

Patent Right	Date	September 11, 2019	Court	Intellectual Property High Court, Third Division
	Case number	2018 (Ne) 10006 2018 (Ne) 10022		
<p>- A case in which, with regard to the patent infringement lawsuit related to Patent A of the invention titled "system operating method" and Patent B of the invention titled "game device and control method thereof", the judgment in prior instance in which the Appellee's defense of invalidity was approved and the Appellant's claim was partially dismissed by stating that Patent A has an invalidation reason of lack of inventive step with the publicly known invention or publicly worked invention as the main cited example was modified, and the defense of invalidity was not approved for Patent A.</p> <p>- A case in which the amount of damages was calculated for the net sales price of the infringement product by multiplying a rate which should be received for the working under Article 102, paragraph (3) of the Patent Act.</p>				

Case type: Injunction, etc.

Result: Partial modification of the prior instance judgment

References: Article 29, paragraph (2), and Article 102, paragraph (3) of the Patent Act, Article 709 of the Civil Code

Number of related rights, etc.: Patent No. 3350773, No. 3295771

Summary of the Judgment

1. This case is a case in which Appellant who had Patent Right A related to the invention related to a system operating method targeted to an information processor such as a consumer game machine and Patent Right B related to the invention related to a game device configured to physically transmit vibration to a player in accordance with an advance state of a game in the game machine and the control method thereof claimed payment of damages from Appellee on the ground of tort by alleging that the game software manufactured and sold by Appellee (Product A and Product B) belongs to the technical scope of the inventions according to each of the aforementioned patent rights, and the manufacture and sales thereof are applicable to infringement of each of the aforementioned patent rights.

The judgment in prior instance (Osaka District Court 2014 (Wa) 6163, judgment on December 14, 2016) stated that [i] Invention A according to Patent Right A is identical to a publicly known invention or the publicly worked invention (Publicly Known Invention 1) by the game system realized by using the game device, game software, and the like sold in Japan before filing of the patent application and Patent A is found to be invalidated through the patent invalidation trial and thus, the claim for damages on the basis of infringement of Patent Right A has no ground; and [ii] the manufacture and sales of Product B is applicable to indirect infringement of Patent

Right B, and Patent Right B is not found to be invalidated through the patent invalidation trial and thus, the claim for damages on the basis of the infringement of Patent Right B is grounded to the limit of claim for payment of 5.17 million yen and the delay damages thereto, and only the claim related to the monetary amount was approved but the remaining claims by Appellant were all dismissed.

Appellant instituted an appeal against the judgment, and Appellee instituted an incidental appeal.

2. This judgment modified the judgment in prior instance on the basis of the Appellant's appeal, orders Appellee to pay the damages on the ground of tort of infringement of Patent Right A and Patent Right B, and dismissed the Appellee's incidental appeal. This case includes many issues, and a summary of the reasons related to the defense of invalidity related to Patent A and the value of damages of Appellant is as follows.

(1) Defense of invalidity related to Patent A

Publicly Known Invention 1 has such a technical idea that continuity is given to the story between the previous work and the subsequent work so that the character in the game in the previous work can play in the game of the subsequent work, or the play in the game of the subsequent work is made advantageous in accordance with the play results in the game of the previous work, whereby arouse a desire to continuously play the game of the subsequent work which is the sequel to the user who played the game in the previous work, and purchase of the game of the subsequent work are promoted and thus, saving of the information indicating the play results and the like in the storage medium of the previous work is the premise. Then, to employ the configuration as Invention A (to remove the storage medium capable of storing the saved data) for Publicly Known Invention 1 lacks motivation or rather makes disincentive and thus, Invention A could not have been easily made on the basis of Publicly Known Invention 1.

Therefore, it is not found that Patent A should be invalidated through the patent invalidation trial.

(2) Value of damages of Appellant

Appellant asserts the value of damages calculated under the Article 102, paragraph (3) of the Patent Act.

A. With regard to the infringement of Patent Right A, by considering circumstances appearing in this lawsuit that [i] in this case, the royalty rate of an actual license contract of Patent A does not appear, but an average royalty rate on the recent statistics of the field to which the technical field of Patent A

belongs is 2.5% according to results of a questionnaire; [ii] in the game software related to the infringement, it cannot be denied that ingenious game characters, contents, sales methods, and the like greatly contribute to the sales thereof, but it is also found that the art related to Invention A reasonably contributes to improvement of sales; [iii] there is no substitute art for Invention A; and [iv] Appellant and Appellee are in a competitive relationship, the rate which should be determined ex post for the infringer of the patent right and should be received for the working in this case should be reasonably found to be not smaller than 3.0%.

B. With regard to the infringement of Patent Right B, by considering the circumstances appearing in this lawsuit, including the circumstances similar to the aforementioned 1[i], that [ii] although the art related to Invention B has reasonable meaning for the game software which is the infringement and does not have a substitute, the degree of contribution to the sales and profits of product B is lower than those with high appeals in setting, visual, direction, characters, and the like of the product, and its value is lower as compared with importance of Invention A in product A; and [iii] Appellant and Appellee are in a competitive relationship, the rate which should be determined ex post for the infringer of the patent right and should be received for the working in this case should be reasonably found to be not smaller than 1.5%.

Judgment rendered on September 11, 2019

2018 (Ne) 10006 Appeal case of seeking injunction against patent infringement, etc.,

2018 (Ne) 10022 Incidental appeal case of seeking the same (court of Prior Instance:

Osaka District Court, 2014 (Wa) 6163)

Date of conclusion of oral argument: May 27, 2019

Judgment

Appellant/Incidental Appellee: CAPCOM Co., Ltd.

(hereinafter referred to as "Appellant")

Appellee/Incidental Appellant: Koei Tecmo Games Co., Ltd.

