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**Datasheet for the decision
of 17 July 2015**

Case Number: T 1385/12 - 3.2.04

Application Number: 05109296.3

Publication Number: 1671685

IPC: A63F13/00

Language of the proceedings: EN

Title of invention:

Game apparatus, storage medium storing game program, and game control method

Applicant:

Nintendo Co., Ltd.

Headword:

Relevant legal provisions:

EPC Art. 56, 52(2)(c)

Keyword:

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

Decisions cited:

T 1543/06, T 0641/00, T 0336/07

Catchword:



**Beschwerdekammern
Boards of Appeal
Chambres de recours**

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Case Number: T 1385/12 - 3.2.04

D E C I S I O N
of Technical Board of Appeal 3.2.04
of 17 July 2015

Appellant: Nintendo Co., Ltd.
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Decision under appeal: **Decision of the Examining Division of the
European Patent Office posted on 22 December
2011 refusing European patent application No.
05109296.3 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 29 February 2012 the appellant lodged an appeal against the examining division's decision of 22 December 2011 refusing the European patent application No. 05109296.3 and paid the prescribed fee. The statement of grounds of appeal was received on 30 April 2012.
- II. The division held, *inter alia*, that the claimed subject matter of the applicant's main and various auxiliary requests did not involve an inventive step. In its decision the examining division considered the following evidence:
D1: "Nintendo DS games release data", retrieved from www.gamefaqs.com/portable/ds/data/925329.html
D2: "Tiger Woods PGA Tour 2003 Game Manual",.
- III. In the appeal proceedings the Board considered the following further document cited in the search report:
D3: JP 2002 000939 and abstract from Patent Abstracts of Japan
- Oral proceedings were duly held before the Board on 17 July 2015.
- 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 on 17 June 2015.
- V. The independent claims read as follows:

Main request

1: "A game apparatus (10) comprising: an operating position detecting means (22, 42, S1, S29, S51, S281, S351) for detecting a user's operating position on an operating surface (14, 120);
a first requirement determining means (42, S3, S283) for determining whether or not the result of detection by said operating position detecting means satisfies a first requirement;
a contact determining means (42, S71, S77, S483, S493, S497, S501) for determining contact between a slide path (142) on said operating surface (14, 120) and a first area (122) set on said operating surface (14, 120), wherein the slide path (142) is determined on the basis of operating positions detected sequentially from the detection of an operating position that satisfies the first requirement; and
a game processing means (42, S93, S225) for performing varied game processes according to the result of detection by said contact determining means (42, S71, S77, S483, S493, S497, S501) wherein said game apparatus (10) is characterized by:
said first requirement being indicative of the start of a slide operation and said game apparatus (10) further comprising:
a first parameter setting means (42, S13, S19, S23, S319, S335, S337, S339) for setting at least one first parameter according to one element of the two-dimensional coordinates of said operating position that satisfies the first requirement and at least another first parameter according to another element of the two-dimensional coordinates of said operating position that satisfies the first requirement; and
said game processing means (42, S93, S225) performing said game processes based on said first parameters".

34: "A recording medium (28) storing a game program to be executed by a game apparatus, wherein said game program causes the processor (42) of said game apparatus (10) to perform:

an operating position detecting step (S1, S29, S51, S281, S351) of detecting a position of operation by the user on the operating surface (14, 120);

a first requirement determining step (S3, S283) of determining whether or not a result of determination in said operating position detecting step satisfies a first requirement;

a contact determining step (S71, S77, S483, S493, S497, S501) of determining whether or not a slide path (142) on the operating surface (14, 120) makes contact with the first area (122) provided on the operating surface (14, 120), wherein the slide path (142) is determined on the basis of operating positions detected sequentially from the detection of an operating position that satisfies the first requirement; and

a game processing step (S93, S225) of performing varied game processes according to a result of determination in said contact determining step (S71, S77, S483, S493, S497, S501), wherein the recording medium is characterized by:

said first requirement being indicative of the start of a slide operation and said game program causing the processor (42) of said game apparatus (10) to further perform:

a first parameter setting step (S13, S19, S23, S319, S333, S337, S339) of setting at least one first parameter according to one element of the two-dimensional coordinates of said operating position that satisfies the first requirement and at least another first parameter according to another element of the two-dimensional coordinates of said operating position that satisfies the first requirement; and

said game processing step (S93, S225) performs said game processes based on said first parameters".

