

Internal distribution code:

- (A) [-] Publication in OJ
- (B) [-] To Chairmen and Members
- (C) [-] To Chairmen
- (D) [X] No distribution

**Datasheet for the decision
of 29 March 2023**

Case Number: T 0517/21 - 3.2.04

Application Number: 17154178.2

Publication Number: 3207967

IPC: A63F13/327, A63F13/235,
A63F13/34

Language of the proceedings: EN

Title of invention:

INFORMATION PROCESSING APPARATUS, INFORMATION PROCESSING
SYSTEM, INFORMATION PROCESSING METHOD, AND INFORMATION
PROCESSING PROGRAM

Applicant:

NINTENDO CO., LTD.

Headword:

Relevant legal provisions:

EPC Art. 56

Keyword:

Inventive step - (no)

Decisions cited:

T 0179/18

Catchword:



Beschwerdekammern
Boards of Appeal
Chambres de recours

Boards of Appeal of the
European Patent Office
Richard-Reitzner-Allee 8
85540 Haar
GERMANY
Tel. +49 (0)89 2399-0
Fax +49 (0)89 2399-4465

Case Number: T 0517/21 - 3.2.04

D E C I S I O N
of Technical Board of Appeal 3.2.04
of 29 March 2023

Appellant: NINTENDO CO., LTD.
(Applicant) 11 Hokotate-cho,
Kamitoba, Minami-ku
Kyoto
601-8501 (JP)

Representative: Karl, Christof
Bardehle Pagenberg Partnerschaft mbB
Patentanwälte, Rechtsanwälte
Prinzregentenplatz 7
81675 München (DE)

Decision under appeal: **Decision of the Examining Division of the
European Patent Office posted on 3 February 2021
refusing European patent application No.
17154178.2 pursuant to Article 97(2) EPC.**

Composition of the Board:

Chairman J. Wright
Members: S. Oechsner de Coninck
C. Heath

Summary of Facts and Submissions

- I. The appeal was filed by the appellant (applicant) against the decision of the examining division to refuse the patent application in suit.
- II. The examining division decided, amongst other things, that the subject matter of claim 1 of the main request lacked novelty with respect to D1.
- III. In a communication in preparation for the oral proceedings the Board made observations on the relevant issues. Amongst other things, the Board considered that the subject matter of the main request was novel but that it lacked inventive step starting from a notorious prior art. Oral proceedings before the Board were duly held on 29 March 2023. During the course of the oral proceedings, the appellant-applicant withdrew its previous auxiliary requests 1 to 11.
- IV. The appellant-applicant requested that the decision under appeal be set aside and that a patent be granted on the basis of the main request, filed with letter of 5 May 2021 or, in the alternative, on the basis of one of auxiliary requests 12 to 15, filed with letter of 13 February 2021.
- V. Claim 1 of the main request reads as follows:

"An information processing apparatus (2) comprising:
display means (12) for displaying an image;
communication means (81, 82) for directly communicating wirelessly with another information processing apparatus (2) of the same type;

operation input reception means (81, 83, Dc) for receiving a plurality of operation input data from a plurality of operation devices (3, 4); game processing means (81, S230, S254, S266) for performing game processing for a communication game based on the plurality of operation input data and information received via the communication means; and image generation means (81, S230, S254, S266) for, based on the game processing, generating, by screen splitting, game images including images on which operations on the plurality of respective operation devices are reflected, and causing the game images to be displayed on the display means".

Claim 1 of auxiliary request 12 reads as for the main request except that, the wording "An information processing apparatus (2)" is replaced with the wording "A mobile information processing apparatus (2)" and the wording "communication means (81, 82) for directly communicating wirelessly with another information processing apparatus (2) of the same type;" is replaced by the wording: "communication means (81, 82) for directly communicating wirelessly with another mobile information processing apparatus (2);"

Claim 1 of auxiliary request 13 reads as for auxiliary request 12, except that the following wording is added at the end of the claim:

"wherein the information received via the communication means is operation input data received by the operation input reception means of the other mobile information processing apparatus indicating an operation on an operation device connected to the other mobile information processing apparatus or position data of a

position, in a virtual space, of an object that appears in the communication game".

Claim 1 of auxiliary request 14 reads as for claim 1 of the main request except that after the wording "communicating wirelessly with another mobile information processing apparatus (2) of the same type", the following wording is inserted: "in a closed local network area".

Claim 1 of auxiliary request 15 reads as for claim 1 of auxiliary request 12 except that, after the wording

"communication means (81, 82) for directly communicating wirelessly with another mobile information processing apparatus (2)", the following wording is inserted: "of the same type in a closed local network area".

