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**Datasheet for the decision
of 21 April 2016**

Case Number: T 2321/12 - 3.2.04

Application Number: 03019666.1

Publication Number: 1475133

IPC: A63F13/12

Language of the proceedings: EN

Title of invention:
Game system and game program

Applicant:
Nintendo Co., Ltd.

Headword:

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

Keyword:
Inventive step - (no)

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

Catchword:



Beschwerdekammern
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Case Number: T 2321/12 - 3.2.04

D E C I S I O N
of Technical Board of Appeal 3.2.04
of 21 April 2016

Appellant: Nintendo Co., Ltd.
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Decision under appeal: Decision of the Examining Division of the
European Patent Office posted on 12 June 2012
refusing European patent application No.
03019666.1 pursuant to Article 97(2) EPC.

Composition of the Board:

Chairman A. de Vries
Members: J. Wright
C. Heath

Summary of Facts and Submissions

- I. On 21 August 2012 the appellant (applicant) lodged an appeal against the examining division's decision of 12 June 2012 refusing the European patent application No. 03019666.1. The appellant paid the prescribed fee at the same time. The statement of grounds of appeal was received on 19 October 2012.
- II. The division held, *inter alia*, that the claimed subject matter of the main and an auxiliary request then on file did not involve an inventive step. In its decision the examining division considered, *inter alia*, the following evidence:
- D1: EP 0 872 266 A1
D5: US 6 468 157 B1
- III. In a communication of 19 February 2016 in preparation for oral proceedings the Board gave its preliminary opinion regarding inventive step starting both from D5 and D1 .
- With a letter of 21 March 2016, the appellant informed the Board that they would not attend the oral proceedings scheduled for 21 April 2016 and requested that the case be decided on the basis of the documents on file. The oral proceedings were held as scheduled in the absence of the appellant.
- IV. The appellant requests that the decision be set aside and a patent be granted on the basis of claims according to a main request, or in the alternative according to an auxiliary request, both filed with the grounds of appeal.

V. Claim 1 of the main and auxiliary requests read as follows:

Main request

"A game system (10) for playing a game by a plurality of players, the game system including a plurality of operating means (36a, 36b, 36c, 36d) provided to the players, a plurality of individual display means (35) provided to the players, and common display means (60) commonly provided to the players, wherein a plurality of player characters (110a, 110b, 110c, 110d) appearing on game maps are controlled by each corresponding player operating each corresponding operating means, the game system comprising:

first game map data storage means (50, 22) which stores data for displaying a first game map (100);

second game map data storage means (50, 32) which stores data for displaying at least one second game map (200);

inter-game-map movement control means (S107, S109, S113, S115) which moves the player characters individually between the first game map and the second game map upon satisfaction of a predetermined condition;

common display control means (S139, S147) which displays player characters located on the first game map and at least a part of the first game map on the common display means;

individual display control means (S217, S221) which displays a player character located on the second game map and at least a part of the second game map on individual display means provided to a player operating

the player character located on the second game map, wherein each point on a second game map corresponds to a predetermined point on the first game map, and

the common display control means generates a predetermined display (150a, 150c) of a player character located on the second game map, at a point on the first game map corresponding to a point on the second game map (S141) at which the player character is located, and

the predetermined display is displayed as a mark different from a display (110a, 110c) of the player character located on the second game map".

Auxiliary request

Claim 1 reads as claim 1 of the main request, except for the addition of the following final feature:

"wherein the first game map and the second game map each include at least one connecting point (130a, 130b, 130c, 130d, 230a), the connecting point (130a, 130b, 130c, 130d) of the first game map corresponding to a predetermined point (230a) on the second game map and the connecting point of the second game map corresponding to a predetermined point on the first game map, and the inter-game-map movement control means moves, upon arrival of the player character at the connecting point on the first game map, the player character to the predetermined point on the second game map corresponding to the connecting point (S107, S109), and moves, upon arrival of the player character at the connecting point on the second game map, the player character to the predetermined point on the first game

map corresponding to the connecting point (S113, S115)".

VI. The appellant argued as follows:

The decision's findings starting from D5 were contested.

The appellant did not comment on the Board's preliminary opinion, and in particular made no submissions regarding its comments concerning inventive step when starting from D1.