(hereinafter referred to as "Appellee")

Main text

1. Based on the appeal lodged by Appellant, the judgment in prior instance shall be modified as follows.
 - (1) Appellee shall pay, to Appellant, 143,843,710 yen and the money accruing at the rate of 5% per annum from July 11, 2014 until the completion of payment.
 - (2) The Appellant's remaining claims shall be entirely dismissed.
2. The Appellee's incidental appeal shall be dismissed.
3. Appellee shall bear one-seventh of the court costs (including appeal costs and incidental appeal costs) throughout the first and second instances and Appellant shall pay the remaining.
4. Section 1(1) of this judgment may be executed provisionally.

Facts and reasons

No. 1 Judgment sought by the parties

1. Gist of the appeal

(1) The decision ruled against Appellant in the judgment in prior instance shall be rescinded.

(2) Appellee shall pay to Appellant for 983,231,115 yen and the money accruing at the rate of 5% per annum from July 11, 2014 until the completion of payment.

2. Gist of the incidental appeal

(1) The decision ruled against Appellee in the judgment in prior instance shall be

rescinded.

(2) Appellant's claims shall be entirely dismissed.

No. 2 Outline of the case (abbreviations shall conform to those used in the judgment in prior instance unless otherwise stated)

1. Summary of the case

This case involves Appellant, who owns the patent of the invention entitled "System operating method" (Patent No. 3350773, number of claims: 3, hereinafter referred to as "Patent A" and the patent right related to Patent A is referred to as "Patent Right A") and the patent of the invention entitled "Game device and control method thereof" (Patent No. 3295771, number of claims: 12, hereinafter referred to as "Patent B" and the patent rights related to Patent B is referred to as "Patent Right B") and who makes allegations that [i] manufacturing, selling, and offering for sale of each game software product listed in the "List of Products A" attached to the judgment in prior instance (hereinafter, referred to as "Product A-1" or the like according to the "number" shown in the same attachment, or may be collectively referred to as "Product A") by Appellee in the course of trade fall under indirect infringement of Patent Right A of the inventions according to Claims 1 and 2 in the scope of claims of Patent A (under Article 101, paragraph (4) of the Patent Act) or constitute a tort due to provocation of indirect infringement, and [ii] manufacturing and selling of each game software product listed in the "List of Products B" attached to the judgment in prior instance (hereinafter, referred to as "Product B-1" or the like according to the "number" of the same attachment, or may be collectively referred to as "Product B") by Appellee in the course of trade fall under indirect infringement of Patent Right B of the inventions according to Claims 1 and 8 in scope of claims of Patent B (under Article 101, paragraphs (1) and (4) of the Patent Act) or constitute a tort due to provocation of indirect infringement, whereby demanding, to Appellee, for compensation for damage based on the torts due to infringement of Patent Right A and Patent Right B or general tort, payment of 983,231,115 yen (as a total sum including the amount of 891,231,115 yen equivalent to working of Patent A, the amount of 47 million yen equivalent to working of Patent B, and the amount of 45 million yen equivalent to attorneys' fees and patent attorneys' fees) and the relevant delay damages accruing at the rate of 5% as stipulated in the Civil Code from July 11, 2014 (the day following service of complaint), which is after the torts, until completion of payment.

Note that each claim of Patent Right A and each claim of Patent Right B are

understood to be selectively combined.

The judgment in prior instance is as follows: [i] because the invention publicly known or publicly worked from the game system realized by using the game devices "Family Computer" and "Family Computer Disk System" and the game software "Madou Senki [*The Hell Cave of the Military History*]" and "Yuushi no Monshou [*Crest of the Hero*]," which were sold in Japan before filing of the patent application of Patent A, as well as TV (hereinafter referred to as "Game System A1") is identical to the inventions according to Claims 1 and 2 in the scope of claims of Patent A, Patent A in connection with these inventions has a ground for invalidity due to lack of novelty, the re-defense of correction to the defense of invalidity is not granted, and Patent A is found to be invalidated in the trial for patent invalidation, whereby the claim for compensation for damage on the basis of infringement of Patent Right A has no ground; and [ii] game devices using Product B belong to the technical scope of the invention according to Claim 1 in the scope of claims of Patent B and Product B is an article whose only use is to produce an article according to Invention B1 so that manufacturing and selling of Product B fall under indirect infringement of Patent Right B (under Article 101, paragraph (1) of the Patent Act), and Patent Right B according to the above invention is not found to be deemed invalid in the trial for patent invalidation and therefore the claim for compensation for damage on the basis of the infringement of Patent Right B has the ground to the extent of demanding payment of 5.17 million yen and the relevant delay damages. For these grounds, the judgment in prior instance granted only the claim in connection with the above amount of money and dismissed the Appellant's remaining claims entirely.

Appellant was dissatisfied with the decision ruled against Appellant in the judgment in prior instance and thus instituted this appeal.

Appellee was dissatisfied with the decision ruled against Appellee in the judgment in prior instance and thus instituted this incidental appeal.

2. Basic facts (unissued facts and facts acknowledged based on each evidence listed below and the entire import of oral argument)

(1) Parties

Appellant is a Stock Company engaged in planning, developing, manufacturing, and selling game equipment, software, toys, etc.

Appellee is a Stock Company engaged in manufacturing, producing, planning, and selling computer software/hardware and game amusement equipment.

(2) Patent Right A

A. Appellant filed an application for patent for the invention entitled "system operating method" on December 9, 1994 (Patent Application No. 1994-306428, hereinafter referred to as "Patent Application A" and the description including drawings attached to the application of Patent Application A is referred to as "Description A") and was granted registration of establishment of the patent for Patent Right A (Patent No. 3350773, Exhibits Ko A2 and Ko A69) on September 20, 2002.

B.(A) Appellant instituted this appeal on July 4, 2014 against the court of Prior Instance. Then, the term of Patent Right A expired on the expiration date of December 9, 2014.

