

Patent Right	Date	March 27, 2023	Court	Intellectual Property High Court, Third Division
	Case number	2022 (Gyo-Ke) 10092		
- A case in which the JPO decision which dismissed an amendment due to violation of the provisions in Article 17-2, paragraph (3) of the Patent Act was rescinded by stating that it was found that the amendment was made within a scope of matters described in the initial description and the like and did not violate the provisions.				

Case type: Rescission of Appeal Decision of Refusal

Result: Granted

References: Article 17-2, paragraph (3) of the Patent Act

Related rights, etc.: Application No. 2017-171341

Decision of JPO: Appeal against Examiner's Decision No. 2020-5296

### Summary of the Judgment

1 This case is a suit against the JPO decision dismissing the request for appeal against the examiner's decision of refusal for the invention of this application, titled "program, fighting game server, and control method thereof".

The Plaintiff, who is the applicant of the invention of this application, received the examiner's decision of refusal and thus, made a request for appeal against the examiner's decision of refusal, made an amendment to change a part of the scope of claims as of November 5, 2021 (first amendment), and further made an amendment to change a part of detailed description of the invention and the scope of claims in the description (second amendment) as of May 18, 2022. The second amendment included limitation of the "strength" in the game in claims 1, 7, and 8 in the scope of claims after the first amendment to "strength, which is a predetermined parameter enabling a state that the higher a numerical value is, the more advantageously the fighting game can be proceeded".

2 Regarding the limitation of the "strength" in 1 described above in the second amendment, the JPO decision determined that, due to reasons such that (A) the problem of the invention of this application described in the initial description and the like is found to be that the user's interests in the game are extremely weakened by "deviation of a total value of offensive power and defensive power, and in view of such problem, the "strength" is found to be only the "total value of offensive power and defensive power"; (B) although the initial description and the like describes that the "strength" is the "total value of offensive power and defensive power", it does not describe that physical strength, quickness, number of held items, and the like are the "strength" or does not have description that it is "a predetermined parameter enabling

a state that the higher a numerical value is, the more advantageously the fighting game can be proceeded"; (C) in the "game" field, it is common general technical knowledge that the "strength" of the "user" includes the physical strength, quickness, the number of held items, and the like other than the offensive power and defensive power, but it is not described in the initial description and the like that the physical strength, quickness, the number of held items, and the like solve the problem to be solved by the invention of this application, and even by considering the common general technical knowledge at the application, it is not self-obvious and thus, the "strength, which is a predetermined parameter enabling a state that the higher a numerical value is, the more advantageously the fighting game can be proceeded" described in claims 1, 7, and 8 is introduction of a new technical matter in the relationship with the technical matter led by integrating all the descriptions in the initial description and the like, and the amendment made as above was not one made within the scope of the matters described in the initial description and the like and that the second amendment violates the provisions in Article 17-2, paragraph (3) of the Patent Act and should be dismissed in accordance with the provisions in Article 53, paragraph (1) which is applied mutatis mutandis in Article 159, paragraph (1) of the same Act.

3 This judgment stated as follows, determined that the JPO decision dismissing the second amendment due to violation of the provisions in Article 17-3, paragraph (3) of the Patent Act was erroneous, and rescinded the JPO decision.

The technical meaning of the invention described in the initial description and the like and the description and the like after the second amendment exist in that the number of battles which are won or lost soon due to a big difference in the strength among opponents can be reduced by extracting the opponent in a predetermined range of strength stages based on the strength stage of the user as a reference, as compared with a case where the opponent is extracted at random as in the conventional ones, and that the user's interests in the game can be increased by changing difficulty of the fighting game by giving it a certain level of variation in the strength of the opponents.

Regarding the common general technical knowledge in the "game" field, there is no dispute between the parties that it was the common general technical knowledge at the time of filing of this application that the "user's" "strength" includes the physical strength, quickness, the number of held items, and the like other than the offensive power and the defensive power.

In view of the technical meaning of the invention of selecting not an opponent with a big difference in the strength but an opponent appropriate for the user as above

in the fighting game, it is reasonable to interpret that the "strength" described in the initial description and the like is an index indicating the user's strength in the game and is only necessary to be a parameter which would influence winning or losing of the game and thus, even if it can be an embodiment of the invention to regard the "strength" as the "total value of offensive power and defensive power", there cannot be any reason found for the limitation of the "strength" to the "total value of offensive power and defensive power" by excluding the physical strength, quickness, the number of held items, and the like from the elements included in the "strength". In other words, whether or not to limit the "strength" to the "total value of offensive power and defensive power" is found to be only an arbitrary additional matter that may be done or not in light of the technical meaning of the invention.

Then, even though the initial description and the like only have the description of the "total value of offensive power and defensive power" in wording as the embodiment of the "strength", in view of the meaning of the invention and the common general technical knowledge, it is not found that the second amendment amended as the "predetermined parameter enabling a state that the higher a numerical value is, the more advantageously the fighting game can be proceeded" without limiting the "strength" to the "total value of offensive power and defensive power" further added a technical matter, and it is not found that the second amendment introduced the new technical matter. Then, the second amendment is found to be made within the scope of the matters described in the initial description and the like and should be considered not to violate the provisions in Article 17-2, paragraph (3) of the Patent Act.

Therefore, the JPO decision which dismissed the second amendment (the decision 2) by determining that the amendment of the "strength" in the invention after the first amendment to the "strength, which is the predetermined parameter enabling a state that the higher a numerical value is, the more advantageously the fighting game can be proceeded" in the second amendment was introduction of a new technical matter and violation of the provisions in Article 17-2, paragraph (3) of the Patent Act is found to be erroneous, and the grounds for rescission asserted by the Plaintiff are approved in the JPO decision.

Judgment Rendered on March 27, 2023

2022 (Gyo-Ke) 10092, Case of Seeking Rescission of JPO Decision

Date of Conclusion of Oral Argument: January 18, 2023

Judgment

Plaintiff: GREE, Inc.

Defendant: Commissioner of the Japan Patent Office

Main Text

1. The JPO decision on the case of Appeal against Examiner's Decision No. 2020-5296 rendered by the JPO on July 20, 2022 shall be rescinded.

2. The Defendant shall bear the court costs.

Facts and Reasons

No. 1 Claim

The same gist as Main Text

No. 2 Outline of the Case

1. Outline of procedures at the JPO

(1) The Plaintiff made a part of a patent application (Japanese Patent Application No. 2013-544607) with an international application date of June 6, 2013 (the priority date of June 7, 2012, Japan) into a new patent application (Japanese Patent Application No. 2014-238065, hereinafter referred to as "Parent Application". Exhibit Ko 19) and was granted registration of establishment on October 12, 2018 (Japanese Patent No. 6415270, Exhibit Ko 17).

The Plaintiff further divided a part of the parent application and filed a new patent application of the invention titled "program, fighting game server, and control method thereof" on September 6, 2017 (Japanese Patent Application No. 2017-171341, hereinafter referred to as "the Application"; moreover, the description, scope of claims, and drawings attached to the Application are collectively called "Initial Description and the Like". Exhibit Ko 1).

Note that the Plaintiff made a part of the Application into a new patent application on April 20, 2020 (Japanese Patent Application No. 2020-74541, hereinafter referred to as the "Child Application", Exhibit Ko 13) and was granted registration of establishment on October 29, 2021 (Japanese Patent No. 6968928, Exhibit Ko 14).

(2) The Plaintiff received a notification of reasons for refusal (Exhibit Ko 3) dated October 4, 2018 for the Application and submitted a written amendment (Exhibit Ko

4-1) dated February 4, 2019, but further received a notification of reasons for refusal (Exhibit Ko 5) dated July 30, 2019 and submitted a written amendment dated September 20 of the same year (Exhibit Ko 6-1).

