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Datasheet for the decision
of 3 May 2013

Case Number: T 0188/11 - 3.2.04

Application Number: 03008019.6

Publication Number: 1358918

IPC: A63F13/10

Language of the proceedings: EN

Title of invention:
Game machine and game program

Applicant:
Nintendo Co., Ltd.

Headword:

Relevant legal provisions:
EPC Art. 52(2)(c), 56, 52(1)

Keyword:
Inventive step - (no) - mixture of technical and non-technical
features
Patentable invention - rules for playing games

Decisions cited:
T 0258/03, T 1543/06, T 0641/00, T 0336/07, T 0012/08

Catchword:

Case Number: T 0188/11 - 3.2.04

D E C I S I O N
of Technical Board of Appeal 3.2.04
of 3 May 2013

Appellant: (Applicant)	Nintendo Co., Ltd. 11-1 Kamitoba Hokotate-cho Minami-ku Kyoto 601-8501 (JP)
Representative:	Lang, Johannes Bardehle Pagenberg Partnerschaft Patentanwälte, Rechtsanwälte Prinzregentenplatz 7 81675 München (DE)
Decision under appeal:	Decision of the Examining Division of the European Patent Office posted on 11 August 2010 refusing European patent application No. 03008019.6 pursuant to Article 97(2) EPC.

Composition of the Board:

Chairman:	A. de Vries
Members:	J. Wright
	T. Bokor

Summary of Facts and Submissions

I.   The appellant (applicant) lodged an appeal, received on
        09 September 2010, against the decision of the
        examining division dispatched on 11 August 2010 to
        refuse the European patent application No. 03008019.6,
        the appeal fee was paid simultaneously. The statement
        setting out the grounds for appeal was received on 17
        December 2010.

        The examining division held that the application did
        not meet the requirements of Article 52(1) in
        combination with Article 56 EPC for lack of inventive
        step having regard to inter alia the prior art
        game "Combo Racer" © 1990 by Gremlin Graphics, referred
        to as D3 and described in

            D3a: Hans-Joachim Amann, "Echt Abgefahr'n",
                 aktueller Software Markt, ASM vol. 9, 1990
                 and
            D3c: "Combo Racer", review in "Amiga Joker", vol.
                 4, 1990, page 36.

II.   Oral proceedings before the Board were duly held on 03
        May 2013.

III.   The appellant requested that the decision under appeal
        be set aside and a patent be granted on the basis of a
        set of claims according to a single request filed with
        a letter dated 02 April 2013 and received on 03 April
        2013.

IV.   The wording of the independent claims (1 and 3) of the
        single request on file at the time of the present
        decision reads as follows:

1.   "A game apparatus for operating a plurality of
characters including a movable character (601)
traveling in a game space, a driver character (602)
driving the movable character, a fellow passenger
character (603) riding on the movable character, the
game apparatus comprising:

      a first operation switch provided in a first
controller (104);

      a second operation switch provided in a second
controller (105) which is different from the first
controller; and

      image processing means executing a game program in
response to operation data (Fig.4) of the first and
second operation switches to generate a game image
including images based on image data of the plurality
of characters, wherein the image processing means
comprises:

      means to set a character selected by the user from
a plurality of characters as the driver character (602)
and the fellow passenger character (603);

      first motion control means (S302) for controlling
motions of the driver character (602) and the movable
character (601) in response to operation data of the
first operation switch;

      second motion control means (S303) for controlling
a motion of the fellow passenger character (603) in
response to operation data of the second operation
switch, and changing a motion of the movable character
based on the motion and the character data of the
fellow passenger character; and

      character change means (S105) for switching, while
the game is being played, the driver character (602)
and the fellow passenger character (603) with each
other in response to operation data of a third
operation switch (301) provided in the first and/or
second controller,

exchange means (S206) for exchanging the operation data of the first and the second operation switch and for exchanging the character data of the driver character and the fellow passenger character;

when the driver character and the fellow passenger character are switched with each other by the character change means, the first motion control means controls the motions of the driver character and the movable character in response to operation data of the second operation switch instead of operation data of the first operation switch, and

when the driver character and the fellow passenger character are switched with each other by the character change means, the second motion control means controls the motion of the fellow passenger character in response to operation data of the first operation switch instead of an operation data of the second operation switch, and changes the motion of the movable character based on the motion and the character data of the fellow passenger character changed by the exchange means (S206) for character data."