36: "A game control method including the following steps of:

(a) detecting (S1, S29, S51, S281, S351) an operating position by a user on an operating surface (14, 120);
(b) determining (S3, S283) whether or not the operating position detected in said step (a) satisfies a first requirement;

(c) determining (S71, S77, S483, S493, S497, S501) whether or not a slide path (142) on the operating surface (14, 120) makes contact with the first area set (122) on the operating surface (14, 120), said path (142) being determined on the basis of operating positions detected sequentially from the detection of an operating position that satisfies the first requirement; and

(d) performing (S93, S225) varied game processes depending on a result of determination in said step (c), wherein said game control method is characterized by said first requirement being indicative of the start of a slide operation and said game control method further comprising:

a first parameter setting step (S13, S19, S23, S319, S333, S337, S339) for setting at least one first parameter according to one element of the two-dimensional coordinates of said operating position that satisfies the first requirement and at least another first parameter according to another element of the two-dimensional coordinates of said operating position that satisfies the first requirement; and performing (S93, S225) said game processes based on said first parameters in step (d)".

Auxiliary request

1: "A game apparatus (10) comprising:
a display (100) for displaying game scenes;
an operating surface (14, 120) with an operating
position detecting means (22, 42, S1, S29, S51, S281,
S351) for detecting a user's operating position on the
operating surface;
a first requirement determining means (42, S3, S283)
for determining whether or not said operating position
detecting means detects, as a first requirement, the
start position of a slide operation on said operating
surface;
a contact determining means (42, S71, S77, S483, S493,
S497, S501) for determining contact between a slide
path (142) of said slide operation and a first area
(122) set on said operating surface (14, 120);
a first game parameter setting means (42, S9, S15, S13,
S19, S23, S25, S307, S319, S335, S337, S339) for
setting at least one first game parameter according to
a difference of one of the two-dimensional coordinates
of said start position and a first reference value and
for setting at least another first game parameter
according to a difference of the other of the two-
dimensional coordinates of said start position and a
second reference value ; and
game processing means (42, S93, S225) performing a game
processes based on said first parameters and according
to the result of detection by said contact determining
means (42, S71, S77, S483, S493, S497, S501)".

34: "A recording medium (28) storing a game program to
be executed by a game apparatus comprising a display
(100) for displaying game scenes, wherein
said game program causes the processor (42) of said
game apparatus (10) to perform:

an operating position detecting step (S1, S29, S51, 9281, S351) of detecting a position of operation by the user on an operating surface (14, 120);
a first requirement determining step (S3, S283) of determining whether or not said operating position detecting step detects, as a first requirement, the start position of a slide operation on said operating surface;
a contact determining step (S71, S77, S483, S493, S497, S501) of determining whether or not a slide path (142) of said slide operation on said operating surface (14, 120) makes contact with a first area (122) set on said operating surface (14, 120); a first game parameter setting step (S9, S15, S13, S19, S23, S25, S307, S319, S333, S337, S339) of setting at least one first game parameter according to a difference of one of the two-dimensional coordinates of said start position and a first reference value and for setting at least another first game parameter according to a difference of the other of the two-dimensional coordinates of said start position and a second reference value ; and
a game processing step (S93, S225) of performing said game processes based on said first game parameters and according to a result of determination in said contact determining step (S71, S77, S483, S493, S497, S501)".

36: "A game control method to be performed on a game apparatus comprising a display (100) for displaying game scenes, the method including the steps of:
(a) detecting (S1, S29, S51, S281, S351) an operating position by a user on an operating surface (14, 120);
(b) determining (S3, S283) whether or not said operating position detection step (a) detects, as a first requirement, the start position of a slide operation on said operating surface;

(c) determining (S71, S77, S483, S493, S497, S501) whether or not a slide path (142) of said slide operation on the operating surface (14, 120) makes contact with a first area set (122) on the operating surface (14, 120);

d) a first game parameter setting step (S9, S15, S13, S19, S23, S25, S307, S319, S333, S337, S339) for setting at least one first game parameter according to a difference of one of the two-dimensional coordinates of said start position and a first reference value and for setting at least another first game parameter according to a difference of the other of the two-dimensional coordinates of said start position and a second reference value ; and

e) performing (S93, S225) a game process based on said first game parameters set in step (d) and according to a result of determination in said step (b)".