However, since the Plaintiff received a decision to dismiss the amendment (Exhibit Ko 7-1) and the decision of refusal (Exhibit Ko 7-2) dated January 31, 2020, the Plaintiff made a request for appeal against the examiner's decision of refusal (Appeal against Examiner's Decision of Refusal No. 2020-5296) (Exhibit Ko 8-1) on April 20 of the same year.

(3) The Plaintiff received a notification of reasons for refusal (Exhibit Ko 9) dated September 29, 2021 and thus, submitted a written amendment which changes the scope of claims, dated November 5 of the same year (hereinafter, referred to as "the First Amendment". Exhibit Ko 10-1). But the Plaintiff further received a notification of reasons for refusal dated April 5, 2022 (Exhibit Ko 11), and thus submitted a written amendment in which paragraphs [0004] and [0005] of the description are deleted, paragraph [0006] is changed, and the scope of claims is changed, as of May 18 of the same year (hereinafter, referred to as "the Second Amendment", Exhibit Ko 12-1).

(4) The JPO made the decision to dismiss the Second Amendment on July 20, 2022, and then rendered the JPO decision with the conclusion that "the request for appeal is not established." (hereinafter, referred to as "the JPO Decision", The JPO Decision is as in Attachment 1) and the certified copy thereof was delivered to the Plaintiff on August 1 of the same year.

(5) The Plaintiff instituted this lawsuit seeking rescission of the JPO Decision on August 30, 2022.

## 2. Description in Scope of Claims

### (1) Initial scope of claims of the Application

The initial scope of claims of the Application (Japanese Patent Application No. 2017-171341, application date of September 6, 2017) is as follows (Exhibit Ko 1).

#### [Claim 1]

A program characterized by causing a computer which provides a fighting game to a plurality of communication terminals to execute:

a step of managing identification information uniquely assigned to each user who operates the communication terminal and user information for calculating strength of the user in association for each of the users;

a step of automatically extracting some units in all the units held by the user to satisfy a predetermined condition on the basis of the user information;

a step of determining the strength according to the user information on the basis of the extracted unit; and

an opponent list transmission step of transmitting to the communication terminal an opponent list related to one or more users selected on the basis of the strength according to the user information associated with the identification information when a fight request including one piece of the identification information is received from the communication terminal.

[Claim 2]

The program according to Claim 1, wherein  
the step of automatic extraction is executed at every predetermined time interval.

[Claim 3]

The program according to Claim 1 or 2, wherein  
the user in the opponent list is selected when the user has a strength within a predetermined range from the strength according to user information associated with the identification information.

[Claim 4]

The program according to Claim 3, wherein  
the strength within the predetermined range is less than the strength according to user information associated with the identification information.

[Claim 5]

The program according to Claim 3, wherein  
the strength within the predetermined range is the strength or more according to user information associated with the identification information.

[Claim 6]

The program according to any one of Claims 3 to 5, wherein  
when the strength according to user information associated with the identification information is at a predetermined threshold value or more, a step of making the predetermined range wider than in a case where the strength according to the user information associated with the identification information is less than the predetermined threshold value is included.

[Claim 7]

The program according to any one of Claims 1 to 6, wherein  
the user information further includes offensive power and defensive power related to a unit; and  
the strength according to the user information is determined in accordance with

a combination of units whose total value of the offensive power and the defensive power becomes the maximum at an upper limit value or less of a cost.

[Claim 8]

The program according to any one of Claims 1 to 7, wherein  
the fight request includes a unit ID of a unit which the user wishes to acquire;  
and

at the opponent list transmission step, the opponent list including only the users having the unit related to the unit ID is transmitted to the communication terminal.

[Claim 9]

A fighting game server which provides a fighting game to a plurality of communication terminals, comprising:

a storage portion which manages identification information uniquely assigned to each user who operates the communication terminal and user information for calculating strength of the user in association for each of the users;

a control portion which automatically extracts some units from all the units held by the user to satisfy a predetermined condition and determines strength according to the user information on the basis of the extracted unit in accordance with the user information; and

a communication portion which transmits to the communication terminal an opponent list related to one or more users selected on the basis of the strength according to the user information associated with the identification information when a fight request including one piece of the identification information is received from the communication terminal.

[Claim 10]

A control method of a fighting game server which provides a fighting game to a plurality of communication terminals and includes a storage portion, a communication portion, and a control portion, comprising:

a step at which the storage portion manages identification information uniquely assigned to each user who operates the communication terminal and user information for calculating strength of the user in association for each of the users;

a step at which the control portion automatically extracts some units from all the units held by the user to satisfy a predetermined condition on the basis of the user information;

a step at which the control portion determines the strength according to the user information on the basis of the extracted unit; and

a step at which the communication portion transmits to the communication

terminal an opponent list related to one or more users selected on the basis of the strength according to the user information associated with the identification information when a fight request including one piece of the identification information is received from the communication terminal.

(2) Scope of claims after First Amendment

The scope of claims after the First Amendment of the Application is Claims 1 to 8, and the description thereof is as follows (underlined parts are parts amended by the First Amendment, Exhibit Ko 10-1).

[Claim 1]

A program characterized by causing a computer which provides a one-user vs. one-user fighting game to a plurality of communication terminals to execute:

a step of managing identification information uniquely assigned to each user who operates the communication terminal and user information in association for each of the users;

a step of determining a stage of strength at which the user is in each of stages of strength defined by a lower limit value and an upper limit value of the strength in accordance with the user information; and

when the fight request is received from the user, on the basis of a stage of strength according to the user information associated with the identification information, a step of starting a fight against another user at a stage of the same strength or a different strength within a predetermined range of the strength, wherein

at the step of starting a fight,

on the basis of an upper limit and a lower limit of strength of an opponent set at each stage of the strength defined by the lower limit value and the upper limit value as well as a ratio of weak persons and/or a ratio of strong persons included between the upper limit and the lower limit of the strength of the opponent, a user, who is an opponent candidate, is automatically extracted, and a fight is started against another user determined by the user from the users who are opponent candidates.

[Claim 2]

The program according to Claim 1, wherein

a stage of different strength within the predetermined range is less than the stage of the strength according to user information associated with the identification information.

[Claim 3]

The program according to Claim 1 or 2, further comprising:

when a stage of strength according to user information associated with the



identification information is a predetermined threshold value or more, a step of making the predetermined range wider than that in a case where the stage of the strength according to the user information associated with the identification information is less than the predetermined threshold value.

[Claim 4]

The program according to Claim 1, 2, or 3, wherein

a probability that a fight against a user at a stage of different strength within the predetermined range is started is based on a ratio of a user at a stage of different strength within the predetermined range included in the entire opponent list of a user who made a fight request; and

the probability that a fight against a user at a stage of the same strength within the predetermined range is started is based on a ratio of a user at a stage of the same strength within the predetermined range included in the entire opponent list of a user who made a fight request.

[Claim 5]

The program according to any one of Claims 1 to 4, wherein

the predetermined range is set for each stage of strength according to user information associated with the identification information.

[Claim 6]

The program according to Claim 1, wherein

the predetermined range is set such that a range is different between:

a stage higher than a stage of the same strength as the stage of strength according to user information associated with the identification information; and

a stage lower than a stage of the same strength as the stage of strength according to user information associated with the identification information.