3.   "A computer-readable recording medium storing a game program which causes a computer, which is included in a game apparatus operating a plurality of characters including a movable character (601) traveling in a game space, a driver character (602) driving the movable character and a fellow passenger character (603) riding on the movable character, to execute a set of steps in response to operations performed on first and second controllers, the set of steps comprising:

a storing step of storing user selected character data for setting the driver character (602) and the fellow passenger character (603);

an operation instruction receiving step of receiving, from the first and second controllers (104,

105), operation data representing operation
instructions inputted into the first and second
controllers; and

an image processing step (S104-S111) of generating
a game image including images based on image data of
the characters in response to the operation data,
wherein

the image processing step comprises:

a first motion control step (S302) of controlling
motions of the driver character (602) and the movable
character (601) in response to a first operation
instruction inputted into the first controller;

a second motion control step (S303) of, in
response to a second operation instruction inputted
into the second controller, controlling a motion of the
fellow passenger character (603), and changing a motion
of the movable character based on the motion and
character data of the fellow passenger character; and

a character change step (S105) of switching, while
the game is being played, the driver character (602)
and the fellow passenger character (603) with each
other in response to a third operation instruction
inputted into the first or second controller,

an exchange step (S206) for exchanging the
operation data of the first and the second operation
switch and for exchanging the character data of the
driver character and the fellow passenger character;

at the first motion control step (S302), when the
driver character and the fellow passenger character are
switched with each other by character change means, the
motions of the driver character and the movable
character are controlled in response to an operation
instruction inputted into the second controller instead
of the first operation instruction, and

at the second motion control step (S303), when the
driver character and the fellow passenger character are

switched with each other by the character change mans,
the motion of the fellow passenger character is
controlled in response to an operation instruction
inputted into the first controller instead of the
second operation instruction, and the motion of the
movable character is changed based on the motion and
the character data of the fellow passenger character as
exchanged by the exchange step."

V.   The appellant's arguments may be summarised as follows:
       The closest prior art is the "Combo Racer" game, D3.
       Like the invention this is a kart racing game in which
       two players control a driver and passenger character
       riding on a kart, whereby both characters contribute to
       steering the kart.

       The central differences with respect to the prior art
       "Combo Racer" game is that players can select
       characters having different character data and that the
       players can decide to swap the roles played by the
       characters during a game.

       Setting character data and changing roles of a player
       during a game may - although not necessarily and not in
       combination - be considered as relating to rules of a
       game. However, swapping roles of characters during play
       is a technical feature by which the game is implemented
       and is not derivable from a game rule. In combination
       with the selection of characters, swapping the roles of
       characters addresses the problem of making the game
       more surprising and therefore exciting for the players.
       Generating the element of surprise in the game is
       comparable to the generation of chance encounter events
       with less predictability in T0012/08. Since none of the
       cited prior art suggests swapping the roles of

character during play, the subject matter of the claims
is not obvious and so involves an inventive step.

Furthermore, the independent claims define that the
character data of the passenger influences the motion
of the kart. This is mainly disclosed in the
application as achieved by modelling characters to
emulate kart riders in the physical world where their
weight influences how the kart moves. In this case,
because players select different characters having
different character weight data, switching the roles of
the driver and passenger characters during the game
changes the dynamic response of the simulated driver/
passenger/kart body to player actions in an
unpredictable way, thereby solving the above problem in
a new and inventive way.