VI. In the present decision, reference is made to the following document:

D1: US20140126754 A1

VII. The appellant's arguments can be summarised as follows: The subject matter of claim 1 of all the requests is inventive over a notorious communication game terminal, as described in paragraph [0002] of the published application, when considering D1 and the skilled person's general knowledge. Amongst other things, it would neither be obvious for the skilled person to split the screen of such a terminal nor for the communication between it and another terminal to be direct.

Reasons for the Decision

1. The appeal is admissible.
2. Background

The application relates to an information processing apparatus that can be used by a plurality of users (see published patent application, paragraph [0001]). According to paragraphs [0002] to [0003] of the published application, it is conventional for a system of game terminals to communicate in a closed local network to play a communication game. A disadvantage of this is that the same number of terminals as players is required. The invention (see published application, paragraph [0004]) sets out to provide an information processing apparatus that allows a larger number of users to participate in a communication game with a small number of apparatuses.

To this end, the invention envisages a processing apparatus that can be networked wirelessly with other processing apparatuses but which also supports multiple players operating the same apparatus. This is achieved by having each apparatus capable of receiving inputs from multiple operation devices operated by respective players and splitting the screen of the apparatus with one screen portion reflecting the game play of a particular player (see published patent application, paragraph [0006], claim 1 and figures 2 and 12 for example).

3. Main request, claim 1, inventive step

3.1 The Board first notes that in accordance with established jurisprudence (see Case Law of the Boards of Appeal, 10th edition, 2022 (CLBA) I.D.9.3.1 and I.D.9.3.2), a combination invention requires that the relationship between the features or groups of features of a claim to be one of functional reciprocity or that they show a combinative effect beyond the sum of their individual effects. In other words they must work together synergistically. Where this is not the case, but rather there is a mere aggregation (juxtaposition) of features or different sets of features that are functionally independent, these solve partial problems and it must be established whether each set of features is separately obvious in the light of the prior art.

3.2 As already touched upon, paragraph [0002] of the application as filed discloses as conventional, a network system where a plurality of communication terminals placed in a closed local area locally communicate with each other, and [with which] a communication game based on data [information] transmitted and received to and from the communication terminals is performed. The words *transmitted* and *received* imply that this conventional network is a wireless network and that the terminal has wireless communication means. Thus, each such terminal is an information processing apparatus to use the terminology of claim 1. Because such a terminal is adapted to play a game, it has an operation input reception means for receiving instructions from an operation device used by a player to play a game, a game processing means for performing game processing based on operation input data from the operation device and, because the game is

a communication game - that is a game played on a plurality of communicating terminals - game processing is also based on information received via the communication means. Such a game terminal would also conventionally have an image generation means for generating game images based on game processing and to display these on a display means so that players can follow game progress. In the Board's view, such terminals would be of the same type.

The Board holds that such a notorious communication terminal - networked to communicate wirelessly with other terminals in a closed local area to play a communication game - is a good starting point from which to examine inventive step.

3.3 The subject matter of claim 1 differs from this notorious prior art in that the operation input reception means is for receiving input data from a plurality of operation devices, rather than a single operating device, and in that the image generation means is for generating, by screen splitting, game images including images reflecting operations on the plurality of operation devices. In contrast, in the conventional arrangement, each player would have their own gaming terminal and images reflecting operations of the player's operating device would be displayed on the entire screen.

3.3.1 The application as filed (see paragraph [0004]) considers that, based on this prior art, the problem to be solved is to allow a larger number of users to participate in a communication game with a small number of apparatuses. The appellant-applicant argues this contains pointers to the solution so should be formulated more generally as: how to improve the

notorious communication game apparatus to reduce the hardware resources needed. The Board agrees that the latter is an appropriate formulation of the objective technical problem.

3.3.2 In the Board's view, the skilled person would know of D1 because, although it does not disclose a communication game, it does relate to a multi-player game (see for example paragraphs [0003] and [0053]). Moreover, the underlying concept of D1's arrangement, from which D1 proposes certain improvements, is for players to *share* a display screen (see paragraph [0003]). Sharing a screen between players boils down to reducing the need for screen hardware. Therefore, contrary to how the appellant-applicant has argued, D1 expressly offers a solution to the objective technical problem (reducing hardware resources needed). Consequently, the combination of the notorious communication game terminal with D1 is not a matter of hindsight but rather one of making a routine combination because D1 expressly offers a solution to the objective technical problem posed.

3.3.3 D1's solution, which can be best seen in figures 1 and 5 (see also paragraphs [0009], [0036], [0054]) is to have a game terminal 5 receive operational input data (for example switch operation data) from two operation devices 7 and for the image generation means to generate game images by *screen splitting*, including images reflecting operations on the plurality of operation devices. As explained in paragraph [0054] the screen is split left and right with respective players A and B, each of whom uses a controller 7, having their respective views of the game displayed on the left and right screen-halves.