[Claim 7]

A fighting game server providing a one-user vs. one-user fighting game to a plurality of communication terminals, comprising:

a storage portion which manages identification information uniquely assigned to each user who operates the communication terminal and user information in association for each of the users; and

a control portion which determines a stage of strength at which the user is in each of stages of strength defined by a lower limit value and an upper limit value of the strength in accordance with the user information and when a fight request is received from the user, starts a fight against another user at the stage of the same strength or different strength within a predetermined range of the strength on the basis

of the stage of the strength according to the user information associated with the identification information, wherein

the control portion,

on the basis of an upper limit and a lower limit of strength of an opponent set at each stage of the strength defined by the lower limit value and the upper limit value as well as a ratio of weak persons and/or a ratio of strong persons included between the upper limit and the lower limit of the strength of the opponent, automatically extracts a user, who is an opponent candidate, and starts a fight against another user determined by the user from the users who are opponent candidates.

[Claim 8]

A control method of a fighting game server which provides a one-user vs. one-user fighting game to a plurality of communication terminals and includes a storage portion, a communication portion, and a control portion, comprising:

a step at which the storage portion manages identification information uniquely assigned to each user who operates the communication terminal and user information in association for each of the users;

a step at which the control portion determines a stage of strength at which the user is in each of stages of strength defined by a lower limit value and an upper limit value of the strength in accordance with the user information; and

a step at which, when a fight request is received from the user, on the basis of a stage of strength according to the user information associated with the identification information, the control portion starts a fight against another user at a stage of the same strength or a different strength within a predetermined range of the strength, wherein

at the step of starting a fight,

on the basis of an upper limit and a lower limit of strength of an opponent set at each stage of the strength defined by the lower limit value and the upper limit value as well as a ratio of weak persons and/or a ratio of strong persons included between the upper limit and the lower limit of the strength of the opponent, a user, who is an opponent candidate is automatically extracted, and a fight is started against another user determined by the user from the users who are opponent candidates.

### (3) Scope of claims after Second Amendment

The scope of claims after the Second Amendment of the Application includes Claims 1 to 8, and the description thereof is as follows (underlined parts are parts amended by the Second Amendment. Exhibit Ko 12-1).

[Claim 1]

A program causing a computer which provides a one-user vs. one-user fighting game to a plurality of communication terminals to execute:

a step of managing identification information uniquely assigned to each user who operates the communication terminal and user information in association for each of the users;

a step of determining a stage of strength at which the user is in each of stages of strength defined by a lower limit value and an upper limit value of the strength, which is a predetermined parameter enabling a state that the higher a numerical value is, the more advantageously the fighting game can be proceeded, in accordance with the user information; and

when a fight request is received from the user, on the basis of a stage of strength according to the user information associated with the identification information, a step of starting a fight against another user at a stage of the same strength or a different strength within a predetermined range of the strength from the stage of the strength, wherein

at the step of starting a fight,

on the basis of an upper limit and a lower limit of the stages of strength of an opponent set at each stage of the strength defined by the lower limit value and the upper limit value as well as a ratio of weak persons and/or a ratio of strong persons included between the upper limit and the lower limit of the stages of the strength of the opponent, the user, who is an opponent candidate, is automatically extracted, and a fight is started against another user determined by the user among the users who are opponent candidates.

[Claim 2]

The program according to Claim 1, wherein

a stage of different strength within the predetermined range is less than the stage of the strength according to user information associated with the identification information.

[Claim 3]

The program according to Claim 1 or 2, further comprising:

when a stage of strength according to user information associated with the identification information is a predetermined threshold value or more, a step of making the predetermined range wider than that in a case where the stage of the strength according to the user information associated with the identification information is less than the predetermined threshold value.

[Claim 4]

The program according to Claim 1, 2, or 3, wherein  
a probability that a fight is started against a user at a stage of different strength within the predetermined range is based on a ratio of a user at a stage of different strength within the predetermined range included in the entire opponent list of a user who made a fight request; and

the probability that a fight is started against a user at a stage of the same strength within the predetermined range is based on a ratio of a user at a stage of the same strength within the predetermined range included in the entire opponent list of a user who made a fight request.

[Claim 5]

The program according to any one of Claims 1 to 4, wherein  
the predetermined range is set for each stage of strength according to user information associated with the identification information.

[Claim 6]

The program according to Claim 1, wherein  
the predetermined range is set such that a range is different between:  
a stage upper than the stage of the same strength as the stage of strength according to user information associated with the identification information; and  
a stage lower than the stage of the same strength as the stage of strength according to user information associated with the identification information.

[Claim 7]

A fighting game server which provides a one-user vs. one-user fighting game to a plurality of communication terminals, comprising:

a storage portion which manages identification information uniquely assigned to each user who operates the communication terminal and user information in association for each of the users; and

a control portion which determines a stage of strength at which the user is in each of stages of strength defined by a lower limit value and an upper limit value of the strength, which is a predetermined parameter enabling a state that the higher a numerical value is, the more advantageously the fighting game can be proceeded, in accordance with the user information, and when a fight request is received from the user, starts a fight against another user at the stage of the same strength or different strength within a predetermined range from the stage of the strength on the basis of the stage of the strength according to user information associated with the identification information, wherein

the control portion,

on the basis of an upper limit and a lower limit of the stage of strength of an opponent set at each stage of the strength defined by the lower limit value and the upper limit value as well as a ratio of weak persons and/or a ratio of strong persons included between the upper limit and the lower limit of the stages of the strength of the opponent, starts a fight against another user determined by the user from the users who are opponent candidates, by automatically extracting the user, who is an opponent candidate.

[Claim 8]

A control method of a fighting game server which provides a one-user vs. one-user fighting game to a plurality of communication terminals and includes a storage portion, a communication portion, and a control portion, comprising:

a step at which the storage portion manages identification information uniquely assigned to each user who operates the communication terminal and user information in association for each of the users;

a step at which the control portion determines a stage of strength at which the user is in each of stages of strength defined by a lower limit value and an upper limit value of the strength, which is a predetermined parameter enabling a state that the higher a numerical value is, the more advantageously the fighting game can be proceeded, in accordance with the user information; and

a step at which, when a fight request is received from the user, on the basis of a stage of strength according to the user information associated with the identification information, the control portion starts a fight against another user at a stage of the same strength or a different strength within a predetermined range from the stage of the strength, wherein

at the step of starting a fight,

on the basis of an upper limit and a lower limit of the stage of strength of an opponent set at each stage of the strength defined by the lower limit value and the upper limit value as well as a ratio of weak persons and/or a ratio of strong persons included between the upper limit and the lower limit of the stages of the strength of the opponent, a user, who is an opponent candidate, is automatically extracted, and a fight is started against another user determined by the user from the users who are opponent candidates.

### 3. Gist of the Reasons Given in the JPO Decision

#### (1) Decision of dismissal of amendment for the Second Amendment

A. Conclusion of decision of dismissal of the amendment (the JPO Decision No. 2 [page 2 of the JPO Decision])

The Second Amendment shall be dismissed.

B. Propriety of the Second Amendment

(a) Amendment matters (the JPO Decision No. 2, 2(1) [page 6 of the JPO Decision])

The Second Amendment includes, regarding the "strength", which is an invention specifying matter of Claims 1, 7, and 8 before the Second Amendment, amendment to "the strength, which is a predetermined parameter enabling a state that the higher a numerical value is, the more advantageously the fighting game can be proceeded".

(b) Presence/absence of addition of new matter

a. Problem to be solved by the invention (No. 2, 2(2)B(a) of the JPO Decision [page 10 of the JPO Decision])

In the initial Description and the like, the problem to be solved by the invention of the Application is found that, as is obvious from the description in paragraphs [0004], [0005], and [0006], a user's interests in the game are extremely weakened by "deviation of the total value of the offensive power and the defensive power".

