

Appeal Decision

Appeal No. 2020-9408

Appellant SANYO BUSSAN CO., LTD.

Patent Attorney ANDO, Satoru

The case of appeal against the examiner's decision of refusal of Japanese Patent Application No. 2019-18351, entitled "Game machine", [the application published on April 25, 2019: Japanese Unexamined Patent Application Publication No. 2019-63648], has resulted in the following appeal decision:

Conclusion

The appeal of the case was groundless.

Reason

No. 1 History of the procedures

The application concerning this case (hereinafter, referred to as "the Present Application") is a divisional application filed on February 5, 2019 from the divisional application (Japanese Patent Application No. 2017-20835) filed on February 8, 2017 from Japanese Patent Application No. 2014-114043 filed on Jun. 2, 2014 (hereinafter, referred to as "Application retroactive date), reasons for refusal were notified as of December 12, 2019, a written opinion was submitted on February 14, 2020, a decision of refusal (hereinafter, referred to as "Examiner's decision") was made as of April 2, 2020 (date of delivery of a copy of the original: April 7 of the same year), and, against this, an appeal against the examiner's decision of refusal was made on July 6 of the same year.

No. 2 The Invention

The inventions according to Claims 1 and 2 of the Present Application are ones that are specified by the matters recited in Claims 1 and 2 of the scope of claims that was originally attached to the application, and the invention according to Claim 1 thereof (hereinafter, referred to as "the Invention") is as follows. (Note that the symbols A to J were added by the collegial body for describing separately. The matters to which the symbol A and the like are added are hereinafter referred to as "Specifying matter A" and the like.)

"J A game machine, comprising:

A a display means having a display unit;

B a display storage means storing image data in advance; and

C a display control means for making an image be displayed on the display unit based on generating drawing data in a setting storage means having a plurality of unit setting areas by setting the image data to the setting storage means and outputting an image signal according to the drawing data to the display means, wherein

D the unit setting area has a structure capable of setting numerical value information within a range up to a limitation numerical value, wherein

E the image data has a plurality of pieces of unit image data associated with numerical value information that stipulates color information within a range up to the limitation numerical value, wherein

F the display control means comprises:

an overlap reflection means for making, in a case where a plurality of individual images are displayed in a way overlapping in the depth direction of the display unit, regarding data of the unit setting area in which those plurality of individual images are supposed to overlap in the depth direction of the display unit, back side individual image data, which is image data of a back side individual image at the overlapping portion, be in a reflected state relative to the front side image data, which is image data of the front side individual image at the overlapping portion, and

G a reflection reduction means for reducing, when the back side image data is reflected relative to the front side image data by the overlap reflection means, a reflection rate of reduction target image data of one of the front side image data and the back side image data by a reduction amount according to the content of reduction amount reference image data of one of the front side image data and the back side image data, wherein

H the reflection reduction means is one that makes, by adding up a value derived by dividing a value, which is obtained as a result of subtracting color information of the unit image data included in the reduction amount reference image data from the limitation numerical value, by the limitation numerical value in the unit image data of the reduction target image data corresponding to the unit setting area to which that unit image data is set, a reflection rate of the reduction target image data be reduced, and wherein

I the reduction amount reference image data is the front side image data, and the reduction target image data is the back side image data."

No. 3 Summary of the reasons for refusal of the decision of refusal

The reasons for refusal stated in the Examiner's decision are to the effect that it is recognized that the inventions according to Claims 1 and 2 of this application are the same as the inventions according to the following application filed on the same day, and, the inventions according to the following application have been patented and consultation cannot be performed for these, and, therefore, the Appellant should not be granted a patent for these in accordance with the provisions of Article 39(2) of the Patent Act.

<List of Cited Documents, etc.>

1. Japanese Patent Application No. 2016-241812 (Japanese Patent No. 6354826 publication)

No. 4 Application filed on the same date

The inventions according to Claims 1 and 2 of Japanese Patent Application No. 2016-241812 (Japanese Patent No. 6354826 publication), which is cited in the reasons for refusal stated in the Examiner's decision, and is a divisional application filed on December 14, 2016 from Japanese Patent Application No. 2014-114045 filed on Jun. 2, 2014 that is the same day as Application retroactive date of the Present Application, are ones specified by the matters recited in Claims 1 and 2 of the scope of claims originally attached to the application, and the invention according to Claim 1 thereof (hereinafter, referred to as "Same-day invention") is as follows (note that a to j were added by the collegial body corresponding to Specifying matter A to J of the Invention).