- 3.3.4 By incorporating D1's solution into the notorious communication game terminal, the skilled person would arrive at the claimed operation input reception means (that receives inputs from a plurality of operation devices) and the split screen arrangement as a matter of obviousness. In this regard, the Board notes that, since it starts from a notorious communication game terminal and not a Nintendo 3DS terminal, the appellant-applicant's argument that it would not be obvious for the skilled person to split the Nintendo 3DS' small screen, is moot.
- 3.4 The appellant-applicant has also argued that a further difference between the notorious prior art communication game terminal discussed above would be that the communication means *directly* communicates with another information processing apparatus. The Board understands *direct* communication to mean communication without intermediary.
- 3.4.1 The Board first notes that the technical effect of direct communication is not disclosed as having any functional link to the problem of reducing hardware or the use of a split screen. In other words the differing features already discussed and the idea of direct communication do not work together synergistically. On the contrary paragraph [0008] states (emphasis added by the Board): [...] *even with* a communication game in which direct communication is performed using a portable information processing apparatus, it is possible to achieve a communication game in which a larger number of users can participate with a small number of apparatuses. The formulation *even with* suggests that, if anything, direct communication might make it harder to implement an arrangement which

reduces hardware (large number of users small number of apparatuses). A similar formulation is used elsewhere (for example paragraphs [0036], [0056], [0062], [0066] and [0069]). Therefore, the *direct communication* difference solves a partial problem and can be treated separately from that of the split screen/screen sharing idea for the purposes of assessing inventive step.

- 3.4.2 The application does not explain any particular advantage of *direct communication*: It is first introduced in paragraph [0006] (column 1, lines 50 to 52), where it is merely stated as a fact, rather than being elaborated upon with any explanation of an associated technical effect.

Nor, from the perspective of playing a communication game does the Board see any implied effect which the skilled person would understand from reading the application. It goes without saying that any communication would have to be of a suitable speed for playing a communication game. This being the case, whether a terminal received game-play data directly from another terminal or indirectly, for example via a third terminal in an ad hoc network or via an Internet router would be of no consequence for the user. Therefore, the Board does not agree with the appellant-applicant that direct communication has the technical effect of providing the user with a more immersive game experience (cf. letter of 13 February 2023, page 9).

- 3.4.3 Therefore, starting from the notorious communication terminal, networked to communicate wirelessly with other terminals in a closed local area to play a communication game (cf. application, paragraph [0002]), the partial objective technical problem associated with *direct communication* can be formulated as: Implementing

a suitable communication between the notorious communication game terminal and other terminals.

3.4.4 The Board considers that the skilled person would, as a matter of obviousness apply their general knowledge and solve this problem by choosing to have these terminals communicate, either using direct communication, as well known to be used in an ad-hoc network or when using a Bluetooth protocol or WiFi direct for example, or indirectly via some wireless access port. In the Board's view, both possibilities are obvious. Therefore, the skilled person, in implementing communication for the notorious communication game terminal, would choose direct communication without making an inventive step.

3.4.5 In this respect, the Board does not agree with the appellant-applicant's assessment (cf. letter of 13 February 2023, page 11, point b) that only indirect communication would be obvious, namely via a router connected to the internet, because this would be the case in an internet-cafe with stationary computers already connected to the internet via router. This assessment is premised on a different starting point from that chosen by the Board, namely a computer connected to the internet in an internet cafe, rather than a notorious communication game terminal communicating in a closed local area using local communication. Therefore, the argument is moot.

3.5 Since, for the reasons explained, all the features of claim 1 are either known from the notorious communication game terminal or are obvious from D1 and the skilled person's general knowledge, claim 1 of the main request lacks inventive step.

3.5.1 In arriving at this conclusion, the Board has not been convinced by the appellant-applicant's argument that the claimed subject matter must be inventive since the individual differing features (split screens and direct communication) have been separately known for decades but no-one has thought to combine these, as evidenced by the fact that that the claimed invention is new. In the Board's view, being new alone does not prove that something is inventive - otherwise examining inventive step would be superfluous. Moreover, how ever long various elements of the invention may have existed without having been combined would at best be a secondary indicator of inventive step. According to established jurisprudence (see CLBA I.D.10.1 and **T 0179/18** point 5.4.2), such indicators are auxiliary considerations which do not negate the result arrived at by applying the problem solution approach.