Reasons for the Decision

1.   The appeal is admissible.

2.   Background; "mixed" inventions

2.1   The present invention sets out to provide a game
        machine in which a player has a more involved
        relationship with the subjects they operate in a game
        space, see application as filed, page 3 lines 12-15. A
        further aim of the invention is to provide a game in
        which two players can together operate the same
        character, such as a racing kart, in a game. It is
        stated that this aspect of the game provides a novel
        experience for the players in that they enjoy
        cooperating with each other, see application as filed,
        page 5, line 20 to page 6, line 5. The detailed
        embodiments concern a simulated kart racing game
        machine having two controllers for two players to act

as a team in operating a virtual kart, see for example
page 21, lines 14-25 and figures 1, 6a and 6b.

2.2   In detail, a first player uses a first controller to
control a kart driver and a second player uses a second
controller to control a fellow passenger. Both
simulated driver and simulated passenger ride on the
simulated kart and both contribute to determining the
movement of the driver/passenger/kart body. In
particular a first player can control a simulated
driver to steer the kart, as for example is explained
on page 32, lines 16-19. At the same time, a second
player can control the simulated passenger to apply
their weight (to the left or right) in order to
influence the travelling direction of the kart, as for
example is explained on page 33, lines 8 to 16.

2.3   Weight data as character data is discussed in the
application as filed, see for example the sentence
bridging pages 30 and 31 and page 50 lines 10 to 13.
Although the independent claims are not restricted to
character data including weight data, the appellant has
presented arguments as to why in particular such a
restriction would make the claim inventive with respect
to the "Combo Racer" game. For the purposes of
assessing inventive step, the Board will therefore
interpret character data as including weight data.

2.4   It is common ground that the game apparatus of claim 1
and corresponding computer readable medium of claim 3
include subject matter related to schemes, rules or
methods for playing games, such as characters, a game
space and game images. This subject matter as such is
excluded from patentability under Articles 52(2)(c) and
52(3) EPC. However, being also directed to an apparatus
having switches, image processing means etc., the

claims possess overall technical character (following
T0258/03 OJ EPO 2004, 575), even if they are
"mixed" (with both technical and non-technical
aspects).

2.5   In dealing with such "mixed" inventions, the Board
        adopts the approach as set out in T1543/06
        (Gameaccount), reasons 2.1-2.9, which is based foremost
        on T0641/00 (OJ EPO 2003, 352). Thus, only those
        features that contribute to technical character are to
        be taken into account when assessing inventive step.
        That requirement cannot rely on excluded (non-
        technical) subject matter alone however original it may
        be. The mere technical implementation of something
        excluded cannot therefore form the basis for inventive
        step. A consideration of the particular manner of
        implementation must focus on any further technical
        advantages or effects associated with the specific
        features of implementation over and above the effects
        and advantages inherent in the excluded subject-matter.
        In the present case it is necessary to consider what
        claimed aspects are non-technical, how they have been
        technically implemented, and whether such
        implementation is inventive over the prior art.

2.6   The Board considers game rules to form part of "…a
        regulatory framework agreed between players and
        concerning conduct, conventions and conditions that are
        meaningful only in a gaming context. It is important to
        note that it is normally so perceived by the players
        involved, and as serving the explicit purpose of
        playing a game. As such an agreed framework it is a
        purely abstract, mental construct, though the means for
        carrying out the game play in accordance with such a
        set may well be technical in nature", See T0336/07,
        reasons 3.3.1. As noted in T0012/08, reasons 4.6, game

rules "form the abstract formal structure of a game
describing the interplay between player actions and the
choices offered within the game." A set of game rules
thus determines inter alia how game-play evolves from
beginning to end in response to player actions and
decisions and the goals to be achieved to conclude
game-play.

3.   Inventive step

3.1   In the following, the Board will consider claim 1. The
        appellant does not dispute that the "Combo Racer" game
        apparatus, as described in D3a and D3c, can be
        considered as the closest prior art. For the skilled
        person, a game system developer with software
        engineering skills, the game is a good starting point
        for developing the present invention.

3.1.1   The "Combo Racer" game is played on a computer
        apparatus see D3a, left-hand column "System". The
        apparatus operates a plurality of (virtual) characters
        including a kart (movable character), a driver
        character and a fellow passenger character, both of
        whom ride on the kart, see D3a, second column, lines
        20-34.