(B) Appellee filed a request for a trial for patent invalidation (Invalidation Trial No. 2015-800110 case) on April 17, 2015 on the ground that Patent A is identical to the invention publicly known or publicly worked by Game System A1 and therefore has a ground for invalidation due to lack of novelty (Exhibit Ko A48).

The Japan Patent Office held a hearing on January 25, 2016 and then provided an advance notice of the JPO decision dated June 21, 2016 to the effect that Patent A in connection with these inventions should be invalidated because the invention according to Claim 1 in the scope of claims of Patent A is identical to the invention publicly known by Game System A1 and has a ground for invalidation due to lack of novelty, and the invention according to Claim 2 in said scope would have been easily conceivable based on the invention publicly known or publicly worked by Game System A1 and therefore has a ground for invalidation due to lack of inventive step (Exhibit Otsu A31).

In response, Appellant filed the correction request dated July 28, 2016 with regard to the set of claims including Claims 1 to 3 in order to correct Claims 1 and 2 and cancel Claim 3 (Exhibits Ko A42 and A43) and then received the notice of reasons for rejection of correction dated November 22, 2016 (Exhibit Ko A47), after which Appellant amended the correction request as of December 5, 2016 (hereinafter, amended correction is referred to as "Correction A," Exhibits Ko A44 to A46).

The Japan Patent Office granted Correction A on March 24, 2017 and then rendered the JPO decision to the effect that "the claim in connection with Claim 3 shall be dismissed and the claim in connection with Claims 1 and 2 is inadmissible" (hereinafter referred to as "JPO decision A," Exhibit

Ko A48).

(C) Appellee instituted a suit against trial decisions made by the JPO, seeking rescission of JPO decision A (2017 (Gyo-Ke) 10097). However, the Intellectual Property High Court rendered judgment on March 29, 2018 for dismissal of the Appellee's claim (hereinafter referred to as "Judgment A") (Exhibit Ko A51).

Appellee filed a petition for acceptance of final appeal against Judgment A, however, the decision for rejection of the final appeal was rendered on March 7, 2019 (Exhibit Ko A68) so that Judgment A has become final and binding and JPO decision A has also become final and binding (Exhibit Ko A69).

In the interim, the judgment in prior instance was rendered on December 14, 2017 in the court of Prior Instance to the effect that the claim for compensation for damage based on infringement of Patent Right A has no basis, because the inventions according to Claims 1 and 2 in the scope of claims of Patent A are identical to the invention publicly known or publicly worked by Game System A1, and Patent A in connection with these invention is found to be invalidated in the trial for patent invalidation.

C. Claims 1 and 2 in the scope of claims of Patent A presented after Correction A are described as follows (Exhibit Ko A46).

[Claim 1]

A method for operating a game system by loading a storage medium that stores a game program and/or data and is replaceable during predetermined operation of a game device (excluding a storage medium capable of storing saved data) in the game device, the method for operating a game system characterized in that

as the storage medium, at least a first storage medium containing a predetermined game program and/or data and a predetermined key, and a second storage medium containing, in addition to a predetermined standard game program and/or data, a predetermined extended game program and/or data are prepared,

the extended game program and/or data are/is a game program and/or data to achieve, in addition to the standard game program and/or data, more game characters and/or enriched functions of the game characters and/or expansion of scenes and/or enriched sound, and

in loading the second storage medium in the game device, if the

predetermined key is read by the game device, the game device is operated with both the standard game program and/or data and the extended game program and/or data, or if the predetermined key is not read by the game device, the game device is operated with only the standard game program and/or data.

[Claim 2]

A method for operating a game system by loading a storage medium that stores a game program and/or data and is replaceable during predetermined operation of a game device (excluding a semiconductor ROM cassette and a storage medium capable of storing saved data) in the game device, the method for operating a game system characterized in that

as the storage medium, at least a first storage medium containing a predetermined game program and/or data and a predetermined key, and a second storage medium containing, in addition to a predetermined standard game program and/or data, a predetermined extended game program and/or data and a predetermined control program are prepared,

the extended game program and/or data are/is a game program and/or data to achieve, in addition to the standard game program and/or data, more game characters and/or enriched functions of the game characters and/or expansion of scenes and/or enriched sound, and

in loading the second storage medium in the game device, only when the predetermined key is not read, the control program contained in the second storage medium causes display of an instruction to load another storage medium in the game device, and if the other storage medium loaded according to the instruction is the first storage medium containing the predetermined key, the game device is operated with both the standard game program and/or data and the extended game program and/or data contained in the second storage medium, or if the other storage medium is not loaded or if a loaded storage medium is not the first storage medium containing the predetermined key, the game device is operated with only the standard game program and/or data contained in the second storage medium.

D. The invention according to Claim 1 (hereinafter referred to as "Invention A1") and the invention according to Claim 2 (hereinafter referred to as "Invention A2") in the scope of claims of Patent A provided after Correction A are divided into constituent features as follows.

(A) Invention A1

A. A method for operating a game system by loading a storage medium

that stores a game program and/or data and is replaceable during predetermined operation of a game device (excluding a storage medium capable of storing saved data) in the game device,

- E. the method for operating a game system is characterized in that
- B. as the storage medium, at least
 - B-1. a first storage medium containing a predetermined game program and/or data and a predetermined key, and
 - B-2. a second storage medium containing, in addition to a predetermined standard game program and/or data, a predetermined extended game program and/or data are prepared,
- C. the extended game program and/or data is a game program and/or data to achieve, in addition to the standard game program and/or data, more game characters and/or enriched functions of the game characters and/or expansion of scenes and/or enriched sound, and
- D. in loading the second storage medium in the game device,
 - D-1. if the predetermined key is read by the game device, the game device is operated with both the standard game program and/or data and the extended game program and/or data, or
 - D-2. if the predetermined key is not read by the game device, the game device is operated with only the standard game program and/or data.

