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**Datasheet for the decision
of 29 June 2021**

Case Number: T 0424/16 - 3.4.03

Application Number: 13160458.9

Publication Number: 2642467

IPC: G09B9/08

Language of the proceedings: EN

Title of invention:

System and method for simulated aircraft control through
desired direction of flight

Applicant:

Gaijin Entertainment Corporation

Headword:

Relevant legal provisions:

EPC Art. 52(1), 56, 84, 123(2)

RPBA 2020 Art. 13(2), 15(1)

RPBA Art. 12(4)

Keyword:

Decisions cited:

T 0641/00, T 0928/03, T 0717/05

Catchword:



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Case Number: T 0424/16 - 3.4.03

D E C I S I O N
of Technical Board of Appeal 3.4.03
of 29 June 2021

Appellant: Gaijin Entertainment Corporation
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Decision under appeal: **Decision of the Examining Division of the
European Patent Office posted on 17 September
2015 refusing European patent application No.
13160458.9 pursuant to Article 97(2) EPC.**

Composition of the Board:

Chairman G. Eliasson
Members: S. Ward
T. Bokor

Summary of Facts and Submissions

- I. The appeal is against the decision of the Examining Division to refuse European patent application No. 13 160 458 on the grounds that the subject-matter of the main request and auxiliary requests 1 and 5-7 did not involve an inventive step within the meaning of Article 56 EPC. Auxiliary requests 2-4 were not admitted into the procedure under Rule 137(3) EPC.
- II. At the end of the oral proceedings held by video conference before the Board the appellant requested that the decision under appeal be set aside and that a patent be granted on the basis of the main request, or alternatively on the basis of one of the auxiliary requests 1 to 4, all filed with the grounds of appeal, or on the basis of auxiliary request 5, filed with letter dated 20 May 2021.
- III. The following document is referred to:
- D1: US 7 284 984 B1
- IV. (i) Claim 1 of the main request reads as follows:
- "An aircraft control system (200) for a user of a simulated aircraft (100) through a desired direction of flight (106), comprising:
a video device (205) for presenting the user with a view of a simulated environment;
modeling means (203) responsive to the desired direction of flight (106) for determining position and orientation of the simulated aircraft (100); and
a pointing device (202) for controlling the desired direction of flight (106), wherein a graphical element*

is shown on the video device (205) corresponding to the desired direction of flight (106) and wherein said graphical element moves in response to the user moving said pointing device; and wherein the modeling means (203) analyzes which control surface adjustments are needed to the simulated aircraft (100) to fly along the desired direction of flight (106) and modifies a simulated aircraft state to align the aircraft with the desired direction of flight."

(ii) Claim 1 of auxiliary request 1 is the same as claim 1 of the main request except that the feature "and modifies a simulated aircraft state" in the final paragraph has been amended to:

"and then applies said control surface adjustments to the simulated aircraft".

(iii) Claim 1 of auxiliary request 2 is identical to claim 1 of the main request except that the following feature has been added:

"wherein the pointing device is neither a joystick nor a keyboard".

(iv) Claim 1 of auxiliary request 3 is identical to claim 1 of auxiliary request 1 except that the following feature has been added:

"and then, once the aircraft is aligned with the desired direction of flight, returns the control surfaces to neutral".

(v) Claim 1 of auxiliary request 4 is identical to claim 1 of auxiliary request 3 except that the following feature has been added:

"wherein the pointing device is neither a joystick nor a keyboard".

(vi) Claim 1 of auxiliary request 5 is identical to claim 1 of the main request except that the following feature has been added:

"wherein the pointing device is a computer mouse, a touch screen, or a trackball".

V. Following the summons to oral proceedings, the Board sent the appellant a communication under Article 15(1) RPBA. The Board's preliminary opinion was that claim 1 of the main request appeared to comprise a mixture of technical and non-technical features, and that the claimed subject-matter did not appear to involve an inventive step within the meaning of Article 56 EPC. The admission into the proceedings of at least some of the auxiliary requests would be a matter for discussion, but the auxiliary requests did not, in any event, appear to overcome the inventive step objection.