3.1.2   The characters are controlled by two players operating
        respective first and second joystick controllers. The
        first player controls the virtual driver to steer the
        kart whilst the second player controls the posture of
        the virtual passenger to contribute to steering the
        kart, see D3c, second column, lines 20 to 26.
        Implicitly a joystick controller comprises an operation
        switch. Therefore the "Combo Racer" game apparatus
        comprises first and second switches as claimed.

3.1.3   That the "Combo Racer" game apparatus includes image
        processing means as claimed, generating a game image of
        the game characters, is evident from the game image
        screen shots of D3a and D3c.

3.1.4   Players of the "Combo Racer" game see how the driver,
        passenger and kart game characters move in response to
        operation of their joysticks. See in particular the
        screen shots of D3c. Therefore, implicitly, the game
        apparatus likewise comprises a first and second motion
        control means as claimed.

3.1.5   It is claimed that "the second motion control means
        [is] for changing the motion of the moveable character
        based on the motion and character data of the fellow
        passenger character". D3a discloses that the player
        controlling the virtual passenger contributes to
        steering the kart by shifting the weight of the
        passenger on the machine, see middle of second column
        ("[der Beifahrer] muss…durch geschickte
        Gewichtsverlagerung die Maschine durch die Kurven
        lenken."). A player controls the passenger character to
        steer the kart by leaning left or right in curves, see
        screen shots of D3c. The passenger character in the
        "Combo Racer" game is thus simulated as having weight.
        Therefore the second motion control means of the "Combo
        Racer" game is arranged for changing a motion of the
        kart (movable character) based on the passenger's
        character data, in this case weight.

3.2   The appellant does not dispute that the "Combo Racer"
        game includes the above features. It is therefore
        common ground that that the differences between the
        gaming apparatus of claim 1 and that of the "Combo
        Racer" game are the following claimed features, with
        feature labels added by the Board:

(a) means to set a character selected by the user from a plurality of characters as the [initial] driver character and the [initial] fellow passenger character;

(b) character change means (8105) for switching, while the game is being played, the driver character (602) and the fellow passenger character (603) with each other in response to operation data of a third operation switch (301) provided in the first and/or second controller,

(c) exchange means (c1) for exchanging the operation data of the first and second operation switch and (c2) for exchanging the character [weight] data of the driver character and the fellow passenger data;

(d) when the driver character and the fellow passenger character are switched with each other by the character change means, the first motion control means controls the motions of the driver character and the movable character in response to operation data of the second operation switch instead of operation data of the first operation switch, and

(e) when the driver character and the fellow passenger character are switched with each other by the character change means, the second motion control means controls the motion of the fellow passenger character in response to operation data of the first operation switch instead of an operation data of the second operation switch, and changes the motion of the movable character based on the motion and the character [weight] data of the fellow passenger character changed by the exchange means (S206) for character [weight] data.

3.3   The Board is of the opinion that game rules underpin
        the features (a) to (d).

3.3.1   The driver character and fellow passenger characters
        referred to in the claim may be considered as the
        players' "characters". Initially, a first character is
        driver and a second character is the fellow passenger
        riding on a kart.

        In the prior art "Combo Racer" game, when playing with
        two players, at the start of play only one player can
        control the driver and so the other must control the
        passenger. Players will be unable to start the game
        unless they have decided which of them will control
        the passenger and which will control the driver. Such a
        game choice offered to players falls under the above
        definition of a game rule.

        According to feature (a) of claim 1 of the invention,
        players additionally have a choice of character.

        From feature (e), the character [weight] data changes
        when character roles are swapped. The Board interprets
        this to mean that characters from which players can
        select according to feature (a) must have different
        weights. This interpretation is confirmed by the
        description, page 23, lines 5 and 6 which states that
        "each character has a unique attribute (for example
        body weight, etc…)".

        The Board considers that a first game rule relating to
        players selecting a character before the race according
        to feature (a) can therefore be expressed as:

i) Before the race, each player selects a character
from a plurality of characters of differing weight that
they will control throughout the game and selects their
initial role in the race.