"j A game machine, comprising:

a a display means having a display unit;

b a display storage means storing image data in advance; and

c a display control means for making an image be displayed on the display unit based on generating drawing data in a setting storage means having a plurality of unit setting areas by setting the image data to the setting storage means and outputting an image signal according to the drawing data to the display means, wherein

d the unit setting area has a structure capable of setting numerical value information within a range up to a limitation numerical value, wherein

e the image data has a plurality of pieces of unit image data associated with numerical value information that stipulates color information within a range up to the limitation numerical value, wherein

f the display control means comprises:

an overlap reflection means for making, in a case where a plurality of individual images are displayed in a way overlapping in the depth direction of the display unit,

regarding data of the unit setting area in which those plurality of individual images are supposed to overlap in the depth direction of the display unit, back side individual image data, which is image data of a back side individual image at the overlapping portion, be in a reflected state relative to the front side image data, which is image data of the front side individual image at the overlapping portion, and

g a reflection reduction means for reducing, when the back side image data is reflected relative to the front side image data by the overlap reflection means, a reflection rate of reduction target image data of one of the front side image data and the back side image data by a reduction amount according to the content of reduction amount reference image data of one of the front side image data and the back side image data, wherein

h the reflection reduction means is one that makes, by adding up a value derived by dividing a value, which is obtained as a result of subtracting color information of the unit image data included in the reduction amount reference image data from the limitation numerical value, by the limitation numerical value in the unit image data of the reduction target image data corresponding to the unit setting area to which that unit image data is set, a reflection rate of the reduction target image data be reduced, and wherein

i the reduction target image data is image data in the side different from the reduction amount reference image data between the front side image data and the back side image data."

No. 5 Comparison

The Invention and Same-day invention will be compared (the headers (a) to (j), approximately correspond to Specifying matters A to J of the Invention).

(a) "Comprising" "a display means having a display unit" of Specifying matter a of Same-day invention corresponds to "comprising" "a display means having a display unit" of Specifying matter A of the Invention.

(b) "Comprising" "a display storage means storing image data in advance" of Specifying matter b of Same-day invention corresponds to "comprising" "a display storage means storing image data in advance" of Specifying matter B of the Invention.

(c) "Comprising" "a display control means for making image be displayed on the display unit based on generating drawing data in a setting storage means having a plurality of unit setting areas by setting the image data to the setting storage means and outputting an image signal according to the drawing data to the display means" of

Specifying matter c of Same-day invention corresponds to "comprising" "a display control means for making image be displayed on the display unit based on generating drawing data in a setting storage means having a plurality of unit setting areas by setting the image data to the setting storage means and outputting an image signal according to the drawing data to the display means" of Specifying matter C of the Invention.

(d) "The unit setting area has a structure capable of setting numerical value information within a range up to a limitation numerical value," of Specifying matter d of Same-day invention corresponds to "the unit setting area has a structure capable of setting numerical value information within a range up to a limitation numerical value," of Specifying matter D of the Invention.

(e) "The image data has a plurality of pieces of unit image data associated with numerical value information that stipulates color information within a range up to the limitation numerical value," of Specifying matter e of Same-day invention corresponds to "the image data has a plurality of pieces of unit image data associated with numerical value information that stipulates color information within a range up to the limitation numerical value," of Specifying matter E of the Invention.

(f) "The display control means" "comprises" "an overlap reflection means for making, in a case where a plurality of individual images are displayed in a way overlapping in the depth direction of the display unit, regarding data of the unit setting area in which those plurality of individual images are supposed to overlap in the depth direction of the display unit, back side individual image data, which is image data of a back side individual image at the overlapping portion, be in a reflected state relative to the front side image data, which is image data of the front side individual image at the overlapping portion" of Specifying matter f of Same-day invention corresponds to "the display control means" "comprises" "an overlap reflection means for making, in a case where a plurality of individual images are displayed in a way overlapping in the depth direction of the display unit, regarding data of the unit setting area in which those plurality of individual images are supposed to overlap in the depth direction of the display unit, back side individual image data, which is image data of a back side individual image at the overlapping portion, be in a reflected state relative to the front side image data, which is image data of the front side individual image at the overlapping portion" of Specifying matter F of the Invention.

(g) "The display control means" "comprises" "a reflection reduction means for reducing, when the back side image data is reflected relative to the front side image data by the overlap reflection means, a reflection rate of reduction target image data of one of the front side image data and the back side image data by a reduction amount according to the content of reduction amount reference image data of one of the front side image data and the back side image data" of Specifying matter g of Same-day invention corresponds to "the display control means" "comprises" "a reflection reduction means for reducing, when the back side image data is reflected relative to the front side image data by the overlap reflection means, a reflection rate of reduction target image data of one of the front side image data and the back side image data by a reduction amount according to the content of reduction amount reference image data of one of the front side image data and the back side image data" of Specifying matter G of the Invention.