(B) Invention A2

- F. A method for operating a game system by loading a storage medium that stores a game program and/or data and is replaceable during predetermined operation of a game device (excluding a semiconductor ROM cassette and a storage medium capable of storing saved data) in the game device,
- J. the method for operating a game system is characterized in that
- G. as the storage medium, at least
 - G-1. a first storage medium containing a predetermined game program and/or data and a predetermined key, and
 - G-2. a second storage medium containing, in addition to a predetermined standard game program and/or data, a predetermined extended game program and/or data and a predetermined control program are prepared,
- H. the extended game program and/or data is a game program and/or data to achieve, in addition to the standard game program and/or data, more game characters and/or enriched functions of the game characters and/or

expansion of scenes and/or enriched sound, and

- I. in loading the second storage medium in the game device, only when the predetermined key is not read, the control program contained in the second storage medium causes display of an instruction to load another storage medium in the game device, and
 - I-1. if the other storage medium loaded according to the instruction is the first storage medium containing the predetermined key, the game device is operated with both the standard game program and/or data and the extended game program and/or data contained in the second storage medium, or
 - I-2. if the other storage medium is not loaded or if a loaded storage medium is not the first storage medium containing the predetermined key, the game device is operated with only the standard game program and/or data contained in the second storage medium.

(3) Patent Right B

A. With regard to the invention entitled "Game device and control method thereof," Appellant filed an application for patent on May 31, 1994 (Patent Application No. 1994-119347, hereinafter referred to as "Patent Application B" and the description, including drawings, attached to the application of Patent Application B is referred to as "Description B") and was granted registration of establishment of the patent for Patent Right B on April 12, 2002 (Patent No. 3295771, Exhibits Ko B1 and B2).

The duration of Patent Right B expired on the expiration date of May 31, 2014.

B. Appellant filed a request for a correction trial on September 9, 2015 (Correction Case No. 2015-390098, Exhibit Ko B17) in order to correct Claims 1, 4, and 8 in the scope of claims of Patent B (hereinafter referred to as "Correction B") and the Japan Patent Office rendered the JPO decision for granting Correction B on December 3, 2015 (Exhibit Ko B24).

C. Claims 1 and 8 in the scope of claims of Patent B provided after Correction B are described as follows (Exhibit Ko B24).

[Claim 1]

A game device provided with a game machine having an input means operated by a player, a game progress control means for determining or controlling a progress state of a game based on a signal from the input means, and an output means for outputting image information including a character that is at least moved responsive to operation of the input means by the player based on a signal from the

game progress control means, the game device comprising:

a particular situation determination means for determining, based on a signal from the game progress control means, whether or not a situation in which the character operated by the player is placed during progress of the game falls in a particular situation;

a vibration information control means for transmitting, upon determination of falling in the particular situation by the particular situation determination means, information being unrecognizable from the image information as a physically sensible vibration information signal for changing the intermittent cycle of vibration generated intermittently according to the situation in which the character is placed; and

a vibration generating means for generating vibration based on the physically sensible vibration information signal from the vibration information control means.

[Claim 8]

A method for controlling a game device provided with a game machine having an input means operated by a player, a game progress control means for determining or controlling a progress state of a game based on a signal from the input means, and an output means for outputting image information including a character that is at least moved responsive to operation of the input means by the player based on a signal from the game progress control means, the method for controlling a game device being characterized in that

based on a signal from the game progress control means, upon determination that a situation in which the character operated by the player is placed during progress of the game falls in a particular situation, information being unrecognizable from the image information is transmitted to a vibration generating means as a physically sensible vibration information signal for changing the intermittent cycle of vibration generated intermittently according to the situation in which the character is placed.

D. The invention according to Claim 1 (hereinafter referred to as "Invention B1") and the invention according to Claim 8 (hereinafter referred to as "Invention B8") in the scope of claims of Patent B provided after Correction B are divided into the following constituent features.

(A) Invention B1

D. A game device provided with a game machine having:

A. an input means operated by a player;

B. a game progress control means for determining or controlling a progress

- state of a game based on a signal from the input means; and
 - C. an output means for outputting image information including a character that is at least moved responsive to operation of the input means by the player based on a signal from the game progress control means,
 - H. the game device comprising:
 - E. a particular situation determination means for determining, based on a signal from the game progress control means, whether or not a situation in which the character operated by the player is placed during progress of the game falls in a particular situation;
 - F. a vibration information control means for transmitting, upon determination of falling in the particular situation by the particular situation determination means, information being unrecognizable from the image information as a physically sensible vibration information signal for changing the intermittent cycle of vibration generated intermittently according to the situation in which the character is placed; and
 - G. a vibration generating means for generating vibration based on the physically sensible vibration information signal from the vibration information control means.
- (B) Invention B8
- L. A method for controlling a game device provided with a game machine having
 - I. an input means operated by a player;
 - J. a game progress control means for determining or controlling a progress state of a game based on a signal from the input means; and
 - K. an output means for outputting image information including a character that is at least moved responsive to operation of the input means by the player based on a signal from the game progress control means,
 - N. the method for controlling a game device being characterized in that
 - M. based on a signal from the game progress control means, upon determination that a situation in which the character operated by the player is placed during progress of the game falls in a particular situation, information being unrecognizable from the image information is transmitted to a vibration generating means as a physically sensible vibration information signal for changing the intermittent cycle of vibration generated intermittently according to the situation in which the character is placed.
- (4) Manufacture and sales of Product A

In the course of trade, Appellee manufactured Product A and started selling Product A on the sale start dates shown in the attachment 1 "List of sale start dates."

(5) Manufacture and sales of Product B

In the course of trade, Appellee manufactured Product B and started selling Product B on the sale start dates shown in the attachment 1 "List of sale start dates."