3.3.2   The Board considers that a second game rule relating to
        the fact that players can initiate a role-swap for
        their characters during the game underpins the
        differing features (b) to (e). The rule can be
        expressed as:

        (ii) During the race, players can choose to have their
        characters swap places and therefore also their roles
        on the kart, so that the character driving before the
        swap becomes the passenger after the swap and vice
        versa.

3.3.3   The appellant does not dispute that the selection of a
        character from a plurality of characters in a game can
        be considered as a game rule.

        However, the appellant considers that the combination
        of characters having different weights and being able
        to swap roles is a technical feature since weight is
        intrinsically technical and together these aspects
        imply a change of the physical characteristics of the
        simulated system, which surprises players when the swap
        is made.

3.3.4   The Board does not follow this argument. Attributing
        weight to a virtual character in a game has no physical
        effect, since a virtual character does not have
        physical weight. Rather the concept determines the way
        the virtual characters respond to user inputs in the
        game space. The fact that different characters have
        different weights therefore means no more than that

different characters respond differently to user inputs
when moving in the game space. This is a purely
abstract concept conceived of by the game designer as
part of the structure of the game, for example in order
to make the game more interesting or more realistic.
This concept therefore falls under the definition of a
game rule. This holds irrespective of whether the game
involves characters swapping roles because the concept
of different characters being modelled in the game to
have different weights does not cease to be a game rule
because a further game rule determines that those
characters can swap roles during the game.

3.3.5   The appellant has furthermore argued that, in contrast
        to the concept of swapping roles of a player, the
        concept of swapping roles of a character in a game is
        not a game rule but a technical aspect of the game
        apparatus claimed that makes the game more exciting.

        The Board does not follow this argument for the
        following reasons:

        The application as filed, page 23, lines 1 to line 5,
        discloses that players have the possibility during the
        game of causing the roles played by the character they
        have selected before the race to be exchanged. However,
        it does not disclose any technical problem or
        considerations associated with the concept of players'
        characters being able to swap roles during the game.

        The application as filed sets out to allow players to
        experience a novel sensation while playing a game, see
        page 3, lines 12 to 15. It is not in dispute that such
        a swap could increase the excitement of playing the
        game for the players, however the Board holds that
        swapping roles is an abstract idea which neither solves

a technical problem, nor involves technical
considerations. In the Board's view, the excitement
players may derive from this is a direct result of the
conceptual structure of the game allowing players to
swap roles of their characters during the game. By
making this choice, a player changes the game dynamics
and therefore how the game evolves. The Board considers
that such a concept is an abstract gaming choice
conceived of by the games designer to increase
excitement for the players. The Board holds that it
therefore falls under the above definition of a game
rule.

Moreover the Board considers that this role-swap
possibility will be perceived to be a game rule by the
players themselves. Players know that they can change
the narrative of the game by initiating the swapping of
characters' roles at a timing of their choice, see page
23, lines 1 to 5 and page 27, lines 6 to 13. An
animated cartoon video sequence is then displayed to
players featuring their characters swapping places. See
the application as filed, page 27, line 11 to page 28
line 8 and Fig. 8. Thus players will be aware of the
role-swap possibility, will understand how it changes
the game narrative and will consider it to be part of
the rule structure of the game.

3.3.6   In summary, the Board considers that two rules underpin
features a to d of the game apparatus claimed. These
rules are as follows:
-       (i) Before the race, each player selects a
        character from a plurality of characters of
        differing weight that they will control throughout
        the game and selects their initial role in the
        race.

-       (ii) During the race, players can choose to have
        their characters swap places and therefore also
        their roles on the kart, so that the character
        driving before the swap becomes the passenger
        after the swap and vice versa.

3.4   Adopting the approach outlined above, sections 2.4 to
        2.6, inventive step cannot be found in the mere
        technical implementation of the above rules, but must
        reside in the particular manner of implementation. It
        is therefore necessary to consider how these rules are
        implemented in the game apparatus of claim 1. This
        question is to be considered from the point of view of
        the skilled person - here a gaming software engineer -
        who is given the task of modifying the prior art "Combo
        Racer" game apparatus to implement the above rules.