VI. The appellant's arguments, insofar as they are relevant to the present decision, may be summarised as follows:

The technical problem could be seen as "how to provide a control system that has a similar level of control to a joystick, where a joystick is not available to the user, or its use is not practical". This was a technical problem because, firstly, it related to the resolution of conflicting technical requirements (as in

T 0928/03), and secondly, it involved an understanding at a technical level of the functioning of a joystick.

In the present case the conflicting technical requirements were, on the one hand, to display realistic aircraft control on a video device, and on the other hand, to provide a simplified aircraft control system (e.g. without a joystick and pedals). As in T 0928/03, this conflict was resolved by technical means, namely the distinguishing features of claim 1, which provided a simplified aircraft control system that had a similar level of control to a typical aircraft control system.

Moreover, the claimed invention not only enabled the use of a single input to select the direction of travel of a simulated aircraft, but in addition also provided direct visual feedback indicating an internal state of the aircraft control system to a user, in that a user could ascertain the direction in which the system would control the aircraft to travel by the position of graphical element on the video device. Means of providing such visual feedback had been acknowledged to be technical by the Boards of Appeal, for example in T 0717/05.

The feature that the direction of flight was controlled by a graphical element should not be treated as part of the concept or content of a game, but as a technical feature requiring technical means, which provided visual feedback to a user of the aircraft control system.

Even if this feature were considered to have a non-technical effect (e.g. to make a game more appealing to novice users), it did not necessarily follow that the

feature was non-technical in nature. Technical features could display both technical and non-technical effects. The feature that the flight direction was indicated by a graphical element did not just amount to a requirement to make the game easier, it set out *how* to make the game easier, by means of a technical feature.

D1 described a typical aircraft control system in which the direction of flight of an aircraft was controlled by two input devices (e.g. joystick and pedals). D1 also described the use of a keyboard with a mouse but there was no specific disclosure as to how these devices might be used to enable a direction of flight to be determined. In particular, there was certainly no direct and unambiguous disclosure of determining the direction of flight by means of the claimed features, which involved a non-obvious use of a pointing device.

There was nothing in D1 that would teach the skilled person to arrive at the subject-matter of the independent claims.

Reasons for the Decision

1. The appeal is admissible.
2. *Background*
 - 2.1 The invention concerns an aircraft control system and method for a user of a simulated aircraft, wherein the desired direction of flight is controlled by means of a "pointing device", which may be "a computer mouse, a touch screen or a trackball" (paragraph [0022]). By this means, "the user will be able to take off, land,

fly traffic patterns, intercept other aircraft, etc., without spending a long time learning how to align simulated aircraft with the desired direction" (paragraph [0005]). The system is not, therefore, a professional flight simulator, of the type used to train pilots, but a system in which flight simulation software is run on a PC etc. for entertainment. In short, the invention is a computer game system and method (see claims 1, 12 and 14 of the main request).

2.2 Flight simulation packages for personal computers have been commercially available since at least the 1980s, a prominent example being *Microsoft Flight Simulator*, a version of which (*Combat Flight Simulator 3: Battle for Europe*) forms the basis for the preferred embodiment of D1 (column 1, lines 39-41).

3. *Claim 1 of the Main Request*

3.1 The final paragraph of claim 1 of the main request defines two steps carried out by the modeling means. Firstly, the modeling means analyzes which control surface adjustments are needed for the simulated aircraft to fly along the desired direction of flight, and secondly, the modeling means modifies a simulated aircraft state to align the aircraft with the desired direction of flight.

3.2 No explicit logical link is made between these two steps, and hence the Board regards claim 1, according to its literal wording, as encompassing embodiments in which the modeling means performs the second (alignment) step without using the control surface adjustments determined in the first step.

3.3 By contrast, claim 1 of auxiliary request 1 defines an intermediate step providing the link between the two steps: *"and then applies said control surface adjustments to the simulated aircraft"*. At oral proceedings the appellant stated that it understood both claims to mean essentially the same thing, which the Board takes to mean that the linking feature is seen by the appellant as implicit in claim 1 of the main request.

3.4 The fact that the Board and the appellant have arrived at two different understandings of the meaning of claim 1 of the main request is indicative of a failure to meet the clarity requirement of Article 84 EPC.

Moreover, the Board sees nothing in the description that would indicate that the invention is intended to extend to embodiments such as those referred to above under point 3.2, and hence the Board also sees a failure to meet the requirement of Article 84 EPC that the claims should be supported by the description.