3. Issues

(1) Patent Right A

A. Whether a game operating method using Product A belongs to the technical scope of Inventions A1 and A2 (Issue 1-1)

(A) Establishment of literal infringement (Issue 1-1-1)

(B) Establishment of infringement under the doctrine of equivalent (Issue 1-1-2)

(C) Establishment of indirect infringement (under Article 101, paragraph (4) of the Patent Act) (Issue 1-1-3)

(D) Establishment of tort by act leading to act of working (Issue 1-1-4)

B. Whether the patent of Inventions A1 and A2 should be invalidated in the trial for patent invalidation (Issue 1-2)

(A) Presence/absence of lack of inventive step in Inventions A1 and A2 based on the invention publicly known or publicly worked by Game System A1 (Issue 1-2-1)

(B) Presence/absence of lack of inventive step in Inventions A1 and A2 based on the invention publicly known by the game system realized by the MSX-based game software "Gambler Jiko Chuushinha [*Gambler Self-Centered School*]" and "Gambler Jiko Chuushinha 2 Jishou! Kyougou Janshi Hen [*Gambler Self-Centered School 2: Self-proclaimed! Strong Mahjong Player*]" and the MSX-based machine (Issue 1-2-2)

C. Presence/absence of damages suffered by Appellant and the amount of damages (Issue 1-3)

(2) Patent Right B

A. Whether a game device using Product B and a control method thereof belong to the technical scope of Inventions B1 and B8 (Issue 2-1)

(A) Establishment of literal infringement (Issue 2-1-1)

(B) Establishment of indirect infringement (under Article 101, paragraph (1) of the Patent Act) (Issue 2-1-2)

(C) Establishment of indirect infringement (under Article 101, paragraph (4) of

- the Patent Act) (Issue 2-1-3)
- (D) Establishment of tort by act leading to act of working (Issue 2-1-4)
- B. Whether the patent of Inventions B1 and B8 should be invalidated in the trial for patent invalidation (Issue 2-2)
 - (A) Presence/absence of lack of inventive step of Invention B1 based on the invention publicly known or publicly worked by the game device operated with the game called "Ninja Warriors" (Issue 2-2-1)
 - (B) Presence/absence of lack of inventive step in Invention B8 based on the invention publicly known or publicly worked by the method for controlling the game device operated with the game called "Ninja Warriors" (Issue 2-2-2)
- C. Presence/absence of damages suffered by Appellant and the amount of damages (Issue 2-3)

(omitted)

No. 4 Judgment of this court

Judgement of this court is as follows: [i] In Method A, the method using Product A-9, etc. belongs to the technical scope of Invention A1, and manufacturing, selling, and offering for sale of these products fall under indirect infringement of Patent Right A in connection with Invention A1 (under Article 101, paragraph (4) of the Patent Act), and the patent of Invention A1 is not found to be deemed invalid in the trial for patent invalidation; [ii] the remaining of Method A (method using Product A-1, etc.) does not meet the constituent feature B-2 of Invention A1 and the constituent feature G-2 of Invention A2 or is not equivalent to the features of Inventions A1 and A2 and therefore does not belong to the technical scope of Inventions A1 and A2; [iii] Device B belongs to the technical scope of Invention B1, manufacture and sales of Product B do not fall under indirect infringement of Patent Right B in connection with Invention B1 (under Article 101, paragraph (1) of the Patent Act), and the patent of Invention B1 is not found to be deemed invalid in the trial for patent invalidation; and [iv] the Appellant's claim for compensation for damage due to a tort due to infringement of Patent Right A and Patent Right B has the ground to the extent of demanding payment of 143,943,710 yen and the relevant delay damages. The reasons are as follows.

1. Patent Right A

- (1) Issue 1-1-1 (Establishment of literal infringement)

A. Matters, etc. described in Description A

(A) Inventions A1 and A2 are described in the scope of claims (Claims 1 and 2) as stated in the above No. 2-2(2)C.

Description A (Exhibits Ko A2, A45 and A46) provides the following descriptions in the detailed description of the invention (see Attachment 8 for "Figs. 1 and 2" mentioned in the following descriptions).

a. [0001]

[Field of Industrial Application]

The invention of the present application relates to a system operating method targeted at information processing devices such as, for example, a home game machine, or more specifically a system operating method that is preferable when a high-density storage medium such as CD-ROM is used as a software supply medium.

[0002]

[Conventional art]

In the field of, for example, home game machines, semiconductor ROM cassettes or the like have been used to supply game software targeted at users who have a game machine body. Users will enjoy the game by loading this game software in the home game machine body.

[0003]

Because of the limited functional ability of the game machine body and the limited capacity of the semiconductor ROM cassette or some other reasons, the conventional ROM cassettes merely contain game contents (such as a game program and data) for the capacity and the price available to users.

[0004]

Meanwhile, a high-speed type of home game machine body installed with a so-called 32-bit CPU was developed in recent years and a CD-ROM is also being employed as a medium to supply game software.

[0005]

The storage capacity of a CD-ROM reaches as high as about 500 MB in general, which is approximately a hundred times that of the semiconductor ROM. Game software comprises programs such as a game advancing program and a control program, and data such as video image data and sound data. When a CD-ROM is used as a medium to supply the game software, in theory, it is possible to store the game software with contents of more than a hundred times that of the semiconductor ROM.

[0006]

However, even if it is technically possible to develop game software with a huge amount of contents and supply a CD-ROM storing the game software as stated above, development costs of the game software will rise and a problem will arise with difficulty in supplying the game software at a price that can be paid at once by targeted users of a relatively young age group.

[0007]

The invention of the present application was conceived in such circumstances, and a problem to be solved by the invention is to allow users to enjoy a game with a variety of contents by, for example, purchasing and collecting a series of game software.

b. [0008]

[Means for solving the problem]

In order to solve the above problem, the invention of the present application employs the following technical means.