3.4.1   Considering the implementation of rule (i)

        Rule (i) states that before the race, each player
        selects a character from a plurality of characters of
        differing weight that they will control throughout the
        game and selects their initial role in the race.

        The skilled person, a gaming software engineer, tasked
        with implementing the character selection rule (i)
        knows that some means need to be provided to allow
        players to make their selection. Feature (a) defines
        that the implementation is carried out by a "means",
        without specifying any particular means. This feature
        therefore merely states the obvious. As the technical
        implementation of rule (i) this feature thus does not
        involve an inventive step.

3.4.2   Considering the implementation of rule (ii)

Rule (ii) states that during the race, players can
choose to have their characters swap places and
therefore also their roles on the kart, so that the
character driving before the swap becomes the passenger
after the swap and vice versa.

  (a) Starting from the "Combo Racer" game, it will be
      immediately obvious to the skilled person that
      some means will have to be provided to implement
      rule (ii). The skilled person would therefore
      arrive at "means" for switching the driver and
      passenger whilst the game is being played without
      making an inventive step. The Board considers that
      the skilled person would therefore obviously
      arrive at the first part of feature (b), which
      essentially states that character change means
      are provided without specifying what those means
      are.

  (b) Tasked with implementing rule (ii), the skilled
      person would also need to provide some means in
      the configuration and software of the "Combo
      Racer" by which players can instruct the apparatus
      to swap character roles. In this context it is
      important to note that this rule requires more
      than just the players swapping controls, which
      would leave what is happening in the virtual game
      space unaffected and indeed require no structural
      modification. Rather it is the virtual characters
      the players control that swap roles in the game,
      which is something that can only be effected in
      the virtual game space. Thus the rule cannot be
      implemented simply by players exchanging controls.
      It is clear that if the swap is to take place in
      virtual game space which is generated by software

in the apparatus, it must receive a data
instruction from a player to this effect.

The Board considers that the simplest way to do
this is to provide an operation switch. It is
standard practice to provide video game joystick
controllers with control switches. For the skilled
person it would be entirely routine to either
programme such an existing switch on one or both
of the joystick controllers to activate a swap-
over, or to provide a further switch on one or
both of the joystick controllers to perform that
function. In either case such a switch would be
additional to the switches within each of the
joysticks that provide the control data for
controlling motion of the respective character(s).
The skilled person, in implementing rule (ii),
would thus arrive at differing feature (b) of
claim 1 in an obvious manner.

(c) Furthermore, for characters to actually swap roles
    in virtual game space it will be obvious to the
    software engineer that he must modify the software
    generating the game space. This raises the
    question as to how the game space of the "Combo
    Racer" game is generated. As explained above in
    sections 3.1.3 to 3.1.4, the "Combo Racer" game
    apparatus includes image processing means
    generating images of the characters in the game
    and first and second motion control means. It is
    implicit in the context of a computer game that
    such means are software routines.
    At the software routine level, a role-swap for the
    characters in the game implies that the motion of
    the kart now responds firstly to the character who
    was formerly passenger and secondly to the

character who was formerly driver. This means that after the swap, the kart motion is determined firstly in response to data associated with the character who was formerly passenger where it previously was determined using that of the driver character. Secondly, kart motion is adjusted in response to data associated with the driver character who is now passenger where it previously was determined using the passenger character data. Thus, this swap-over of roles must be mirrored by an exchange of data at the control or software level used to generate the virtual game space. This implies that some form of "exchange means" exchanging the two sets of data as in feature c) of claim 1 is necessary and would therefore be obvious for the software engineer implementing rule (ii).

(d) What particular data needs to be exchanged depends on how the swap is realised at the player level. There are only two possibilities: the players must either swap joysticks as their characters swap roles, or retain their joysticks to continue to control their characters in the new, swapped roles. Both are obvious options for the software engineer asked to implement the character role-swap, and each has its own relative advantages.