In view of the aforementioned problem, the "strength" is found to be only the "total value of the offensive power and the defensive power".

b. Description in the initial Description and the like (No. 2, 2(2)B(b) of the JPO Decision [page 11 of the JPO Decision])

Although the Initial Description and the like describe that the "strength" is the "total value of the offensive power and the defensive power", they do not refer as far as stating that physical strength, quickness, number of held items, and the like are the "strength".

c. Common general technical knowledge at the time of filing the application (No. 2, 2(2)B(c) of the JPO Decision [page 12 of the JPO Decision])

In the "game" field, it is common general technical knowledge that the "strength" of the "user" includes physical strength, quickness, the number of held items, and the like other than the offensive power and the defensive power

It is surely possible that the higher numerical values of the physical strength, quickness, the number of held items, and the like are, the more advantageously the fighting game can be proceeded, but the initial Description and the like do not describe that the physical strength, quickness, the number of held items, and the like solve the problem that "a user's interests in the game are extremely weakened by 'deviation of the total value of the offensive power and the defensive power'", which is the problem to be solved by the aforementioned invention, and even by considering

the common general technical knowledge at the time of the application, there is no reason to consider it to be self-obvious.

d. Summary (No. 2, 2(2)B(e) of the JPO Decision [page 13 of the JPO Decision])

Then, the "strength, which is a predetermined parameter enabling a state that the higher a numerical value is, the more advantageously the fighting game can be proceeded" described in Claims 1, 7, and 8 after the Second Amendment is introduction of a new technical matter in a relationship with the technical matter led by synthesizing all the descriptions in the Initial Description and the like and is not within the range of the matters described in the Initial Description and the like.

Therefore, the Second Amendment violates the provisions in Article 17-2, paragraph (3) of the Patent Act.

C. Conclusion on the Second Amendment (No. 2, 3 of the JPO Decision [page 13 of the JPO Decision])

As described above, the Second Amendment violates the provisions in Article 17-2, paragraph (3) of the Patent Act and should be dismissed under the provisions in Article 53, paragraph (1) of the same Act as applied mutatis mutandis pursuant to Article 159, paragraph (1) of the same Act.

Thus, it is decided as the conclusion of decision to dismiss the amendment.

(2) First Amendment Invention

A. Reasons for refusal in the notification of reasons for refusal dated April 5, 2022 (Exhibit Ko 11) (No. 3, 2 of the JPO Decision [pages 13 to 14 of the JPO Decision])

(a) Reason 1. (New matter)

The First Amendment is not made within a range of the matters described in the Initial Description and the like and thus, it does not satisfy the requirement prescribed in Article 17-2, paragraph (3) of the Patent Act.

(b) Reason 2. (Support requirement)

The description in the Scope of Claims after the First Amendment does not satisfy the requirement prescribed in Article 36, paragraph (6), item (i) of the Patent Act.

(c) Reason 3. (Clarity requirement)

The description in the Scope of Claims after the First Amendment does not satisfy the requirement prescribed in Article 36, paragraph (6), item (ii) of the Patent Act.

B. Determination of the JPO Decision

(a) Reason 1. Determination on the (new matter) (No. 3, 3(1)D of the JPO Decision [page 15 of the JPO Decision])

a. Problem to be solved by the invention (No. 3, 3(1)D(a) of the JPO Decision [page 16 of the JPO Decision])

In the Initial Description and the like, the problem to be solved by the invention of the Application is found that, as is obvious from the description in paragraphs [0004], [0005], and [0006], a user's interests in the game are extremely weakened by "deviation of the total value of the offensive power and the defensive power".

In view of the aforementioned problem, the "strength" is found to be only the "total value of the offensive power and the defensive power".

b. Description in the Initial Description and the like (No. 3, 3(1)D(b) of the JPO Decision [page 16 of the JPO Decision])

Although the initial Description and the like describe that the "strength" is the "total value of the offensive power and the defensive power", they do not describe as far as stating that physical strength, quickness, number of held items, and the like are the "strength".

c. Common general technical knowledge at the time of the application (No. 3, 3(1)D(c) of the JPO Decision [page 17 of the JPO Decision])

As the common general technical knowledge in the "game" field, the "strength" of the "user" is considered to include physical strength, quickness, killer moves, and the like other than the offensive power and the defensive power and thus, the "strength" defined by "a lower limit value and an upper limit value of the strength" described in Claims 1, 7, and 8 after the first amendment includes not only the offensive power and the defensive power but also physical strength, quickness, and killer moves.

However, although the Initial Description and the like describe that the "strength" is the offensive power and the defensive power, they do not describe as far as stating that physical strength, quickness, and killer moves are the "strength".

Still more, it is obvious that those attributes that cannot be converted to numerical values such as killer moves and the like are not included in the concept of the "strength".

In the Initial Description and the like, it is not described that physical strength, quickness, killer moves, and the like solve the problem to be solved by the invention of the Application; that is, to solve the problem that "a user's interests in the game are extremely weakened by 'deviation of the total value of the offensive power and the defensive power'", and even by considering the common general technical knowledge at the time of the application, there is no self-obvious reason.



d. Conclusion (No. 3, 3(1)D(d) of the JPO Decision [page 17 of the JPO Decision])

Then, the "a lower limit value and an upper limit value of the strength" described in Claims 1, 7, and 8 after the first amendment is introduction of a new technical matter in a relationship with the technical matter led by synthesizing all the descriptions in the Initial Description and the like and is not within the range of the matters described in the Initial Description and the like.

Therefore, the First Amendment violates the provisions in Article 17-2, paragraph (3) of the Patent Act.

(b) Reason 2. Determination on (Support requirement) (No. 3, 3(2) of the JPO Decision [pages 17 to 18 of the JPO Decision])

In view of the description in the Initial Description and the like, the problem to be solved by the invention of the Application is found, in the "fighting game" in which the winner is determined by the "total value of the offensive power and the defensive power of deck", "to provide a program, a fighting game server, and a control method thereof in which an opponent suitable for each user can be selected and which can increase the user's interests in the game".

However, none of the First Amendment inventions specifies the "fighting game" in which the winner is determined by the "total value of the offensive power and the defensive power of deck" in the problem to be solved by the invention and thus, the means for solving the problem of the invention of the Application is not reflected.

Therefore, the First Amendment invention is not described in the Detailed Description of the Invention.

(c) Reason 3. Determination on (Clarity requirement) (No. 3, 3(3) of the JPO Decision [page 18 of the JPO Decision])

The "strength" of the First Amendment invention includes not only the total value of the offensive power and the defensive power but also killer moves and the like when the common general technical knowledge of the fighting game is considered.

Here, since the killer moves cannot be converted into numerical values, for example, regarding the "a lower limit value and an upper limit value of the strength", it is not clear what "a lower limit value and an upper limit value" are to specify for those attributes that cannot be converted into numerical values.

Moreover, it is not clear what "each stage of the strength" defined by "a lower-limit value and an upper-limit value of the strength", which cannot be converted into

numerical values as described above, is to specify.

Thus, the First Amendment invention is not clear.

(3) Conclusion (No. 4 of the JPO Decision [page 18 of the JPO Decision])

The First Amendment does not satisfy the requirement prescribed in Article 17-2, paragraph (3) of the Patent Act, and the First Amendment invention does not satisfy the requirement prescribed in Article 36, paragraph (6), item (i) and item (ii) of the same Act and thus, it cannot be granted a patent.

Therefore, the Application should be refused.

4. Grounds for rescission asserted by the Plaintiff

Erroneous dismissal of the Second Amendment by determining that the Second Amendment violates the provisions in Article 17-2, paragraph (3) of the Patent Act.

(omitted)

No. 4 Judgment of this court

1. Description in the Initial Description and the like of the Application and in the Description and the like after the Second Amendment

(1) Scope of claims

The description in the Scope of Claims at filing of the Application is as in the aforementioned Second, 2(1), and the description in the Scope of Claims after the Second Amendment is as in the aforementioned Second, 2(3).