(h) "The reflection reduction means is one that makes, by adding up a value derived by dividing a value, which is obtained as a result of subtracting color information of the unit image data included in the reduction amount reference image data from the limitation numerical value, by the limitation numerical value in the unit image data of the reduction target image data corresponding to the unit setting area to which that unit image data is set, a reflection rate of the reduction target image data be reduced," of Specifying matter h of Same-day invention corresponds to "the reflection reduction means is one that makes, by adding up a value derived by dividing a value, which is obtained as a result of subtracting color information of the unit image data included in the reduction amount reference image data from the limitation numerical value, by the limitation numerical value in the unit image data of the reduction target image data corresponding to the unit setting area to which that unit image data is set, a reflection rate of the reduction target image data be reduced," of Specifying matter H of the Invention.

(j) "A game machine" of Specifying matter j of Same-day invention corresponds to "a game machine" of Specifying matter J of the Invention.

Then, the Invention and Same-day invention are identical also literally as being

"J A game machine, comprising:

- A a display means having a display unit;
- B a display storage means storing image data in advance;
- C a display control means for making image be displayed on the display unit based on generating drawing data in a setting storage means having a plurality of unit

setting areas by setting the image data to the setting storage means and outputting an image signal according to the drawing data to the display means, wherein

D the unit setting area has a structure capable of setting numerical value information within a range up to a limitation numerical value, wherein

E the image data has a plurality of pieces of unit image data associated with numerical value information that stipulates color information within a range up to the limitation numerical value, wherein

F the display control means comprises:

an overlap reflection means for making, in a case where a plurality of individual images are displayed in a way overlapping in the depth direction of the display unit, regarding data of the unit setting area in which those plurality of individual images are supposed to overlap in the depth direction of the display unit, back side individual image data, which is image data of a back side individual image at the overlapping portion, be in a reflected state relative to the front side image data, which is image data of the front side individual image at the overlapping portion, and

G a reflection reduction means for reducing, when the back side image data is reflected relative to the front side image data by the overlap reflection means, a reflection rate of reduction target image data of one of the front side image data and the back side image data by a reduction amount according to the content of reduction amount reference image data of one of the front side image data and the back side image data, wherein

H the reflection reduction means is one that makes, by adding up a value derived by dividing a value, which is obtained as a result of subtracting color information of the unit image data included in the reduction amount reference image data from the limitation numerical value, by the limitation numerical value in the unit image data of the reduction target image data corresponding to the unit setting area to which that unit image data is set, a reflection rate of the reduction target image data be reduced.", and appear to be different in the following point.

· Different Feature (Specifying matter I)

A point that, in the Invention, "the reduction amount reference image data is the front side image data, and the reduction target image data is the back side image data", whereas,

in Same-day invention, "the reduction target image data is image data in the side different from the reduction amount reference image data between the front side image data and the back side image data".

No. 6 Judgment

1 Judgment will be made supposing that the Invention is the earlier application, and Same-day invention is the later application.

Same-day invention has the matter specifying the invention that "the reduction target image data is image data in the side different from the reduction amount reference image data between the front side image data and the back side image data" (Specifying matter i), and, in this matter specifying the invention, "reduction target image data" is "image data in the side different from the reduction amount reference image data between the front side image data and the back side image data", and therefore, when "reduction amount reference image data" is "the front side image data", "reduction target image data" is "the back side image data" in the side different from the front side, and, further, when "reduction amount reference image data" is "the back side image data", "reduction target image data" is "the front side image data" in the side different from the back side.

Then, it can be said that Specifying matter i of the application filed on the same date is one that substantially indicates the following two options (1) and (2) alternatively.

- (1) The reduction amount reference image data is the front side image data, and the reduction target image data is the back side image data
- (2) The reduction amount reference image data is the back side image data, and the reduction target image data is the front side image data

In this way, Same-day invention (the later application) is one in which the matter specifying the invention indicates two options alternatively, and, as a result of comparison of Same-day invention (the later application) with the Invention (the earlier application) assuming that only the option of the above (1) is taken as the matter specifying the invention concerning the options, there is no difference between these, and thus it can be said that these are identical.

As above, the Different Feature is not a substantial different feature.

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

2 Judgment will be made supposing that Same-day invention is the earlier application, and the Invention is the later application.

As shown in the above 1, Same-day invention (the earlier application) is one in which the above matter specifying the invention has two options, and a result of

comparison of Same-day invention (the earlier application) with the Invention (the later application) assuming that only the option of the above (1) between the options is taken as the matter specifying the invention concerning the options, there is no difference between these, and thus it can be said that these are identical.

As above, the Different Feature is not a substantial different feature.