[0012]

According to a first aspect of the invention of the present application, there is provided a method for operating a game system by loading a storage medium that stores a game program and/or data in a predetermined game device, wherein as the storage medium, at least a first storage medium containing a predetermined game program and/or data and a predetermined key, and a second storage medium containing, in addition to a predetermined standard game program and/or data, a predetermined extended game program and/or data are prepared, the extended game program and/or data are/is formed to achieve, as opposed to the standard game program and/or data, more game characters and/or enriched functions of the game characters and/or expansion of scenes and/or enriched sound, and in loading the second storage medium in the game device, if the predetermined key is read by the game device, the game device is operated with both the standard game program and/or data and the extended game program and/or data, or if the predetermined key is not read by the game device, the game device is operated with only the standard game program and/or data.

c. [0015]

[Function and Operation of the Invention]

As a specific example of the information processing device, a home game machine is suggested. As a specific example of the storage medium, a CD-ROM is suggested. As a specific example of the program and/or data stored in

the storage medium, so-called game software is suggested.

[0016]

In a first CD-ROM, a predetermined key is stored in addition to a series of game contents. In this case, game contents are, for example, those partially using a storage capacity of a CD-ROM and set for a price that allows users to purchase by one-time payment.

[0017]

In a second CD-ROM, a predetermined control program and a series of game contents are stored. For example, in addition to standard game contents assuming use of the second CD-ROM alone, extended game contents are stored. Contents of the extended game include, for example, as opposed to the standard game contents, a program and/or data to achieve more game characters, enriched functions of the game characters, expansion of scenes, enriched sound, or the like. The second CD-ROM is set at a price that allows, for example, users to purchase by one-time payment.

[0018]

The control program contained in the second CD-ROM or the control program preinstalled in the game machine determines, when the second CD-ROM is loaded in the game machine, whether a predetermined key is read by the game machine. If the predetermined key is not read, the standard game contents selected from game contents stored in the second CD-ROM are activated. In contrast, if the predetermined key is read, the standard game contents and the extended game contents are activated.

[0019]

It is also possible that the control program causes, for example, display of an instruction such as "Load in the game machine the CD-ROM of XXX of YY series if you have it" to urge a user to load the first CD-ROM. At this time, when the user loads the first CD-ROM and then loads the second CD-ROM, it is determined that the key is read by the game machine, followed by activating the standard game contents and the extended game contents.

[0020]

In the above case, a user who has the first CD-ROM and the second CD-ROM can enjoy extended game contents in addition to the standard game contents stored in the second CD-ROM when the second CD-ROM is loaded in the game machine.

[0021]

As such, by supplying third and fourth CD-ROMs in the same manner and adding standard game contents to these CD-ROMs as the series advances, a user who has previous CD-ROMs can enjoy extended game contents that are gradually advanced and enriched by making the game machine read keys contained in the respective CD-ROMs sequentially.

[0022]

Accordingly, users can purchase and collect a series of CD-ROMs each priced appropriately for users to purchase at once, which is ultimately the same as obtaining game software with extremely rich contents. It also becomes substantially possible for manufacturers to provide game software with a huge amount of contents requiring significant development costs in a manner of allowing users to purchase easily.

d. [0023]

[Description of embodiments]

A preferable embodiment of the invention of the present application is specifically described below with reference to drawings.

[0024]

Fig. 1 is a schematic view of a home game set for use when a system operating method according to the invention of the present application is used. Fig. 2 is a flowchart showing an example of the system operating method.

[0025]

As shown in Fig. 1, the game set according to the present embodiment comprises a home game machine S, and a plurality of CD-ROMs 1, 2, 3 serving as storage media to supply game software to the game machine.

[0028]

As shown in Fig. 1, the CD-ROMs 1, 2, 3 store, for example, a series of game contents and herein a CD-ROM released first is called the first CD-ROM 1, a CD-ROM released second is called the second CD-ROM 2, and a CD-ROM released third is called the third CD-ROM 3. Note that there may be a CD-ROM released fourth and thereafter. In the case shown in Fig. 1, a user of the game machine is assumed to have a trilogy of the first, second, and third CD-ROMs 1, 2, 3.

[0029]

The first CD-ROM 1 released first stores at least a game program and data A₁ and a first key C₁. The first key C₁ does not have any meaning when the game is played by using the first CD-ROM 1 but, as described below, has a

meaning in association with the second CD-ROM 2 and/or subsequent CD-ROMs.

[0030]

Then, the second CD-ROM 2 stores a standard game program and data A_2 , an extended game program and data A_2' , a control program B_2 , and a second key C_2 . Herein, the standard game program and data A_2 assume use of the second CD-ROM 2 alone. Also, the extended game program and data A_2' are used to realize a higher level and greater variety of game contents than the standard game contents realized by the standard game program and data A_2 . For example, more game characters, enriched functions of the game characters, expansion of scenes, enriched sound, or the like are realized by the extended game program and data A_2' . Herein, the second key C_2 does not have any meaning when the game is played by using only the second CD-ROM 2, but has a meaning in association with the third CD-ROM 3 and/or subsequent CD-ROMs. Functions that the control program B_2 should have in the embodiment of the present application are described later.

[0031]

Similarly, the third CD-ROM 3 stores a standard game program and data A_3 assuming use of the third CD-ROM 3 alone, an extended game program and data A_3' to realize a higher level and a greater variety of game contents than the control program B_3 , and a third key C_3 . The extended game program and data A_3' of the third CD-ROM 3 have a much higher degree of extension than the extended game program and data A_2' of the second CD-ROM 2. Herein, the third key C_3 does not have any meaning when the game is played by using only the third CD-ROM 3, but has a meaning in association with a fourth CD-ROM not shown and/or subsequent CD-ROMs.