VI. The appellant argued as follows:

Main request

The invention is a new input mechanism for generating game parameters using the XY co-ordinates. This new interface or input facility can be used by the game designer in the development of different games. It uses a common user-interface to control various games in which game parameters are set according to the absolute coordinates of positions where a player starts a slide gesture. This interface does not involve a game rule because the slide start position has different meanings in different games. Such an interface is purely technical and would be conceived of by the software engineer responsible for game interfaces, not by a game developer. Being common to different games the interface simplifies game development and makes it easier for players to adapt from one game to the next.

In the interface of D3 only one parameter is entered from a position and this is entered by dragging a button a certain distance, not by touching down on the screen at a point. By contrast the invention allows two parameters to be entered by touching-down on the screen. These features make the interface more powerful and save programming resources. Therefore starting from D3 the skilled person would not obviously arrive at the invention. Implementing the game of D2 on the DS game console would not result in the detection of absolute coordinates to decide whether touch-on coordinates satisfy a predetermined requirement since in the game of D2 the ball can be anywhere, rather than in an area set on the operating surface as claimed. Furthermore, the operating surface claimed is physically separate from the game screen, implementing the game of D2 on a touch screen would only result in one screen. Such a combination would therefore not result in the invention claimed.

Auxiliary request

Arguments for the main request also apply to the auxiliary request which further emphasises that the display screen and operating surfaces are different entities. Furthermore, the claimed parameters are set according to a difference between a start position and reference value which is not suggested in the prior art.

Reasons for the Decision

1. The appeal is admissible.
2. Background
 - 2.1 The present invention concerns a game apparatus, a recording medium storing a game programme and a game control method, in particular for controlling movement of an object according to the player's operating position and a slide operation (published application, paragraph [0001]). An object of the invention is to offer the player a new sense of operation and make a game more interesting (published application, paragraph [0007]).

To this end, the apparatus of claim 1 in both its versions, sets game parameters according to the two dimensional x and y coordinates of an operating position corresponding to the start of a slide operation detected on an operating surface. A game processing means then performs varied game processes based on these parameters (see also published application paragraph [0010]). The other independent claims, again in all their versions, have corresponding features in terms of method steps.

- 2.2 Whilst the claimed operating surface for detecting the x, and y coordinates is clearly technical, a question arises as to whether or not the *choice* of coordinates that determine game parameters is technical or not.
- 2.3 For inventions involving both technical and non-technical features, so called "mixed" inventions, the

Board adopts the approach as set out in **T 1543/06** (Gameaccount), reasons 2.1-2.9, which is based foremost on **T 0641/00** (OJ EPO 2003, 352). Accordingly, only those features that have 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.

- 2.4 In the context of inventions concerned with games, Article 52(2)(c) EPC explicitly mentions schemes, rules and methods for playing games as being excluded from patentability.

As explained in **T 0336/07**, reasons 3.3.1. *"a game in the usual sense of the word is characterized by ...its rules of play which govern the conduct and actions of the players during game play...[A] set of game rules thus determines how game play evolves from beginning to end in response to player actions and decisions..."*. That decision went on to emphasise that such a set of rules is *"normally so perceived by the players involved, and as serving the explicit purpose of playing a game"*.

Game rules thus determine, *inter alia*, how game play evolves in response to player actions and decisions.

3. Main request, novelty and inventive step

It is common ground that gaming apparatus with operating surfaces for detecting a user's operating position, such as touch screens, are generally known in the prior art. For example the two-screen Nintendo DS gaming console, with its lower touch screen, was prior sold (see D1, cf. published application, paragraphs [0070] and [0078] and figure 1). Furthermore D3, cited at paragraphs [0003] and [0005] of the published application, discloses a game apparatus for a golf game with a touch screen (see figures 8 to 12).

- 3.1 Document D3 is acknowledged in the present patent application as disclosing a game in which a player inputs a slide operation, (see published application, paragraph [0003], cf. D3, figures 8, 10 and 11). In view of this, the Board considers that this is a good starting point for assessing novelty and inventive step.