(2) Description in the Description and Drawings

The description in the Initial Description and the like and the Description and the like after the Second Amendment (excluding the Scope of Claims.) are as in Attachment 2.

2. Problems and Technical Meaning of Invention

(1) Problems and technical meaning of the invention described in the Initial Description and the like

According to the description in the Initial Description and the like in the aforementioned 1, the problem and the technical meaning of the invention described in the Initial Description and the like (hereinafter, referred to as "the Invention") are found to be as follows.

A. Problem of the invention

Conventionally, there is a fighting game server in such a format that a deck of a user is configured by a plurality of fighting cards and the like stored for each of the users, and on the basis of the total value of the offensive power and the defensive

power of the deck, a plurality of the users compete against one another, but since the user to be an opponent is determined at random or on a condition only of having a predetermined fighting card or the like, there is a possibility that the total values of the offensive power and the defensive power of the decks of the users fighting against each other are deviated, which lowers the users' interests in the game (paragraphs [0002], [0004], and [0005]).

#### B. Technical meaning of the invention

An object of the invention of the Application is to provide a program, a fighting game server, and a control method thereof in which an opponent suitable for each user can be selected and which can increase a user's interests in the game in a fighting game. (paragraph [0006] and [FIG. 1])

In the embodiment of the invention of the Application, the user's strength is a value determined on the basis of the total value of the offensive power and the defensive power of a unit configuring the deck of the user, which is set for each stage within a range between an upper limit value and a lower limit value (paragraphs [0028], [0031], and [0032] as well as [FIG. 2], [FIG. 3], and [FIG. 4]), and when a fight request is received from a user, the control portion 13 of the fighting game server 1 generates an opponent list by extracting other users with the strength in the predetermined range with the strength of the user who made a fight request as a reference, and the other users with the strength in the predetermined range are extracted from a strength table by referring to "strength lower-limit value" as well as "strength upper-limit value" and "a ratio of weak persons" as well as "a ratio of strong persons" in the setting table (paragraphs [0034] and [0052] to [0060] as well as [FIG. 7] and [FIG. 8]).

In the invention of the Application, since the opponent at the stage of the same strength or a different strength within the predetermined range with the stage of the strength of the user as a reference as described above is extracted, as compared with the case in which the opponent is extracted at random from all the users as before, a large difference in the strength is hardly generated among the opponents, quick decision on winning or losing is reduced, use of the game can be continued longer, and moreover, by giving a certain variation to strengths of the opponents, difficulty in the fighting game is changed, whereby a user's interests in the game can be increased (paragraph [0061]).

(2) Problems and technical meaning of the invention described in the Description and the like after the Second Amendment

In the Second Amendment, paragraphs [0004] and [0005] in the Initial

Description and the like were deleted, and paragraph [0006] was changed from "Therefore, the object of the present invention made in view of the problems as described above is to provide a program, a fighting game server, and a control method thereof in which an opponent suitable for each user can be selected, and a user's interest in the game can be increased." to "The object of the present invention is to provide a program, a fighting game server, and a control method thereof which can prevent a fight against an opponent with an inappropriate strength in a fighting game." (Exhibit Ko 12-1).

In this regard, the Plaintiff asserts that the Second Amendment is valid and has a retrospective effect and that the finding in the JPO Decision of the problem of the invention on the basis of paragraphs [0004] and [0005] which were deleted in the Second Amendment and paragraph [0006] before the Second Amendment is erroneous (No. 3 [Assertion by Plaintiff] 3 described above).

However, when it is to be determined whether the amendment does not introduce a new technical matter in the relationship with the "matters described in the Initial Description and the like", the technical matter described therein needs to be made clear on the basis of the description in the Initial Description and the like and thus, in the JPO decision, there is no error found in the finding of the problem of the invention on the basis of the description in paragraphs [0004] to [0006] in the Initial Description and the like, and in this regard, the Plaintiff's assertion cannot be accepted.

However, to "prevent a fight against an opponent with an inappropriate strength" in paragraph [0006] after the Second Amendment means prevention of such a fight that a user's interest in the game is lost because of a large difference in the strength of the opponent user, by enabling a fight against an opponent with a strength relatively closer to the strength of the user, and it is found to describe substantially the same contents as those described in paragraphs [0004], [0005], and [0006] before the Second Amendment.

Therefore, the invention described in the Initial Description and the like and the invention described in the Description and the like after the Second Amendment have the problem in common and it should be considered that their technical meanings are also the same.

### 3. Presence or not of grounds for rescission

The technical meanings of the invention in the Initial Description and the like and in the Description and the like after the Second Amendment are, as described in the aforementioned 2(1)B and (2), by extracting an opponent at a stage of the strength within a predetermined range with the stage of the strength of the user as a reference,

as compared with the conventional case that an opponent is extracted at random, the number of such fights in which winning or losing is quickly determined with a large difference in the strength among the opponents can be reduced, and a user's interest in the game is increased by giving a certain variation to the strength of the opponent so as to change the difficulty of the fighting game.

Regarding the common general technical knowledge in the "game" field, there is no dispute between the parties that it was common general technical knowledge at the time of filing of the Application that the "strength" of the "user" includes the physical strength, quickness, the number of held items, and the like other than the offensive power and the defensive power (see No. 2, 2(2)B(c) of the JPO Decision [page 12 of the JPO Decision]).

In the fighting game as above, in the light of the technical meaning of the invention that the opponent suitable for the user, not an opponent with a large difference in the strength, is selected, it is reasonable to interpret that the "strength" described in the Initial Description and the like is an index indicating the strength of the user in the game, which is only necessary to be a parameter that influences winning or losing of the game. To set the "strength" to a "total value of the offensive power and the defensive power" can be one embodiment of the invention but there can be no reason found to limit the "strength" to the "total value of the offensive power and the defensive power" even by excluding the physical strength, quickness, the number of held items, and the like from the elements included in the "strength" in the common general technical knowledge. In other words, whether the "strength" is to be limited to the "total value of the offensive power and the defensive power" or not is found to be only an optional and additional matter that it may be limited or does not have to be in light of the technical meaning of the invention.

Then, even though the Initial Description and the like have only the description of the "total value of the offensive power and the defensive power" as an embodiment of the "strength" in wording, in light of the meaning of the invention and the common general technical knowledge, it is not found that the technical matter was further added by amending to "a predetermined parameter enabling a state that the higher a numerical value is, the more advantageously the fighting game can be proceeded" without limiting the "strength" to the "total value of the offensive power and the defensive power" in the Second Amendment, and it is not found that the Second Amendment introduced the new technical matter. Then, it is found that the Second Amendment is made within the range of the matters described in the initial Description and the like and does not violate the provisions in Article 17-2, paragraph

(3) of the Patent Act.

Therefore, the JPO Decision which dismissed the Second Amendment by determining that the Second Amendment violates the provisions in the Article 17-2, paragraph (3) of the Patent Act (the JPO Decision No. 2) by stating that the amendment of the "strength" in the First Amendment invention to the "strength, which is a predetermined parameter enabling a state that the higher a numerical value is, the more advantageously the fighting game can be proceeded" by the Second Amendment is introduction of a new technical matter, is found to be erroneous, and the grounds for rescission asserted by the Plaintiff are approved for the JPO Decision.

#### 4. Determination on assertion by Defendant

(1) The Defendant asserts that, from the description in the Initial Description and the like, it is obvious that the "strength" is limited to the "total value of the offensive power and the defensive power" (aforementioned No. 3 [Assertion by Defendant] 2(1)A).