3.5 The appellant did not challenge these findings at oral proceedings, stating that it was content to move on to auxiliary request 1 for the discussion of inventive step. The Board therefore maintains its view that the subject-matter of claim 1 of the main request does not meet the requirements of Article 84 EPC, and hence that a patent cannot be granted based on this request.

4. *Claim 1 of Auxiliary Request 1: Inventive Step*

4.1 The closest prior art could be taken to be any general purpose computer set up to operate a conventional flight simulator program. In order to have a concrete example, the Board takes as the closest prior art the

combination of a PC together with the program *Combat Flight Simulator 3: Battle for Europe*, disclosed as the preferred embodiment in D1 (column 1, lines 39-41; column 4, lines 6-8; column 6, lines 17-22).

4.2 Under point 2.4 of its communication under Article 15(1) RPBA the Board set out the features which were considered to distinguish claim 1 of the main request over D1. This analysis was not challenged in the appellant's letter of response dated 20 May 2021. The Board accepts that the additional feature of claim 1 of auxiliary request 1 (see point IV(ii) above) is also not disclosed in D1. Hence, the distinguishing features of claim 1 of auxiliary request 1 (with reference letters added by the Board) are seen as follows:

- (a) The graphical element on the video device
"correspond[s] to the desired direction of flight" and the system operates "to align the aircraft with the desired direction of flight" as indicated by the graphical element;

- (b) *"wherein the modeling means (203) analyzes which control surface adjustments are needed to the simulated aircraft (100) to fly along the desired direction of flight (106) and ..."*

- (c) the modelling means *"then applies said control surface adjustments to the simulated aircraft"* (to thereby align the aircraft with the desired direction of flight).

It must first be determined whether features (a)-(c) are of a purely technical character, as contended by the appellant, or whether they comprise non-technical

features. The Board therefore turns to this question, starting with feature (a).

4.3 A video or computer game typically involves an animated image comprising graphical elements being displayed on a video screen to a user having the power to control or influence properties of one or more of the graphical elements by manipulating an input device, such as a mouse or joystick, the changes brought about by such manipulations being displayed on the screen.

4.4 While video screens and input devices are technical devices *per se*, the choice by a game developer of the nature of the graphical elements to be displayed on the screen, the manner in which a user may control the graphical elements by means of the input device, and the consequences of such user inputs for the progress of the game, must generally be regarded as non-technical aspects of the game content, conceived as part of a creative design process aiming to produce a game which appeals to the gaming public. The same is true of the tasks which a user is set and the levels of difficulty associated with such tasks.

It is accepted that in certain exceptional cases the Boards have recognised a graphical feature displayed in a video game as having a technical character (see below, points 4.18 to 4.21). However, as a general rule, the features mentioned in the previous paragraph constitute non-technical aspects of the game to be played.

4.5 In the Board's view, feature (a) is just such a non-technical feature, being part of the content of the game. It is inherent in the nature of a flight simulation video game that the user must be able to

control the flight direction by means of the input device. Whether this is achieved in a realistic manner by, for example, a joystick, or in a simplified manner by indicating a desired direction of flight by means of a graphical element movable by a pointing device, is a choice to be made by a game developer in deciding the content and nature of the game.

- 4.6 Concerning features (b) and (c), clearly the modeling means is a technical feature, but it may be asked whether the effects which the modeling means is programmed to produce can be considered to make a technical contribution to the claimed subject-matter (the Examining Division found that they did not).

Features (b) and (c) produce the effects that the aircraft is aligned with the direction indicated in feature (a), and that the simulated change in direction corresponds to a realistic change of trajectory of the aircraft, i.e. one which could actually be brought about by appropriate adjustment of the flight control surfaces (ailerons, elevators, rudder) of the real aircraft which the system is aiming to simulate.

This is achieved by the modeling means performing an analysis to determine which control surface adjustments would be needed to fly along the desired direction of flight, and then applying these control surface adjustments to the simulated aircraft. As will be shown below (point 4.13), the Board's conclusion on inventive step is the same whether these features are considered to be technical or not, and hence the Board proceeds by assuming, *arguendo*, and to the appellant's advantage, that these features are technical.