Reasons for the Decision

1. The appeal is admissible.
2. In its communication in preparation for the oral proceedings the board gave a preliminary opinion regarding inventive step. In particular it stated

"2. Inventive step

The application relates to a game played by multiple players (application, page 1, lines 5 to 7 and page 2, lines 6 to 10). In the game, on meeting certain conditions, characters move from a first (ground) space, mapped in a first map to a second game space, mapped in a second map. For example character 110 enters a dungeon when it reaches an entrance 230a (figures 6 and 7, page 3, lines 6 to 17; page 4, line 16 to page 5, line 15, page 19, lines 9-14). The game could for example be a dungeons and dragons game.

2.1 The Board is satisfied that the claims of both requests have technical character. However the Board

notes that some of the concepts expressed in the claims, such as player characters moving from a first to a second game map upon satisfying a predetermined condition, appear to concern underlying game rules.

This may play a role in assessing inventive step, since schemes, rules or methods for playing games, which are per se excluded from patentability under Article 52(2)(c) EPC.

2.2 In dealing with "mixed" inventions, that is inventions including technical and non technical aspects, the Board adopts the approach as set out in T1543/06 (Gameaccount) 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. Rather, it is necessary to consider in detail how that matter has been technically implemented.

2.3 Main request

...

A gaming arrangement having individual controller/screen 1a, 15 for each player, as well as a common display 19a is known from D1, see in particular figures 1 and 4 and column 16, lines 10 to 26.

2.3.6 In the Board's view D1 (EP0872266 A) also offers a good starting point for assessing inventive step. As explained above D1 (figures 1 and 4) discloses the

hardware set-up as claimed, where each player has an operating means 1a and screen 15 (figure 1), whilst two players can see a common screen 19a. Furthermore there are different game maps displaying player characters (racing cars) in different game spaces. A first map shows the overall game space, in this case a car race course (figure 23, step ST62b, column 30, lines 33-39, cf. figure 11). A second map shows that part of the course immediately in front of the driver (figure 9, column 19, lines 32 to 35). Thus the second game map is a part of the first game map, and each point on the second game map represents a predetermined point on the first game map. Each map has map data storage (D1, figure 1, ROM/RAM 102, 111,113,114) and control means (CPU 101, 117).

Furthermore the character marks differ between maps (cf. car symbols in figures 9 and 11).

2.3.7 In the Board's view the subject matter of claim 1 therefore differs from D1 in the feature of an inter-game-map movement control means which moves the player characters individually between the first and second game map upon satisfaction of a predetermined condition.

2.3.8 In the Board's opinion, a game rule underpins this difference. The rule could be: In order for a player to move their character to a different game space, a particular condition must be met (e.g. to move from the ground space into the dungeon, the character must be at the dungeon entrance) cf. application page 4, line 16 to page 5, line 19; page 19, lines 9 to 14 and figures 3 and 6.

2.3.9 As explained above, in the case of a game rule, inventive step can only lie in its implementation. The problem could then be how to implement the above game rule in the system of D1. It may be relevant to consider whether or not it would be obvious for the skilled person, when tasked with this problem, to provide inter-game-map-movement control means as claimed.

...

2.4 Auxiliary request

...

2.4.1 In addition to the features of claim 1 of the main request, claim 1 defines the particular predetermined condition for characters to move between the game spaces mapped in the first and second maps. Namely arrival at a connecting point, resulting in the character being moved from the first to second map or vice versa at the corresponding point.

This feature appears not to be known from D5 or D1.

2.4.2 In the Board's opinion, this difference is however determined by a game rule. The rule could be: Game spaces inter-connect at connection points. In order for a player to move their character to a different game space, their character must arrive at a connection point.

Applying the approach outlined above, inventive step with respect to this feature can only depend on how the rule is implemented.

2.4.3 In addition to considerations applying to the main request, it may therefore be relevant to consider how the skilled person would solve the problem of implementing this game rule.

...

Starting from D1 it may be relevant to consider whether or not it would be obvious for the skilled person, to provide connection points on the different maps and inter-game-map movement control means, triggered by a character arriving at a connection point, as claimed."

3. As is apparent from the above, in the board's preliminary opinion the question of inventive step for both the main and auxiliary requests hinged on how a difference, that was seen to be underpinned by a game rule, was implemented. In its letter of 21 March 2016, announcing their non-attendance at the oral proceedings, the appellant refrained from addressing the board's provisional comments, and in particular did not address these points the board had identified as critical for inventive step. It is therefore incumbent on the board to do so. In so doing it assumes that its provisional position regarding D1 is correct; absent any comment from the appellant in this regard it has no reason to deviate from this earlier position.