However, as described in the aforementioned 3, regarding the common general technical knowledge in the "game" field, there is no dispute between the parties that it was common general technical knowledge at the time of filing of the Application that the "strength" of the "user" includes the physical strength, quickness, the number of held items, and the like other than the offensive power and the defensive power. Even if the Initial Description and the like have the description that the "strength" is the "total value of the offensive power and the defensive power", in light of the technical meaning of the invention, the "strength" is interpreted to be an index indicating the strength of the user in the game, which is only necessary to be a parameter that influences winning or losing of the game, and there can be no reason found to exclude the elements other than the "total value of the offensive power and the defensive power" from the "strength". It is found that the fighting games can take various forms, and in the light of the common general technical knowledge, various parameters can be assumed for the "strength" that influences winning or losing in accordance with the form of the game, and it is sufficiently possible to interpret that the term "and the like" in the "offensive power and the defensive power and the like" described in the paragraph [0028] and "..." in Fig. 2B indicate elements such as the physical strength, quickness, number of held items, and the like other than the offensive power and the defensive power in the elements of the "strength".

Therefore, the aforementioned assertion by the Defendant cannot be accepted.

(2) Moreover, the Defendant asserts that, from the wording in Claims 1, 7, and 8 after the Second Amendment that "the strength, which is a predetermined parameter

enabling a state that the higher a numerical value is, the more advantageously the fighting game can be proceeded", what parameters are included in the "strength" cannot be specifically specified, which causes an unexpected disadvantage to a third party (aforementioned No. 3 [Assertion by Defendant] 2(1)B).

It is sure that there can be various forms in the fighting game, and in the light of the common general technical knowledge, it is found that various parameters can be assumed for the "strength" that influences winning or losing in accordance with the form of the game.

However, it is presumed a person ordinarily skilled in the art can determine as appropriate what kind of a parameter of the "strength" to set is appropriate for a game in each form, and by selecting another user having a strength within a predetermined range as an opponent with the strength of the user as a reference, in the light of the technical meaning of the invention to prevent lowering of a user's interest in the game, it is presumed that a person ordinarily skilled in the art can assume what parameter is included in the "strength" in the fighting game of a certain form. Then, even if the "strength" is not limited to the "total value of the offensive power and the defensive power", it is not found that it would cause an unexpected disadvantage to a third party.

Therefore, the aforementioned assertion by the Defendant cannot be accepted.

(3) The Defendant asserts that the "strength" is expanded to a wide concept by the Second Amendment, and the new technical matter was added, what parameter is included in the wording of Claims 1, 7, and 8 after the Second Amendment that "the strength, which is a predetermined parameter enabling a state that the higher a numerical value is, the more advantageously the fighting game can be proceeded" cannot be specifically specified, which causes an unexpected disadvantage to a third party and thus, the second amendment should not be approved (aforementioned No. 3 [Assertion by Defendant] 3).

However, as described in the aforementioned (1) and (2), the aforementioned assertion by the Defendant cannot be accepted.

(4) Moreover, the Defendant asserts that, from the description in the initial Description and the like that it is obvious that the "strength" is limited to the "total value of the offensive power and the defensive power" (aforementioned No. 3 [Assertion by Defendant] 4), but as described in the aforementioned (1), such assertion by the Defendant cannot be accepted.

## 5. Conclusion

According to the above, the JPO Decision that determined that the Second Amendment violates the provisions in Article 17-2, paragraph (3) of the Patent Act

and dismissed the Second Amendment (the JPO Decision No. 2) is recognized to be erroneous, and this error affects the conclusion of the JPO Decision and thus, the JPO Decision is illegal and should be rescinded.

Therefore, the Plaintiff's claim was approved, and the judgment shall be rendered as in the main text.

Intellectual Property High Court, Third Division

Presiding Judge: SHOJI Tamotsu

Judge: NAKADAIRA Ken

Judge: TSUNO Michinori

(Attachment 1 JPO Decision copy omitted)



Attachment 2 (Description of Initial Description and the like and Description after the Second Amendment and the like)

1. Description related to technical field

"The present invention relates to a program relating to a computer which provides a fighting game, a fighting game server, and a control method thereof." (paragraph [0001])

2. Description in the problem to be solved by the invention

"Conventionally, there is a fighting game server in such a format that a deck of a user is configured by a plurality of fighting cards and the like stored for each of the users, and on the basis of the total value of the offensive power and the defensive power of the deck, a plurality of the users compete against one another (Patent Document 1, for example). In the fighting game server as above, in order to increase a user's interest in the game, it is usually configured such that a user who won the fight can acquire the fighting card or the like held by the user who lost. In this case, it was configured such that the user could select an opponent from the users having the fighting card and the like to be acquired." (paragraph [0002])

"However, in the conventional fighting game server, since the user as an opponent is determined at random or on a condition only of having a predetermined fighting card or the like, there is a possibility that the total value of the offensive power and the defensive power of the decks of the users fighting against each other are deviated, which lowers the user's interest in the game in some cases." (paragraph [0004])

"Particularly, if a user is a beginner and has a low total value of the offensive power and the defensive power, there is a good possibility that the total value of the offensive power and the defensive power of the opponent is higher, and the user loses the game in many cases, which remarkably lowers the user's interest in the game." (paragraph [0005]).

"Therefore, an object of the present invention made in view of the aforementioned problem is to provide a program, a fighting game server, and a control method thereof in which an opponent suitable for each user can be selected and which can increase a user's interest in the game." (paragraph [0006])

Note that, the aforementioned paragraphs [0004] and [0005] were deleted and paragraph [0006] was changed to the following by the Second Amendment.

"The object of the present invention is to provide a program, a fighting game server, and a control method thereof which can prevent a fight against an opponent with an inappropriate strength in a fighting game."

### 3. Description related to the effect of the invention

"According to the program, the fighting game server, and the control method thereof in the present invention, an opponent suitable for each user can be selected, and a user's interest in the game can be increased." (paragraph [0017])

### 4. Description related to the embodiment of the invention

#### (1) Description related to Embodiment 1

"Fig. 1 is a block diagram illustrating a fighting game system according to Embodiment 1 of the present invention. The fighting game system according to Embodiment 1 of the present invention includes a fighting game server 1 and a communication terminal 2. Note that Fig. 1 illustrates an example in which only one unit of the communication terminal 2 is provided, but this is not limiting, and a plurality of the communication terminals may be provided." (paragraph [0020])

"The fighting game server 1 includes a communication portion 11, a storage portion 12, and a control portion 13. As an outline, on the basis of the total value of the offensive power and the defensive power of the deck configured by a plurality of units held by the user, the fighting game server 1 provides a fighting game in a form that winning or losing of a fight is competed among a plurality of users to the communication terminal 2." (paragraph [0021])

"Fig. 2A illustrates an example of a user table. For example, Fig. 2A illustrates that a user with a user ID '001' has units relating to IDs of a unit A, a unit B, a unit C, a unit D, a unit E, a unit F, a unit G, a unit H, and a unit I." (paragraph [0024])

"Moreover, the storage portion 12 stores a unit information table including a user ID, a unit ID, offensive power, defensive power, and a cost related to the unit ID. The offensive power and the defensive power are parameters related to the strength of the unit. Moreover, the cost is a parameter which is referred to when the deck is to be configured. The total value of the costs of the plurality of units configuring the deck should be a predetermined value (hereinafter, referred to as a cost upper-limit value.) or less. In this embodiment, as an example, explanation will be made by assuming that the cost upper-limit value is 30." (paragraph [0025])

"Fig. 2B illustrates an example of the unit information table. In Fig. 2B, the user ID '001', the unit ID 'unit A', the offensive power '1000', the defensive power '500', and the cost '5' are associated and stored, for example. Here, the offensive power and the defensive power of each unit are changed in accordance with the progress of the game. For example, the offensive power and the defensive power of the unit held by a certain user are increased in accordance with an event or the like in the game. When the offensive power and the defensive power of the unit are changed, the control

portion 13, which will be described later, updates the unit information table so as to have the latest state at all times." (paragraph [0026])