As can be inferred from the sequence of figures 8 to 12 of D3 this game apparatus has an operating position detection means for detecting a user's operating position; means for determining user gestures to see if they fulfil particular requirements (swipe to the left, figures 8 and 9 for backswing, followed by a swipe to the right, figures 10, 11, to complete the swing); and contact determining means for determining contact between the slide path and first area (the swipe must be across or along the sequence of operating position dots shown at the bottom of the screen). The apparatus naturally also has game processing means (figures 2, 3), which must include game parameter setting means that determine "the carry and the line of the ball [from] the dragging distance and speed" according to paragraph [0003] of the present published application. These are (game) parameters that are thus

derived from the swipe gesture, in particular the difference between the backswing start (figure 8) and stop position (figure 9), that is, the length of the backswing gesture is determined. As discussed at the oral proceedings before the Board this means that the "x" coordinate of, say, the stop position as a first requirement is used to determine a first parameter in the game, here the ball's "carry" or flying distance.

- 3.2 In D3 the swing speed of the shot, a further parameter used for determining game processes, is not determined by the other coordinate ("y") of the stop position but by the speed of the slide operation to the right, see also the application as published, paragraph [0003]).

Thus, the game apparatus of claim 1 differs from that of D3 in that the first parameter setting means is additionally for setting at least another first parameter according to another element of the two-dimensional coordinates of said operating position that satisfies the first requirement, the game processing means performing game processes based also on this parameter. The claimed game apparatus is therefore new with respect to D3.

- 3.3 The Board must therefore consider whether this differing feature contributes an inventive step.

- 3.3.1 With respect to D3, the application states the game using this apparatus is so simple that it may lack interesting characteristics (published application, paragraph [0005]). The central idea of the invention is to interact with a game apparatus in a new way, giving rise to the effect that the game is more interesting (published application, paragraph [0007]). Since the screen of D3 is indisputably a touch-screen on which

slide gestures are performed (see figures 8 to 11), this idea does not reside in these known features per se, but rather in a new way of deriving parameters from the interaction with the touch screen.

In particular, this new way of interacting with the apparatus generates a further parameter used in game play from the y coordinate of the start of a slide action.

- 3.3.2 The Board holds it unlikely that such an idea would be conceived of by an engineer tasked with designing a new interface, which could then be used in developing new games, much as would be the case for, say, a new button provided on a joystick.

Unlike the joystick with its new button, the user interface of the invention is physically no different from prior art touch screens. Nor does the user interact with it differently; they do so by touching the surface. The invention differs only in that a particular *selection* of coordinate data generates a further game parameter. In the Board's view the choice to do so is not driven by the engineer who is seeking to develop new touch-screen technology which might then be used in gaming applications. Rather, it originates with the game developer who wishes to make a more interesting game, and who does so by modifying the conditions and criteria that govern game play and which form part of the set of game rules in the wider sense. In a computer game, the conditions and criteria will include game input and how this is used to generate game parameters. In the Board's view therefore the idea to use the y as well as x coordinates of an input position on a touch screen to generate respective gaming parameters, given that these coordinates are

necessarily already available in a touch screen interface (e.g. to verify that a user swipes across the sequence of dots in D3), is a pure games choice, made by the games developer specializing in developing computer games. That games developer will have some understanding of the hard- and software of a computer game console to the extent that they affect game play, and can thus make informed choices as to which of those available coordinates to use, and how these will influence game-play.

- 3.3.3 Although the claim does not relate to any one particular game, selecting the y coordinate of the start of a slide action determines how the player influences game-play in whichever game is being played. Furthermore, the player will be fully aware of how their slide action determines game play in that particular game.

In the golf-game example of the application (see application as published, paragraphs [0096] to [0109], figures 3 and 5), shot power, that is how far a golfball flies, is determined by the y coordinate of where the player first touches down on the screen (paragraph [0108]). This is displayed to the player in units of 10% (paragraph [0109]). Figure 5a shows the effect of touch-down on the displayed "full-shot" or 100% power line and figure 5b shows a different shot where the user's shot has 30% power. Thus the player immediately sees how they can influence game-play by appropriately picking from where they commence a slide operation that plays a shot. Put differently, in the context of this example, the choice of the y coordinate relates to a game rule, as defined above in section 2.4. The rule could be worded as follows: To play a shot, touch your finger on the screen between the 0%

power line 124 and the 100% power line 126, the vertical position of the touch-down point determines the power of your shot, then slide your finger towards the ball.

