention under the provisions of Article 29(1)(iii) of the Patent Act.

The present application should be rejected without examining other claims.

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

January 26, 2021

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