

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

Paper No. 24

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte ATSUSHI HAYASHI and TAKASHI SATSUKAWA

Appeal No. 2002-1028
Application No. 09/208,430

HEARD: January 23, 2003

Before THOMAS, KRASS, and GROSS, Administrative Patent Judges.
GROSS, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 1 through 16, which are all of the claims pending in this application.

Appellants' invention relates to a multi-player game system. More specifically, while one player is playing a game, the system accepts a mid-game entry request for another player in the same game space. Claim 1 is illustrative of the claimed invention, and it reads as follows:

1. A multi-player type of game system having a plurality of game machines that correspond to a plurality of players, said players comprising first and second players and being able to play a game together, wherein said game system comprises:

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means for accepting a mid-game entry request, said mid-game entry request being requested while one of said first and second players is playing a game in a first game space, and said mid-game entry request asking permission for another player to play said game together within said first game space;

means for creating reconstruction information for reconstructing said first game space;

means for transferring said reconstruction information from one game machine to another game machine; and

means for reconstructing said first game space in another game space in another game machine, based on said reconstruction information, and for allowing said other player to play said game in the reconstructed game space.

The prior art references of record relied upon by the examiner in rejecting the appealed claims are:

Logg	4,738,451	Apr. 19, 1988
Tashiro et al. (Tashiro)	4,958,835	Sep. 25, 1990

Claims 1 through 16 stand rejected under 35 U.S.C. § 103 as being unpatentable over Logg in combination with Tashiro.

Reference is made to the Examiner's Answer (Paper No. 16, mailed August 9, 2001) for the examiner's complete reasoning in support of the rejections, and to appellants' Brief (Paper No. 15, filed May 30, 2001) and Reply Brief (Paper No. 18, filed October 9, 2001) for appellants' arguments thereagainst.

OPINION

We have carefully considered the claims, the applied prior art references, and the respective positions articulated by

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appellants and the examiner. As a consequence of our review, we will reverse the obviousness rejection of claims 1 through 16.

As admitted by the examiner (Answer, pages 4-5), Tashiro discloses that the players decide at the beginning of a game whether or not to enter a multi-player game, and all game information is transmitted to all of the participating machines. Thus, Tashiro fails to disclose accepting a mid-game entry request, creating and transferring reconstruction information of a first game space, and reconstructing the first game space on a newly participating game machine.

Logg teaches a multi-player system where players may enter a game in the middle. However, as pointed out by appellants (Brief, page 11), the game is played on a single machine. Logg adds characters to the game for mid-entry players. Since Logg uses a single machine, Logg has no need for, and thus fails to disclose, creating reconstruction information, transferring it, and reconstructing the first game space in a newly participating game machine. Since neither Tashiro nor Logg discloses creating, transferring, and reconstructing, the combination of the two references fails to disclose means for or information for creating, transferring, and reconstructing, as recited in independent claims 1 and 12.

The examiner asserts (Answer, page 5) that "it would have been obvious ... to include the mid-game entry feature of Logg in the system of Tashiro et al to **further improve** upon the prior art gaming system of Logg ... to enhance the players' gaming experience." We agree that Logg teaches (column 1, lines 38-40) that "[i]t is useful in a multi-player video game to allow any player to enter the game or leave at any time," and that "[t]his makes the game more social." However, Logg accomplishes mid-game entry with a single game space on a single machine. Logg provides no guidance as to how one would add a character to a game played on plural machines as in Tashiro's system, and thus provides no suggestion to create reconstruction data of the game space, transfer it, and reconstruct the game space on an additional machine.

The examiner states (Answer, pages 5-6) that "reconstruction information is merely gaming data that updates all the gaming machines in the multi-player game with the inclusion data of a new player so that all the gaming machines will have the same game data and be able to play on an even accord." The examiner continues

Thus, the gaming system of Tashiro et al is **capable of** transferring the reconstruction data, of the combined systems of Tashiro et al and Logg, through the data transmission lines shown in Fig. 2 of Tashiro et al. When combining the mid-entry game feature of Logg in the Tashiro et al invention, the gaming data sent to

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each of the gaming machines in the Tashiro et al system, would have to be updated with data for the "reconstruction" of the game space to include the new player in order for mid-game entry to be successful. (Emphasis ours)

First, that Tashiro is capable of transferring reconstruction data fails to address the obviousness of creating and transferring such information. Merely that the prior art can be modified in the manner suggested by the examiner does not render the modification obvious unless the prior art suggests the desirability of the modification. ***In re Fritch***, 972 F.2d 1260, 1266, 23 USPQ2d 1780, 1783-4 (Fed. Cir. 1992). Second, a factual inquiry whether to modify a reference must be based on objective evidence of record, not merely conclusionary statements of the examiner. ***See In re Lee***, 277 F.3d 1338, 1343, 61 USPQ2d 1430, 1433 (Fed. Cir. 2002). As neither reference even suggests creating and transferring reconstruction data, the motivation for modifying Tashiro to include creating and transferring reconstruction data must be based on speculation and/or impermissible hindsight. Consequently, we cannot sustain the rejection of independent claims 1 and 12 and their dependents, claims 2 through 11 and 13 through 16.

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CONCLUSION

The decision of the examiner rejecting claims 1 through 16 under 35 U.S.C. § 103 is reversed.

REVERSED

JAMES D. THOMAS)	
Administrative Patent Judge)	
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)	BOARD OF PATENT
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Administrative Patent Judge)	AND
)	INTERFERENCES
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