4. Main Request

As stated, the Board is of the opinion that the only differing claim feature with respect to D1 is:

"Inter-game-map movement control means which moves the player characters individually between the first game

map and the second game map upon satisfaction of a predetermined condition".

As also stated in the Board's opinion this feature relates to a game rule. It adds that, as explained in the application as filed (page 16, lines 2 to 18), figure 3 shows a map of the general game space through which characters can move, thus a first, or ground map, of the game-space. The first map shows, inter alia, a dungeon with entrances 130a and b. Figure 6 shows a second map, namely of the dungeon game space in detail, including its entry points 230a and 230b (page 18, lines 7 to 19). In the game scenario of the application, characters move from the general game space (ground), into specific parts of the game space (for example the dungeon) when certain conditions (reaching an entry point) are met (page 19, lines 9 to 14). Thus the movement of player characters between these mapped game-spaces is part of the game structure, of which players would be aware when playing the game, so the idea belongs to the rules of the game. The game rule underpinning the above differing feature could therefore be expressed as:

In order for a player to move their character from the general ground game-space, as shown in the first map, into a specific area thereof, as shown in the second map, a particular condition must be met.

In the Board's opinion, the fact that in carrying out the invention the game developer might define more specific game rules narrowing down conditions for moving characters between different mapped game spaces does not belie the fact that a game rule, albeit a general one, lies at the heart of the above differing feature.

5. Applying the approach outlined above (see point 2), the objective technical problem can be formulated as: how to modify the system of D1 to implement the above game rule.

The Board holds that, tasked with this problem, the skilled person, a game system developer with system and software engineering skills, would as a matter of obviousness provide some means for implementing the above rule. Since the rule involves moving characters between maps, expressed in terms of its function, this means would inevitably be an inter-game-map movement control means. Therefore the skilled person would arrive at the subject matter of claim 1 in an obvious manner.

6. Auxiliary request

- 6.1 As stated above the board held that the further feature defining the condition for characters to move between the game spaces mapped by the first and second game space, which was not known from D1 was determined by a game rule. The rule could for example be expressed as:

- Game spaces, as shown in the game maps, interconnect at connecting points.
- In order for a player to move their character to a different game space, their character must arrive at a connecting point.

- 6.2 The board adds that, however efficient it may be to move characters between maps once connecting points are defined (cf. application as filed, page 18, line 20 to page 19, line 5), this does not exclude that the final claim feature expresses underlying game rules. The

player will be fully aware that they are playing a game whose structure requires them to arrive at connecting points in order for their character to move between different mapped game spaces. Thus, in the Board's view, the feature can but relate to game rules. Any efficiency gain is inherent in the game rules themselves defining a mapped connecting point, whose coordinates on different maps have a simple correspondence, when compared to some other game space/ map changing rule which might entail more complex computations. Thus, rather than the above game rules solving the technical problem of increasing efficiency, at best they merely circumvent this technical problem.

6.3 Applying again the approach outlined above, the objective technical problem associated with the differing features of the auxiliary request (which includes all the features of the main request) can be formulated as: how to modify the system of D1 to implement all the above game rules.

In the Board's opinion, tasked with this problem, the skilled person would, as a matter of obviousness, provide inter game map movement control means, for the reasons given for the main request (see point 2.4). Furthermore, they would inevitably provide connecting points in the game-space maps, since the relevant rule requires this. Finally, since the last rule requires that characters move between maps on reaching the connecting points, the skilled person would programme the inter game map movement control means to do just that. The skilled person would therefore, as a matter of obviousness, arrive at the subject matter of claim 1 without having made an inventive step.

7. The above same conclusions also hold for claim 8 of the main request, respectively claim 7 of the auxiliary request, which are directed at a computer readable medium, which rephrases the various elements of the system of the respective claim 1 in terms of their function.
8. The Board concludes that the subject matter claimed in independent claims 1 and 8 of the main request and claims 1 and 7 of the auxiliary requests lacks an inventive step and thus fails to meet the requirements of Article 52(1) EPC in combination with Article 56 EPC. It therefore confirms the appealed decision's finding.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:



G. Magouliotis

A. de Vries

Decision electronically authenticated