3.3.4 By the same token, when playing games according to the other examples of the application, the player is likewise presented with a vertical percentage scale that they can use to appropriately select their touch-down point to influence game play. For example, the scale may represent the power of kicking in a soccer game (figure 26), the amount of arm swing in a baseball game (figure 27) or the power of magic in a fighting game (figure 28). Thus, also for these games, the player is aware of how they can influence game-play by choosing a slide action vertical start position. Consequently, game rules that are contextually different yet similar in substance to the one for the golf game (see above, point 3.3.3), underpins each game.

3.3.5 Thus, whilst claim 1 is not restricted to any particular game, and therefore its subject matter is not founded on any specific game rule, the Board considers that the game developer's choice of having the y coordinate of the slide start-point set a game parameter used in game processes nevertheless represents a non-technical generic scheme for playing various games. Therefore it is excluded from patentability under Article 52(2)(c) EPC.

However ingenious or powerful it may be for the game developer or player to have common elements in different games as this scheme offers, advantages resulting from this idea, are inherent to the non-technical scheme itself.

- 3.4 Adopting the approach outlined above in section 2.3, inventive step cannot be found in the mere technical implementation of the above scheme, but must lie in the particular manner of implementation. It is therefore necessary to consider how this scheme is implemented in the game apparatus of claim 1. This question is to be considered from the view-point of the skilled person, a gaming software engineer rather than the game developer, who is tasked with modifying the prior art game apparatus of D3 to implement the above scheme.
- 3.5 As with any touch-screen, that of D3 will continuously provide both the x and y coordinates of points at which it is being touched (e.g. to ascertain that the screen is being touched within the region defined by the sequence of dots in figures 8 to 12). Given the task of implementing the above scheme, the skilled person will inevitably have to provide some means of setting a [further] first parameter according to the y coordinate provided by the touch screen operating surface at the start of the slide operation. Such a means is already available in the apparatus of D3 for setting a first parameter in accordance with the x coordinate of that point (see paragraph 3.1). Thus, as a matter of obviousness, the skilled person will merely adapt that means to set a further parameter according to the y coordinate of the slide-start. Likewise the skilled person will obviously use the existing game processor to perform game processes based on this parameter. Therefore they will arrive at the differing feature, means for setting a game parameter according to the y coordinate of the start of slide operation and using the game processor to perform game processes based on this parameter, without having made an inventive step.

- 3.6 Finally, that the claimed invention can be applied to different games, simplifying game development and making it easier to adapt from one game to another follows directly the generic nature of the underlying rule. These typical gaming benefits do not render it more technical. This applies also to alleged effects of a more powerful interface or reduced programming resources, which inherent in the game rule not its specific technical implementation.
- 3.7 In summary, the board holds that all the differing features of claim 1 with respect to D3 (see above point 3.2) 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 setting a game parameter according to the y coordinate of the start of a slide operation, and using the parameter to perform game processes. The same conclusion holds for the computer readable medium of claim 34 and the method of claim 36 which rephrase the various elements of the apparatus of claim 1 in terms of their functions.
- 3.8 Therefore the subject matter of independent claims 1, 34 and 36 does not meet the requirements of Article 52(1) in combination with Article 56 EPC.
- 3.9 The Board notes that the impugned decision took an alternative approach, considering document D2, a handbook for a golf game implemented on a computer with a mouse user interface, as closest prior art. The decision found that it would be obvious for the skilled person to implement this game on a touch-screen gaming console, such as the Nintendo DS known to be prior art from document D1, and that this would lead to them to

the invention as claimed in an obvious way, see decision reasoning, sections 2.2 to 2.6.

3.9.1 The Board agrees with the decision's conclusion in this respect. In particular the Board notes that D2 discloses how a player inputs a simulated golf swing to the game apparatus, called a true swing, on pages 24 and 25. How far the cursor on the screen is pulled down from the golfer's hands using the mouse (simulating a back-swing) determines the power of the shot (page 24, points 1 to 3). Thus the y coordinate of the end of the backswing position on the screen determines a parameter used in game processes. If the back-swing is made vertically down on the screen, the ball flies in a straight path, (page 25, first paragraph). Fades and draws, that is right and left biased flight paths, can be simulated by ending the back swing to the left or right of the vertical respectively (page 25, second paragraph). In other words the x coordinate of the end of the backswing position on the screen determines a flight direction game parameter that is used by the game processor to determine ball flight direction. Furthermore, where the backswing ends is also the start of the cursor path (simulated swing) that ends at a particular area on the screen, namely the ball (see page 24, point 4).