"The control portion 13 executes various types of control related to the fighting game server 1. Specifically, when a fight request is received from the communication terminal 2, the control portion 13 selects at least one user ID from the user table and generates a list of the user IDs as opponents (hereinafter, referred to as an opponent list) and transmits the opponent list to the communication terminal 2 by the communication portion 11. Note that the fight request is a request for generation and transmission of the opponent list in this embodiment. The fight request includes a user ID of the user who operates the communication terminal 2. Moreover, when a signal including the user ID of the user who operates the communication terminal 2 and a user ID of an opponent is received from the communication terminal 2, the control portion 13 calculates total values of the offensive power and the defensive power of the decks of the two user IDs and determines winning or losing on the basis of the total values." (paragraph [0027])

"Moreover, the control portion 13 regularly calculates strength of each user ID on the basis of the user table and the unit information table stored in the storage portion 12. Here, the strength is a value determined on the basis of the total value of the offensive power and the defensive power of the unit configuring the deck. In other words, the offensive power and the defensive power and the like of each unit stored in the unit information table can be also considered to be user information for calculating the strength of the user. The control portion 13 extracts at least one unit from the plurality of units held by each user ID in order to calculate the strength of the user. Then, the control portion 13 calculates the total values of the offensive power and the defensive power of all the extracted units as those configuring the deck by the extracted units. The control portion 13 stores the strength based on the calculated total value in the storage portion 12. Preferably, the control portion 13 stores a strength table including the strength of each user ID in the storage portion 12. Note that the control portion 13 calculates the strength of each user ID at predetermined time interval by a timer (not shown) or the like in order to regularly calculate the strength of each user ID. The predetermined time interval is 8 hours, for example." (paragraph [0028])

"Fig. 3 illustrates an example of the strength table stored in the storage portion 12 by the control portion 13. For example, in the strength table, the user ID '001' and the total value of the offensive power and the defensive power of the unit configuring the deck '7000' are stored in association. Moreover, in the strength table, the total value

and the strength determined on the basis of a setting table, which will be described later, are stored. For example, '3' is stored as the strength of the user ID '001'. Note that the strength table in Fig. 3 includes the total value of the offensive power and the defensive power, but this is not limiting, and the strength table may include only the user ID and the strength." (paragraph [0031])

"Fig. 4 illustrates an example of the setting table. The setting table is stored in the storage portion 12 in advance before the operation of the system. In the setting table, the strength and a definition thereof; that is, a range of the total value of the offensive power and the defensive power, is stored. For example, a range with a lower limit value of the total value of the offensive power and the defensive power at '6000' and an upper limit value at '8999' is defined as the strength '3'". (paragraph [0032]).

"When the fight request including the user ID is received from the communication terminal 2, the control portion 13 selects a user ID with the strength within the predetermined range and generates an opponent list with the strength corresponding to the user ID stored in the storage portion 12 as a reference. Specifically, the control portion 13 acquires the strength corresponding to the user ID included in the fight request on the basis of the strength table. Subsequently, the control portion 13 selects some of the user IDs corresponding to the strength on the basis of the fight range table and generates the opponent list. Then, the control portion 13 transmits the opponent list to the communication terminal 2 via the communication portion 11. That is, in the user IDs within the range of the same strength as the strength of the user ID included in the fight request, the user ID excluding himself/herself is selected and added to the opponent list. For example, when the fight request including the user ID '001' is received, the control portion 13 acquires the strength '3' corresponding to the user ID on the basis of the strength table. Subsequently, the control portion 13 acquires the user IDs '001', '003', '008', '020' corresponding to the strength '3' on the basis of the fight range table. Then, the control portion 13 transmits the opponent list including the user IDs '003', '008', '020' excluding the own user ID '001' to the communication terminal 2 via the communication portion 11." (paragraph [0034])

## (2) Description related to Embodiment 2

"Fig. 7 is an example of the setting table stored in the storage portion 12 of the fighting game server 1. In Embodiment 2, the predetermined 'strength', the 'total value lower-limit value', the 'total-value upper limit value', the 'strength lower-limit value', the 'strength upper-limit value', the 'ratio of weak persons', and the 'ratio of strong persons' are stored in the setting table. Since the 'total value lower-limit value' and the 'total-value upper limit value' are the same as those in Embodiment 1,

the explanation will be omitted. The 'strength lower-limit value' indicates a lower-limit value of the strength included in the opponent list transmitted to the user with a predetermined strength. The 'strength upper-limit value' indicates an upper-limit value of the strength included in the opponent list transmitted to the user with a predetermined strength. The 'ratio of weak persons' indicates a ratio of the user IDs with strength less than the predetermined strength included in the opponent list. The 'ratio of strong persons' indicates a ratio of the user IDs with strength exceeding the predetermined strength included in the opponent list." (paragraph [0052])

"In the setting table shown in Fig. 7, for example, the strength lower-limit value for the strength '3' is '1', and the strength upper-limit value is '4'. This means that for the user with the strength '3', a user ID with the strength '1 to 4' is selected as an opponent, and an opponent list is generated. Moreover, for the strength '3', the ratio of weak persons is '50%', and the ratio of strong persons is '10%'. This means that in the opponent list, 50% of the user IDs have the strength '1 to 2', 10% of the user IDs have the strength '4', and the remaining 40% of the user IDs have the strength '3'." (the paragraph [0053])

"Preferably, when the strength is a predetermined value or less, the strength lower-limit value and the strength upper-limit value are made the same value as that of the strength, respectively. For example, the predetermined value is the strength '1'. In this case, the strength lower-limit value and the strength upper-limit value are set to '1', respectively. Instead of setting the strength lower-limit value and the strength upper-limit value to '1', respectively, the ratio of weak persons and the ratio of strong persons may be set to 0%. By setting as above, for example, it can be configured such that a user with the strength at the predetermined value or less or specifically, a user with '1' or the like fights against a user with the same strength so as to lower the difficulty of the game and to increase or maintain the user's interest in the game." (paragraph [0054])

"Moreover, preferably, when the strength is a first threshold value or more, the range of the strength relating to the user ID included in the opponent list may be set wider than the case of less than the first threshold value. The first threshold value is, '5', for example. By setting as above, such a possibility that the user with the strength at the first threshold value or more fights against a stronger or weaker user increases, which changes the difficulty of the fighting game and can increase or maintain the user's interest in the game." (paragraph [0055])

"Furthermore, when the strength is a second threshold value or more, the ratio of strong persons may be set higher than the case of less than the second threshold value.