- 4.7 Claim 1 therefore comprises a mixture of technical and non-technical features, and the Board will apply the principles set out in T 641/00, according to which features which do not contribute to the technical character of the invention cannot support the presence of inventive step, but may legitimately appear as part of the framework of the technical problem to be solved, in particular as a constraint that has to be met (T 641/00, Headnote, points I and II).
- 4.8 In the light of the above considerations, the Board sees the technical problem solved by the distinguishing features as *implementing* a control system for a simulated aircraft which aligns the aircraft with a desired direction of flight as indicated by a graphical element on screen which is moved by a pointing device, subject to the constraint that the simulated change in direction corresponds to a realistic change of trajectory of the aircraft being simulated.
- 4.9 Since the problem facing the skilled person includes the requirement that any manoeuvre must be realistic, i.e. must correspond to one which could actually be carried out in practice as a result of adjustments to the flight control surfaces of the simulated aircraft, it would be obvious, if not inevitable, that the solution must involve determining (by some means, which may be referred to as "modeling means") a set of adjustments to the flight control surfaces which would bring about the desired trajectory change. Without such a determination, it is difficult to see how it could be verified that the envisaged manoeuvre would correspond to one which could actually be carried out in practice. In the Board's view, the programming required to implement such a determination would be within the

capacity of the skilled person in the field, and the appellant has not argued otherwise.

- 4.10 Having calculated the adjustments required to realistically manoeuvre the aircraft to align with the indicated direction, it would then be obvious to implement the manoeuvre by providing the calculated adjustments as inputs into the flight simulation software so that the simulated aircraft would follow the appropriate path.
- 4.11 The Board notes that prior art flight simulators typically have the capacity to adjust the flight of the simulated aircraft in response to adjustments to the flight control surfaces. In the description of the present application it is acknowledged that the direction of flight in a flight simulator can be set by "controlling, for example, ailerons, elevator and rudder" (paragraph [0005]). In D1 also, adjustment of the elevator is described in detail (see e.g. column 8, lines 39-51) either entirely manually or using "autotrim", and it is implicit that flight control involving the adjustment of the other flight control surfaces is also provided (see e.g. column 1, lines 47-54).

Hence, once the adjustments to the flight control surfaces were determined, it would be a routine matter to simulate the corresponding flight path by using the existing flight simulation software.

- 4.12 For the reasons given above, the skilled person would be led in an obvious manner to the distinguishing features of claim 1.

4.13 If the steps carried out by the modeling means in features (b) and (c) were to be regarded as non-technical, all of the distinguishing features would constitute non-technical requirements, and the technical problem would be simply to implement them. In the Board's view, the skilled person would be able to implement such requirements without difficulty, and hence the same conclusion would be reached.

4.14 The Board is not persuaded by the arguments of the appellant that feature (a) should be regarded as having a technical character.

The contention that the technical problem is "how to provide a control system that has a similar level of control to a joystick, where a joystick is not available to the user, or its use is not practical" (Grounds of Appeal, point 2.2.9) does not appear to have any basis in the description. On the contrary, the underlying aim of the invention is stated to be that of simplifying the operation of a flight simulator so that "the user will be able to take off, land, fly traffic patterns, intercept other aircraft, etc., without spending a long time learning how to align simulated aircraft with the desired direction" (paragraph [0005]).

4.15 The Board does not dispute that flying a simulated aircraft in a flight simulator having the features mentioned above under point 4.2 would be considerably simpler for the user than flying a simulated aircraft in a conventional flight simulator, such as that of D1. However, the development of any video game involves setting an appropriate level (or levels) of difficulty. An experienced user of flight simulators may want the challenge of piloting an aircraft in a realistic

manner, whereas for a beginner or occasional user this may prove too difficult. In the Board's view, the selection of a level of difficulty which will appeal to a particular group of target users is essentially a question of marketing, and not a technical problem.

The Board accepts that it is not inconceivable that the solution to the problem of selecting an appropriate level of difficulty in a video game could involve technical means. However, in the present case, the choice to simplify piloting the simulated aircraft by allowing a desired direction of flight to be indicated by means of a movable on-screen graphical element is, in the Board's view, a solution based on a simplification of the nature and rules of the game which does not involve the provision of technical features.