3.6 Therefore, the main request must fail.

4. Auxiliary request 12, claim 1, inventive step starting from the notorious gaming terminal

4.1 Other than by deleting that the apparatuses are *of the same type*, claim 1 of auxiliary request 12 differs from the main request in that it adds that the information processing apparatus is a *mobile* apparatus and that it communicates with another *mobile* apparatus. As for the main request, the Board starts from the notorious gaming terminal (cf. application, paragraph [0002]). This starting point does not specify any particular form for the terminal, so it is neither limited to a static computer in an internet cafe nor to a particular gaming terminal such as the Nintendo 3DS. Therefore, the claimed subject matter further differs from this

notorious terminal in being *mobile*. In the Board's view, the added feature (mobile) is unrelated to both the ideas of splitting the screen so that two players can share an apparatus and direct communication. In other words, the differing features do not work together synergistically. Therefore, examination of inventive step of this feature can be treated independently.

- 4.2 The application does not explain any particular problem which might be solved by having a mobile terminal: Paragraph [0072] states that the apparatus can be mobile or stationary. Paragraph [0076] tells the reader to note that *the housing may have any shape and size*. Therefore, the problem associated with this differing feature can be formulated as how to provide a suitable housing for the notorious gaming terminal. In the Board's view, the skilled person knows that a game terminal can either be mobile or stationary and knows the advantages and disadvantages of both. They will therefore choose one of these just two alternatives and design the terminal as a mobile terminal (or indeed as a stationary terminal) as a matter of obviousness. The Board adds that the claim with the feature *mobile* does not specify any particular kind of device, e.g. a mobile phone, and a notorious gaming terminal in the form of an ordinary mobile computer would thus also comprised in the wording of the claim.
- 4.3 From the above, including the discussion of inventive step of the main request, auxiliary request 12 must fail.
5. Auxiliary request 13, claim 1, inventive step starting from the notorious gaming terminal

- 5.1 This request adds to auxiliary request 12 a feature defining the nature of the information received by the communication means (from the remote apparatus) as follows:

the information received via the communication means is operation input data received by the operation input reception means of the other information processing apparatus indicating an operation on an operation device connected to the other information processing apparatus or position data of a position, in a virtual space, of an object that appears in the communication game.

- 5.2 Starting from the notorious communication game terminal (see application paragraph [0002]), although it is implicit that data must be exchanged, the nature of that data is left open, thus the specific data claimed (operation input data and position data of a virtual object in game space) is a differing feature.

- 5.3 The technical effect of this feature is to provide specific data used in game processing in the communication game (see application as published, column 6, lines 9 to 13). In the Board's view, it is unrelated to the problems of reducing hardware and choosing a suitable format for the terminal (mobile or stationary). In other words the specific data feature is not synergistically related to any of the other differing features (plurality of operation devices, split screen, mobile) already discussed for auxiliary request 12. Therefore, it is to be considered separately for the purpose of examining inventive step.

5.4 In the Board's view, the data needed for game processing will be dictated by the non-technical game rules of the particular game being played. For example a game in which the player presses a button to advance game play, a terminal's game processor would need to receive the button operation status information from a remotely connected terminal. Similarly, if the position of a [virtual] object in the game-space is significant for determining how game play develops, then the terminal would also need to receive this information from the remotely connected terminal.

5.5 The Board considers that the game rules underlying this differing feature can be formulated as:

1. To play the game, each player provides inputs by operating an operation device
2. The position of objects appearing in the virtual game space determines how the game develops.

Based on this further differing feature, the [partial] objective technical problem can be formulated as: How to implement the above game rules in the notorious communication game terminal.

5.6 In the Board's view, in implementing these, the skilled person would have no choice but to arrange the terminal's communication means so that it would receive operation input data and data on the position of objects in the game space as claimed. Thus, this further differing feature does not contribute an inventive step. For this reason, and the reasons already explained for auxiliary request 12, auxiliary request 13 fails.

6. Auxiliary request 14, claim 1, inventive step starting from the notorious gaming terminal

Claim 1 of this request adds to the main request the feature that the information processing apparatus communicates with the another apparatus in a closed local network area. This feature is known from the notorious system of communication terminals locally communicating to play a game (cf. application as filed, paragraph [0002]) from which the Board has considered inventive step for the main request. Consequently it cannot contribute an inventive step. Therefore, claim 1 of this request lacks inventive step for the same reasons as have been explained for the main request and auxiliary request 14 fails.

7. Auxiliary request 15, claim 1, inventive step starting from the notorious gaming terminal

Other than adding that the information processing apparatus communicates with another apparatus of the same type (known from the notorious gaming terminal), claim 1 of this request adds to auxiliary request 12 that the communication is in a closed local network area. Since this is also the case in the notorious communication game terminal from which the Board starts, the feature cannot contribute an inventive step. Therefore, auxiliary request 15 must fail for the reasons explained for auxiliary request 12.

8. The subject matter of claim 1 of all the appellant-applicant's requests lacks inventive step, Article 56 EPC. Therefore, without prejudice to the admissibility of any requests, the Board must dismiss the appeal.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:



G. Magouliotis

J. Wright

Decision electronically authenticated