[0032]

Note that the first, second, and third keys C_1 , C_2 , C_3 may be, in a narrow sense, information with no direct relevance to game contents, such as a game title, version No., release timing, and destination, but are not prevented from containing a part of game data such as game results and a program. In general, such key information may be any information so long as the information is encoded and stored in a predetermined format in a predetermined area of a storage medium and the information is read by a control program to recognize a key according to a certain logic.

[0033]

Next, with reference to the flowchart shown in Fig. 2, an example of a method according to the invention of the present application is described based on a case example in which, as shown in Fig. 1, a user who has the first to third CD-ROMs 1, 2, 3 enjoys the extended game stored in the second CD-ROM 2.

[0034]

When the second CD-ROM 2 is loaded in a CD drive device 4 of the game machine S, the control program B₂ stored in the second CD-ROM 2 is read by a game machine 1. The control program that has been thus read executes the following control.

[0035]

Firstly, the control program determines whether the first key C₁ which the first CD-ROM 1 should have has already been read in the game machine S (step 001). If the first key C₁ has already been read in the game machine S (YES in step 001) through battery backup of an ordinary volatile RAM or arrangement of a nonvolatile storage function, the control program performs a control to execute the standard game and the extended game stored in the second CD-ROM 2 (step 002).

[0036]

If the control program determines in step 001 that the first key C₁ is not read (NO in step 001), an instruction is displayed to urge the user to load the first CD-ROM 1 in the game machine S (step 003). This is realized by, for example, displaying "Load in the game machine the CD-ROM of XXX of YY series if you have it" or the like on the screen of TV apparatus. If within a certain period (YES in step 004) the first CD-ROM 1 is loaded in the game machine S (YES in step 005), the control program determines whether the first key C₁ has been read (step 006). If the control program determines that the first key has been read (YES in step 006), an instruction is displayed to urge the user to load the second CD-ROM 2 again in the game machine S (step 007). This is realized by, for example, displaying "Load the original CD-ROM in the game machine" or the like on the screen of TV apparatus. If within a certain period (YES in step 008) the second CD-ROM 2 is loaded (YES in step 009), the control program performs a control to execute the standard game and the extended game stored in the second CD-ROM 2 (step 010). If the second CD-ROM 2 is not loaded within a certain period after the above display of the instruction (NO in step 009), the control stops (step 011).

[0037]

In contrast, if the first CD-ROM 1 is not loaded in the game machine S within a certain period (NO in step 005) in spite of the instruction displayed to urge the user to load the first CD-ROM 1 in step 003, and if the first key C₁ is not read from the first CD-ROM 1 loaded within a certain period according to the displayed instruction (NO in step 006), an instruction is displayed again to urge the user to load the second CD-ROM 2. In this case, an instruction such as, for example, "Due to failure to read the key to execute the extended game, the standard game is being executed. Load the original CD-ROM again." is displayed on the screen of TV apparatus. If within a certain period (YES in step 013) the second CD-ROM 2 is loaded (YES in step 014), the control program performs a control to execute only the standard game stored in the second CD-ROM 2 (step 015). If the second CD-ROM 2 is not loaded within a certain period after the above display of the instruction (NO in step 014), the control stops (step 016).

[0038]

Specifically, according to the above embodiment, because the user has the second CD-ROM 2 and the first CD-ROM 1, the user can enjoy not only the standard game but also the extended game stored in the second CD-ROM 2. If the user does not have the first CD-ROM 1, it is not possible to read the first key C₁ in the above control and therefore the user can enjoy only the standard game stored in the second CD-ROM 2.

[0040]

For example, by setting CD-ROMs from the first CD-ROM to the N-th CD-ROM at a price that can be paid at once by users, users can purchase and collect the series of these CD-ROMs, which is ultimately the same as obtaining game software with extremely rich contents. It also becomes substantially possible for manufacturers to provide game software with a huge amount of contents requiring significant development costs in a manner allowing users to purchase easily.

[0041]

The method according to the invention of the present application is not limited to the above embodiment. For example, instead of determining the key by the control program stored in the second or subsequent CD-ROMs in the above embodiment, a program to perform the above control may also be stored in, for example, a storage unit of the game machine so as to perform the above key determination.

[0042]

Further, instead of using CD-ROMs as storage media and the game machine as an information processing device in the above embodiment, other storage media such as, for example, a floppy disk, a hard disk, and a magneto optical (MO) disk may also be used and another information processing device such as a personal computer may also be used.

(B) According to the matters recited in the above (A), with regard to Inventions A1 and A2, the following disclosures are found in the detailed description of the invention of Description A.

Conventionally, in the field of home game machines, semiconductor ROM cassettes or the like have been used to supply game software targeted at users who have a game machine body. However, in recent years, a high-speed type of home game machine body installed with a 32-bit CPU was developed and a CD-ROM having a storage capacity of more than a hundred times that of the semiconductor ROM is also being employed as a medium to supply game software ([0002] to [0005]).

However, even if it is technically possible to develop game software with a huge amount of contents and supply the game software stored in a CD-ROM, development costs of the game software will rise and a problem will arise with difficulty in supplying the game software at a price that can be paid at once by targeted users of a relatively young age group. ([0006]).

"The invention of the present application" was conceived in such circumstances and a problem to be solved by the invention is to allow users to enjoy a game with a variety of contents by, for example, purchasing and collecting a series of game software. As a means for solving such a problem, a method for operating a game system by loading a storage medium that stores a game program and/or data in a predetermined game device is employed, wherein as the storage medium, at least a first storage medium containing a predetermined game program and/or data and a predetermined key, and a second storage medium containing, in addition to a predetermined standard game program and/or data, a predetermined extended game program and/or data are prepared, the extended game program and/or data are/is formed to achieve, as opposed to the standard game program and/or data, more game characters and/or enriched functions of the game characters and/or expansion of scenes and/or enriched sound, and in loading the second storage medium in the game device, if the predetermined key is read by the game device, the game device is operated

with both the standard game program and/or data and the extended game program and/or data, or if the predetermined key is not read by the game device, the game device is operated with only the standard game program and/or data ([0007] and [0012]).