4.16 The appellant argued that feature (a) was technical in that it was part of a feedback loop. In particular it provided "visual feedback indicating an internal state of the aircraft control system to a user. That is, a user can ascertain the direction in which the system will control the aircraft to travel" (letter 20 May 2021, page 2, third and fourth paragraphs). However, what is indicated to the user is simply the desired direction of flight which they themselves have selected, in other words, their own external input. The Board does not see in what sense this communicates the "internal state" of the system to the user.

4.17 The Board does not intend to review all the decisions cited by the appellant, but will focus on the two decisions cited in the letter of 20 May 2021. The other decisions mentioned in the Grounds of Appeal appear to the Board to be less relevant.

4.18 T 928/03 concerns a video game simulating a football match. A player character (P1) who is in possession of the ball can pass it to player character (P2) who is indicated by an accompanying "pass guide mark (G3)", whereby "a portion of the pass guide mark (G3) is displayed on the end of the display area even when said another player character (P2) and said pass guide mark (G3) come out of the display area of the monitor screen so as to properly indicate the direction in which the game medium (b) is to be passed by the player character (P1)" (see point [c] of claim 1).

Under point 4.3 of the Reasons, the deciding Board came to the following conclusion in relation to point [c]:

"The technical problem underlying this feature relates to conflicting technical requirements: On the one hand, a portion of an image is desired to be displayed on a relatively large scale (e.g. zoom in); on the other hand, the display area of the screen may then be too small to show a complete zone of interest. Resolving that conflict by technical means implies a technical contribution which has to be considered in the inventive step discussion."

4.19 The appellant argues that in the present case there are also conflicting technical requirements: "on the one hand, an aircraft control system with realistic aircraft control is desired to be displayed on a video device; and, on the other hand, it is desired to provide a simplified aircraft control system (e.g. without a joystick and pedals)" (letter of 20 May 2021, page 5, second paragraph).

4.20 The Board does not see either of these requirements as technical. The requirement that the simulated aircraft moves in a realistic manner is not a technical necessity, but a design choice made by the developer to make the game more appealing to users. A simplified rule for controlling the aircraft is again a choice intended to appeal to a certain group of users, namely those with less skill or experience. Hence the decision T 928/03 is not seen as relevant to the present case.

4.21 T 717/05 concerns a gaming apparatus (for playing, for example, poker or blackjack) involving a principal game and an auxiliary game. The outcomes of the principal game are detected and classified as either credit events or a no-credit events; these outcomes are monitored over a predetermined number of consecutive past events, and the prize in the auxiliary game is determined depending on the detected credit and no-credit events.

According to claim 1 of the auxiliary request, a representation of the monitored credit events and no-credit events over at least a predetermined number of consecutive past events is displayed, which has the effect of keeping the player informed about the development of the auxiliary game.

The deciding Board found that (Reasons, point 5.2, final ten lines):

"[d]isplaying the outcomes of the previous games informs the player of the internal state of the gaming apparatus and of the way it will behave under the occurrence of a further outcome and is in this way similar to any display of the internal state of an apparatus in a more classical field, such as displaying

the temperature of an internal combustion machine or the pressure of an autoclave."

For the reasons already given above (point 4.16), the present Board does not accept that feature (a) can be seen as informing the user about the internal state of the system, and hence T 717/05 is also not seen as relevant to the present case.

4.22 Finally, the argument that indicating a desired direction of flight by means of a graphical element on the screen is a non-obvious use of a pointing device is not seen as pertinent. For the reasons given above, feature (a) is seen as having a non-technical character and cannot therefore support the presence of inventive step (T 641/00, Headnote, point I). The question whether a non-technical requirement which appears as part of the technical problem to be solved is obvious or not plays no role in the assessment of inventive step.

4.23 For the above reasons the Board judges that the subject-matter of claim 1 of auxiliary request 1 does not involve an inventive step within the meaning of Articles 52(1) and 56 EPC.

5. *Auxiliary Request 2*

5.1 Claim 1 of auxiliary request 2 comprises the additional feature:

"wherein the pointing device is neither a joystick nor a keyboard".

5.2 The Examining Division did not admit any of the requests (auxiliary requests 2-4) containing this

feature pursuant to Rule 137(3) EPC on the grounds that the above disclaimer had no basis in the application as originally filed (Article 123(2) EPC) and hence they were not clearly allowable.