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

3 Summary

As described above, even focusing attention on the Invention or Same-day invention, it can be said that these are substantially identical with each other, and thus the Invention and Same-day invention are mutually identical.

4 Appellant's allegation

(1) The Appellant alleges, in "(2) Opinion against the decision of refusal" of "[Reason that the Invention should be patented]" of the written request for appeal, as follows.

"However, it is usual to understand that the content of <<in a case where a matter specifying the invention of the invention according to a claim of one of applications has options, ...>> described in ... of 'Examination Guidelines, Chapter 4, Prior Application (Article 39 of the Patent Act)' means, as clearly indicated as 'a case where a matter specifying the invention has options', a case where a description content itself has options. Inventions recited in superordinate concepts have, even if the numbers of constitutions of a subordinate concept included therein differ from each other, options corresponding to the constitutions of the relevant subordinate concept included therein after all. In this case, if an invention recited in a superordinate concept, as is the case with the above examination judgment, has options of constitutions of a subordinate concept in effect, inventions having superordinate-subordinate relationship in applications filed on the same date end up with violation of the provisions of Article 39(2) of the Patent Act. Such way of thinking ends up with a way of thinking incompatible with the content daringly described in '3. Judgment on the requirements of Article 39, 3.2 Judgment on whether the Invention and an invention according to a claim of another application and the like are identical or not' in 'Examination Guidelines, Chapter 4, Prior Application (Article 39 of the Patent Act)'.

In addition, even if the above options substantially exist, by daringly adopting the constitution that 'the reduction amount reference image data is the front side image

data, and the reduction target image data is the back side image data', as with Inventions 1 and 2, it is possible to exert the effect that 'In comparison with a constitution that uniformly reduces the reflection rate of the back side image data, it becomes possible to reflect the back side image data in an aspect according to the content of the front side individual image. In addition, although the front side individual image displayed in the front side comes to stand out rather than the back side individual image displayed in the back side, by reducing the color information of the back side individual image that is in the less-noticeable side instead of reducing the color information of the front side individual image that is in the standing-out side, it becomes possible to make degradation of a displaying effect not easily occur even if reduction of color information is performed. Therefore, it becomes possible to perform fine adjustment for further improving display effect in a case where performing overlap reflection of image data.' Such effect is a new effect that cannot be exerted by the Application 1 invention and the constitution in the above-mentioned (2). Then, it should not be said that Inventions 1 and 2, and the Application 1 invention are substantially identical."

(2) The Appellant's allegation will now be discussed below.

A The Appellant alleges that, in relation between an invention recited in a superordinate concept and an invention recited in a subordinate concept in applications filed on the same date, "it is usual to understand that" such case "is" "a case where a description content itself has options.", and "Inventions recited in superordinate concepts have, even if the numbers of constitutions of a subordinate concept included therein differ from each other, options corresponding to the constitutions of the relevant subordinate concept included therein after all." and the like.

Here, "superordinate concept" generally means a comprehensive concept consisting of ideas belonging to the same family or type, and it can be said that it is one indicating a different concept from one having finite specific options as is the case with the application filed on the same date (for example, " ... comprising any of Constitution A and Constitution B ..."). Then, although an invention of a subordinate concept has a concept in which a plurality of matters of the invention of the superordinate concept are summarized, in other words, has specific options among infinite options of the invention of the superordinate concept, if the relevant specific options are not clearly and specifically indicated in the invention of the superordinate concept, the inventions of the superordinate and subordinate concepts are not deemed to be identical.

In contrast to this, in applications filed on the same date, if the invention of one application has finite and specific options, and the invention of the other application has

specific options among the above-mentioned finite and specific options, these are identical inventions.

As above, the Appellant's allegation does not have an influence on the judgment of this case.

B The effect of the Invention alleged by the Appellant is an effect that is exerted naturally if the specifying matter of "the reduction amount reference image data is the front side image data, and the reduction target image data is the back side image data" (refer to Option (1) in the above-mentioned "No. 6 Judgment"), which is one of the options of the above-mentioned matter specifying the invention of Same-day invention, is provided, and thus it is not recognized as a new effect.

C As described above, the above-mentioned allegation of the Appellant cannot be adopted.

5 Summary

As above, since it is recognized that the Invention and Same-day invention are identical inventions, and the invention according to the application filed on the same date has been patented and consultation cannot be performed, the Appellant should not be granted a patent for the Invention in accordance with the provisions of Article 39(2) of the Patent Act.

No. 7 Closing

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

Therefore, without examining the inventions according to the other claims, the Present Application should be rejected.

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

March 9, 2021

Chief administrative judge: ISHII, Satoshi
Administrative judge: TETSU, Toyoo

Administrative judge: KITAKAWA, Hajime