3.9.2 The Board agrees with the decision that it would be obvious in the light of the use of touch screens as an alternative input means which was generally known to the skilled person before priority for them to implement the game on a touch screen (decision grounds, page 7, point 2.4.1, last paragraph). Position data which can be input by a mouse controlling a screen cursor can equally well be input on a touch screen, and such screens provide convenient interfaces for playing

games. The Board finds the above conclusion all the more correct as before priority a touch screen console was already used in a Nintendo DS gaming console.

- 3.9.3 The Board notes that a touch screen always provides absolute coordinates of the point being touched, the frame of reference being the screen itself. The Board also notes that the claim does not suggest that the "predetermined requirement" is a touch-on point. It could for example equally well be the point where the backswing ends and the swing starts. Furthermore, nothing in claim 1 suggests that the "first area (122) set on said operating surface" can never change. Therefore, whether or not the ball in the game of D2 may move within the screen from shot to shot, it is still "set" for any particular shot, and it is with respect to this area that the player's swing is referenced. Lastly nothing in the claim suggests that the claimed apparatus has two screens, let alone an operating surface and a separate game screen. Thus, whether or not it would be obvious to separate game screen and operating surface when implementing the game of D2 on the Nintendo DS console is irrelevant to the question of inventive step.

Therefore the Board is also not convinced by the appellant's arguments that the impugned decision was wrong to conclude that claim 1 of the main request lacked an inventive step over D1, D2 and the skilled person's general knowledge (decision, page 7, point 2.5).

4. Auxiliary request

- 4.1 Apart from editorial rearrangement and certain deletions, claim 1 of this request adds that the game

apparatus comprises a display for displaying game scenes, that the parameters are game parameters and that the first and second game parameter setting means set game parameters according to the *difference* between respective ones of the two dimensional coordinates [x, y] of the start position [of the slide operation] and first and second *reference* values (emphasis added by the Board).

4.2 Following on from the Board's findings with respect to inventive step of claim 1 of the main request, D3 also discloses a display for displaying game scenes (see figures 8 to 12). In this regard, nothing in the claim wording suggests that the display must be a separate entity from the operating surface. A touch screen, such as that of D3, incorporates both an operating surface and a display in a single unit. Merely by referring to these entities using separate functional labels in the claim does not preclude that they may form a single unit. Therefore in this respect claim 1 is no different from D3. It goes without saying that the parameters generated in D3 are also game parameters, the end of back swing gesture determines how far the ball flies. As explained above in section 3.1, in D3 these parameter will be derived from the difference between x coordinates at the start of backswing (figure 8) and stop position at the end of backswing (figure 9). Thus in D3 a first game parameter is set according to the difference between the x coordinate of the start of a slide operation (swing) and a reference value.

4.3 Claim 1 of this request therefore differs from D3 only in that a (further) first parameter is set according to the difference between the y coordinate of the start of the slide operation (swing) and a reference value.

- 4.4 Just as the scheme to use the y coordinate for generating a game parameter is a generic non-technical scheme for playing various games (see above, section 3.3.5), so too is a modified scheme setting a parameter according to the *difference* between the y coordinate and a reference value.
- 4.5 Following the approach outlined above in section 2.3 again, tasked with implementing this modified scheme the skilled person would as a matter of obviousness adapt the existing parameter setting means of D3 to set a further parameter according to the difference between the y coordinate and a reference value. They will therefore arrive at the subject matter of claim 1 without having made an inventive step.
- 4.6 As with the main request, the same result holds for the computer readable medium of claim 34 and the method of claim 36 which have corresponding elements of the apparatus of claim 1 in terms of their functions. Thus, the subject matter of independent claims 1, 34 and 36 according to the auxiliary request does not meet the requirements of Article 52(1) in combination with Article 56 EPC.
5. The Board concludes that the independent claims 1, 34 and 36 according to both the main and auxiliary requests are not allowable under Article 52(1) EPC with Article 56 EPC. The Board therefore confirms the appealed decision to refuse the application.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:



G. Magouliotis

A. de Vries

Decision electronically authenticated