Opting as a matter of obviousness for the second possibility has the benefit of ensuring game continuity. In this case the operation data from the joystick that controls the character who was formerly in the passenger seat must now be used for motion control of the kart and its driver, while the operation data from the joystick that controls the character who was previously in the

driver seat is now used to adjust kart motion. In
this case the data exchange must include the
operation data from the operation switches of the
two joystick controls, feature c1). Hence it is a
matter of obviousness for the skilled person to
arrive at differing feature c1) of claim 1.

(e) At the level of virtual game space, the two
characters change places when the swap takes
place. This should be reflected in the dynamics of
the game space as well as in the display, as will
be obvious to the skilled person. This naturally
includes data relative to the characters
appearance on the display (shape, colour, size).
Where the games designer has decided that
different characters have differing weights in
accordance with rule (i), so that the game
response varies with different characters in the
passenger seat, then this data should likewise be
included. Thus the skilled person would arrive at
differing feature c2 of claim 1 as a matter of
obviousness.

(f) The inevitable result of the data exchanges
defined in features (c1) and (c2) is that, at the
game software level responsible for generating the
game space, those parts responsible for
determining motion of the kart and driver on the
one hand and the passenger on the other hand,
exchange the data sets they use for generating
motion in the game space. Thus control of the
motion of the driver and kart is now in response
to the operation data from the joystick that was
formerly controlling the character in the
passenger seat (the display control will also use
the character data associated with the character

to display the character in the drivers seat).
This is differing feature (d). Likewise control of
the motion of the passenger uses data from the
other joystick, namely that which was formerly
controlling the character in the driving seat,
while its character [weight] data is now used to
adjust movement of the kart (and display the
character in the passenger seat). This is
differing feature (e). Thus the skilled person
would arrive at all the differing features of the
claim without making an inventive step.

3.4.3   The appellant has argued that a technical effect of
surprise for the players is derived from the technical
implementation of combined concepts of characters
having differing weight data, and players being able to
swap roles played by the characters during a game. The
dynamics of the driver/passenger/kart system change as
a result of the swap, thereby surprising the players.
The appellant argues that this is a further technical
effect not directly following from the concepts
themselves, but from their combination.

The Board does not follow this argument. When the role
of the characters are swapped, each player suddenly has
a new and different task. Although this itself may
surprise the players, in particular if they are not
familiar with their new task, this is a direct
consequence of the idea of swapping roles - a game rule
- and is not attributable to how the rule is
technically implemented.

The Board can accept that the way the players interact
as a team may change when they swap roles and give rise
to a new experience. This however is again inherent in
the idea of swapping roles as a game rule, not its

particular implementation. Equally, players may have a
different experience of the game when they choose a
character of a different weight from one game to
another, particularly when their character acts as
passenger during game play. However this is a result
inherent in the abstract concept of associating
different weights and different responses with
different characters, this latter concept essentially
being a further detail (or refinement) of the known
game rule of simulating kart movement under the
influence of passanger character weight, but as such
being a game rule nevertheless.

Furthermore the change in dynamics of the driver/
passenger/kart body at the time of characters swapping
roles is a direct consequence of swapping characters
having differing weights, in fact also being inherent
in the very idea of cart movement simulation, therefore
this likewise follows directly from the rules
themselves rather than from their implementation.

3.4.4   In summary the Board holds that all differing features
(a) to (e) of claim 1 follow in an obvious manner when
the skilled person, a software engineer specialising in
gaming software, is asked to implement the new game
scheme allowing for a choice of different characters
with different characteristics in the different roles
and the possibility a swap-over of roles in the game
space during game play. The same conclusion holds for
the computer readable medium of claim 3 which rephrases
the various element of the apparatus of claim 1 in
terms of their function.

The Board has arrived at these conclusions even when
considering the term "character data" narrowly, as
including character weight data. Naturally, the same

conclusion must be reached for a broader interpretation
of the claims, since weight data falls within the term
"character data".

3.5   Therefore the subject matter of independent claims 1
and 3 does not meet the requirements of Article 52(1)
in combination with Article 56 EPC.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar: The Chairman:

G. Magouliotis   A. de Vries

Decision electronically authenticated