5.3 The purported basis is paragraph [0022] of the description:

"In FIG. 1, the user preferably operates a pointing input device 202, such as a computer mouse, a touch screen or a trackball. With such devices, accuracy is increased, compared to input devices like computer keyboard, joysticks etc."

5.4 Even if this passage were taken to mean that input devices like computer keyboards and joysticks are not to be used (and this is debatable; it appears that such devices are merely not preferred), the exclusion would apply to a class of input devices "like computer keyboard, joysticks etc.", not just to two members of that class (joysticks and keyboards).

For example, yokes (devices similar to steering wheels, but which can also be pushed backwards and forwards) are commonly used in flight simulators, and operate in a somewhat similar way to joysticks. The skilled person would, in the Board's opinion, classify yokes as being input devices like joysticks, and hence excluded by paragraph [0022] to the same extent that joysticks are. However, claim 1 of auxiliary request 2 excludes joysticks but not yokes. Such an exclusion cannot be seen as having a basis in paragraph [0022] or elsewhere in the application as originally filed, contrary to the requirements of Article 123(2) EPC. The Board does not, therefore, see any reason to deviate from the conclusion of the Examining Division, and hence

auxiliary request 2 is not admitted into the procedure (Article 12(4) RPBA).

6. *Auxiliary Request 3*

6.1 Claim 1 of auxiliary request 3 comprises the following feature:

"and then, once the aircraft is aligned with the desired direction of flight, returns the control surfaces to neutral".

6.2 According to the appellant the principal basis is paragraph [0069] which reads as follows:

"Mouse-based aircraft control places more burden on the analytical aspects of aircraft behavior. Unlike conventional approach, where the user gives commands "rotate this control surface, pitch the aircraft 60 degrees, and by rotating the rudder, gain altitude at 30 degrees, and, once reaching desired roll and pitch, return the control surfaces to neutral", here, the user simply needs to point the mouse' cursor, and the actions with the control surfaces will take place automatically. The user is freed from the complexities of thinking about control surface manipulation."

This specific example does not, in the opinion of the Board, amount to a basis for the more general statement of claim 1 of auxiliary request 3, according to which the control surfaces are always returned to neutral once the aircraft is aligned with the desired direction of flight. Nor does the Board find it implicit that maintaining the aircraft in alignment with the desired direction of flight would always require the control surfaces to return to neutral; there might be

situations (for example, crosswinds) where this presumably would not be the case.

- 6.3 The appellant argues that paragraph [0069] should be read in the context of paragraph [0025]. In the Board's view this paragraph adds nothing which could either serve as a basis for the contested feature or render more plausible the argument that paragraph [0069] provides such a basis.

Consequently the Board judges that the subject-matter of claim 1 of auxiliary request 3 does not meet the requirements of Article 123(2) EPC.

7. *Auxiliary Request 4*

- 7.1 Claim 1 of auxiliary request 4 comprises the additional feature mentioned above under point 5.1.

- 7.2 For the reasons explained above in connection with auxiliary request 2, the Board does not see any reason to deviate from the conclusion of the Examining Division in relation to this feature, and hence auxiliary request 3 is not admitted into the procedure (Article 12(4) RPBA).

8. *Auxiliary Request 5*

- 8.1 Claim 1 of auxiliary request 5 is identical to claim 1 of the main request except that the following feature has been added:

"wherein the pointing device is a computer mouse, a touch screen, or a trackball".

8.2 Being based on the main request, the subject-matter of claim 1 of auxiliary request 5 fails to meet the requirements of Article 84 EPC for the reasons given above in relation to claim 1 of the main request (point 3).

Moreover, the Board has examined the application under the understanding that the term "pointing device" refers to a device such as a computer mouse, a touch screen, or a trackball, but not, for example, a joystick. Hence, this feature would, in any event, make no further contribution to the argument on inventive step.

8.3 Since auxiliary request 5 is not clearly allowable, it is not admitted into the proceedings pursuant to Article 13(2) RPBA.

9. Since all of the appellant's requests are either not allowable or not admitted into the proceedings, the appeal must fail.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:



S. Sánchez Chiquero

G. Eliasson

Decision electronically authenticated