The second threshold value is '6', for example. By setting as above, by setting the possibility to fight against a user stronger than himself/herself for the relatively strong user among all the users so that the game cannot be won easily, a user's interest in the fighting game can be increased or maintained." (paragraph [0056])

"Fig. 8 is an example of a fight range table stored in the storage portion 12 of the fighting game server 1 according to Embodiment 2. For the strength '3', for example, the user IDs '001', '003', '002', and '006' are included. Here, the strength relating to the user ID '002' is 2, and the strength relating to the user ID '006' is 4. That is, a user ID with the strength different from the strength '3' is included in the opponent list." (paragraph [0057])

"When the fight request including the user ID is received from the communication terminal 2, the control portion 13 acquires the strength corresponding to the user ID included in the fight request on the basis of the strength table. Subsequently, the control portion 13 selects at least one of the user IDs corresponding to the strength and generates an opponent list on the basis of the fight range table. Then, the control portion 13 transmits the opponent list to the communication terminal 2 via the communication portion 11." (paragraph [0058])

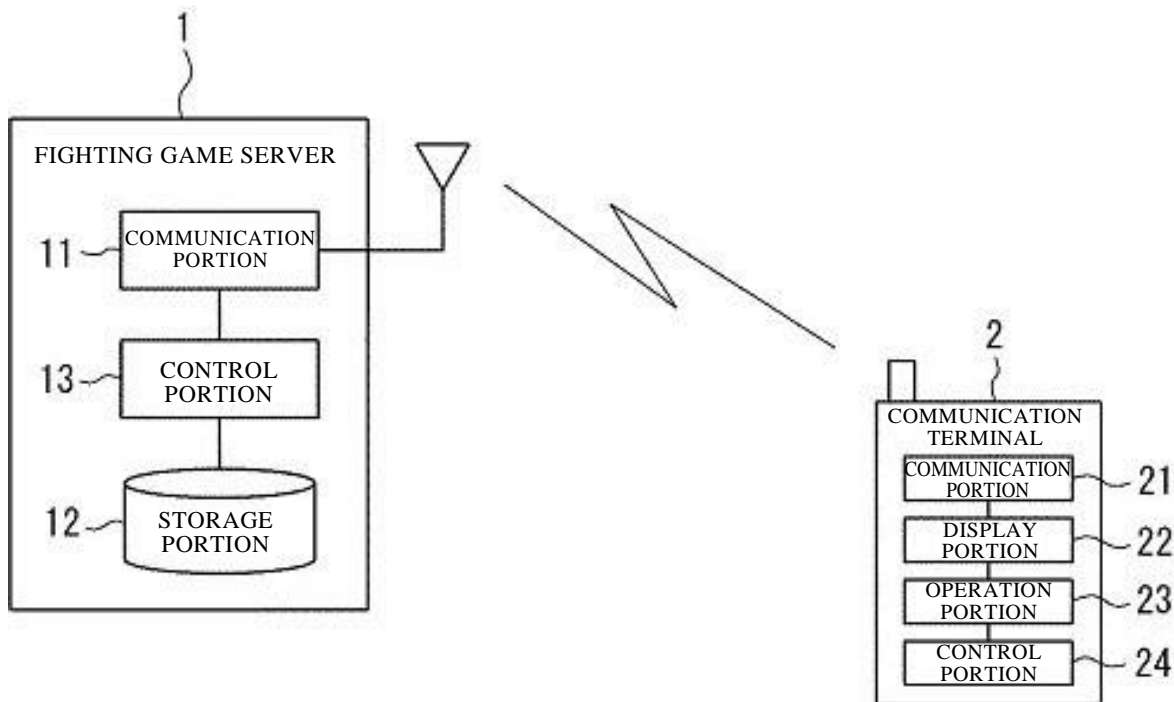
"Subsequently, an operation of the fighting game server 1 according to Embodiment 2 will be explained. The fighting game server 1 according to Embodiment 2 performs substantially the same operation as that in Embodiment 1, but the fight range table stored in the storage portion 12 at Step S3 is different. Since the operation other than Step S3 is the same as that in Embodiment 1, explanation will be omitted." (paragraph [0059])

"The control portion 13 of the fighting game server 1 according to Embodiment 2 stores the fight range table in which the user ID is associated for each strength on the basis of the strength table and the setting table at Step S3 in the storage portion 12. Specifically, the control portion 13 refers to the 'strength lower-limit value', the 'strength upper-limit value', the 'ratio of weak persons', and the 'ratio of strong persons' in the setting table and extracts the user ID with the strength in the predetermined range from the strength table. Then, the control portion 13 generates the fight range table by the extracted user ID and stores it in the storage portion 12." (paragraph [0060])

"By setting as above, by including some of the user IDs with the strength different from the strength included in the fight request in the opponent list, a certain variation, that is, fluctuation, is included in the strengths of the opponents, and the difficulty of the fighting game is changed, whereby the user's interest in the game can be increased.

That is, according to this embodiment, by extracting an opponent in a predetermined range, as compared with the case where the opponent is extracted at random from all the users, a large difference is rarely generated in the strength among the opponents. Therefore, the opponent is selected in an appropriate range according to the strength of the user, and quick decision on winning or losing can be reduced, whereby use of the game can be further continued." (paragraph [0061])

[FIG. 1] BLOCK DIAGRAM OF FIGHTING GAME SYSTEM IN EMBODIMENT 1



[FIG. 2] EXAMPLE OF USER TABLE AND UNIT INFORMATION TABLE IN EMBODIMENT 1

(a)

USER ID	UNIT ID	UNIT ID	UNIT ID	UNIT ID	UNIT ID	UNIT ID	UNIT ID	UNIT ID	UNIT ID	...
001	UNIT A	UNIT B	UNIT C	UNIT D	UNIT E	UNIT F	UNIT G	UNIT H	UNIT I	...
002	UNIT A	UNIT B	UNIT C	UNIT J	UNIT K	UNIT L	UNIT M	UNIT N	UNIT O	...
003	UNIT A	UNIT B	UNIT C	UNIT P	UNIT Q	UNIT R	UNIT S	UNIT T	UNIT U	...
...	...	...	...	...	...	...	...	...	...	...

(b)

USER ID	UNIT ID	OFFENSIVE POWER	DEFENSIVE POWER	COST	...
001	UNIT A	1000	500	5	...
001	UNIT B	1000	1000	10	...
001	UNIT C	500	1000	5	...
001	UNIT D	1000	1500	15	...
001	UNIT E	1000	1000	10	...
001	UNIT F	200	300	2	...
001	UNIT G	300	500	3	...
001	UNIT H	100	100	1	...



001	UNIT I	500	500	4	...
002	UNIT A	1000	500	5	...
002	UNIT B	1000	1500	10	...
002	UNIT C	500	500	5	...
...	...	...	...	...	...

[FIG. 3] EXAMPLE OF STRENGTH TABLE IN EMBODIMENT 1

USER ID	TOTAL VALUE OF OFFENSIVE POWER AND DEFENSIVE POWER	STRENGTH
001	7000	3
002	5000	2
003	8000	3
004	2000	1
005	1500	1
006	10000	4
007	4000	2
008	6000	3
009	16000	6
010	1000	1
011	4000	2
012	11000	4
013	13000	5
014	17000	6
015	14000	5
...	...	...

[FIG. 4] EXAMPLE OF SETTING TABLE IN EMBODIMENT 1

STRENGTH	TOTAL-VALUE LOWER LIMIT VALUE	TOTAL-VALUE UPPER LIMIT VALUE
1	0	2999
2	3000	5999
3	6000	8999
4	9000	11999
5	12000	14999

6	15000	17999
7	18000	20999
...	...	...

[FIG. 7] EXAMPLE OF SETTING TABLE IN EMBODIMENT 2

STRENGTH	TOTAL-VALUE LOWER LIMIT VALUE	TOTAL-VALUE UPPER LIMIT VALUE	STRENGTH LOWER-LIMIT VALUE	STRENGTH UPPER-LIMIT VALUE	RATIO OF WEAK PERSONS	RATIO OF STRONG PERSONS
1	0	2999	1	1	0%	0%
2	3000	5999	1	2	0%	0%
3	6000	8999	1	4	50%	10%
4	9000	11999	2	5	20%	20%
5	12000	14999	2	7	30%	30%
6	15000	17999	5	9	10%	50%
7	18000	20999	6	10	10%	60%
...	...	...	...	...	...	...

[FIG. 8] EXAMPLE OF FIGHT RANGE TABLE IN EMBODIMENT 2

STRENGTH	USER ID	USER ID	USER ID	USER ID	...
1	004	005	010	019	...
2	002	007	011	023	...
3	001	003	002	006	...
4	006	012	001	013	...
5	013	015	006	009	...
6	009	014	025	026	...
7	029	030	031	032	...
...	...	...	...	...	...