Owing to such a feature, the user who has the first storage medium and the second storage medium can enjoy not only the standard game contents but also the extended game contents stored in the second storage medium. Thus, an effect is exhibited such that users can purchase and collect a series of storage media each priced appropriately for users to purchase at once, which is ultimately the same as obtaining game software with extremely rich contents, and it becomes substantially possible for manufacturers to provide game software with a huge amount of contents in a manner allowing users to purchase easily ([0020], [0022], and [0040]).

B. Whether [the subject methods] belong to the technical scope of Invention A1

(A) Meaning of the constituent features D, D-1, and D-2

a. (a) According to the description in the scope of claims (Claim 1) of Invention A1, it is understood that the "second storage medium" "contains, in addition to a predetermined standard game program and/or data, a predetermined extended game program and/or data" (constituent feature B-2), and "in loading the second storage medium in the game device" (constituent feature D), "if the predetermined key is read by the game device, the game device is operated with both the standard game program and/or data and the extended game program and/or data" (constituent feature D-1), or "if the predetermined key is not read by the game device, the game device is operated with only the standard game program and/or data" (constituent feature D-2).

Meanwhile, the above scope of claims provides no description serving as a basis for limited interpretation such that the timing at which "the predetermined key is read by the game device" falls in a range from the step immediately after "loading the second storage medium in the game device" to the point before operating the game device with the second storage medium.

(b) Then, as stated in the above A(B), Description A recites in the detailed description of the invention as follows. "The invention of the present application" adopts a feature such that, in loading the second storage medium in the game device, if the predetermined key is read by the game

device, the game device is operated with both the standard game program and/or data and the extended game program and/or data, or if the predetermined key is not read by the game device, the game device is operated with only the standard game program and/or data, thereby exhibiting an effect of allowing users who have the first storage medium and the second storage medium to enjoy not only the standard game contents but also the extended game contents stored in the second storage medium. Thus, technical significance is found in this feature.

Then, in light of the above technical significance of Invention A1, it is difficult to find the necessity of limiting the timing at which "the predetermined key is read by the game device" in a range from the step immediately after "loading the second storage medium in the game device" to the point before operating the game device with the second storage medium. In view of Description A as a whole, there is no disclosure or suggestion of technical significance such as an advantageous effect brought by limiting the timing at which "the predetermined key is read by the game device" in the above range in comparison with the case of reading the predetermined key by the game device at other points of time.

- (c) According to the above descriptions in the scope of claims (Claim 1) of Invention A1 and in Description A, it should be interpreted that the timing at which "the predetermined key is read by the game device" in Invention A1 is satisfied sufficiently by the case of "loading the second storage medium in the game device" and is not limited in the range from the step immediately after loading the second storage medium in the game device to the point before operating the game device with the second storage medium.
- b. In contrast, Appellee alleges, according to [i] the description in the scope of claims (Claim 1) of Invention A1, [ii] the description in [0018] of Description A, and [iii] the statement in the written opinion provided by Appellant in the course of examination of application for Patent Application A (Exhibits Otsu A14-1 and A14-2), the constituent features D, D-1, and D-2 presuppose determination as to whether or not the "predetermined key" is read before operating the game device with the second storage medium.

Firstly, with regard to the above [i] and [ii], as stated in the above a, according to the description in the scope of claims (Claim 1) of Invention A1

and the description in Description A, it should be interpreted that the timing at which "the predetermined key is read by the game device" in Invention A1 should not be limited in a range from the step immediately after loading the second storage medium in the game device to the point before operating the game device with the second storage medium.

Next, with regard to the above [iii], the written opinion provided by Appellant in the course of examination of application for Patent Application A (Exhibits Otsu A14-1 and A14-2) states that "the control program contained in the second storage medium or the control program preinstalled in the game machine determines, in loading the second storage medium in the game machine, whether or not the predetermined key is read by the game machine, and when the predetermined key is not read, the standard game contents selected from game contents stored in the second storage medium are activated, or when the predetermined key is read, the standard game contents and the extended game contents are activated."

However, it is not possible to understand immediately from the above statement that Appellant makes an allegation to the effect that the feature in the technical scope of Invention A1 is limited to the determination as to whether or not the "predetermined key" is read in a range from the step immediately after loading the second storage medium in the game machine to the point before operating the game machine. In addition, in light of the statement in the above written opinion as a whole, the Appellant's allegation can be understood such that the invention disclosed in Cited Document 1 listed in the notice of reasons of refusal is different from the invention according to Claim 1 in the scope of claims of Patent A provided before Correction A due to the presence or absence of the concept of extension of the standard game program contents, and therefore the invention provided before the above Correction A would not have been easily conceivable based on the invention disclosed in Cited Document 1.

As stated above, the above Appellee's allegation is inadmissible.

(B) Meaning of the constituent feature B, etc.

- a. (a) According to the description in the scope of claims (claim 1) of Invention A1, it can be understood that the "predetermined extended game program and/or data" are/is "a game program and/or data to achieve, in addition to the standard game program and/or data, more game characters and/or enriched function of the game characters and/or expansion of scenes and/or enriched

sound" and "contained" in the "second storage medium" and in "loading the second storage medium in the game device," "when the predetermined key" "contained" in the "first storage medium" is "read" by the "game device," "the game device is operated with both the standard game program and/or data and the extended game program and/or data."

As such, the "predetermined extended game program and/or data" in constituent feature B-2 operates with "the standard game program and/or data" to operate the game device, are/is stored in the second storage medium, and can operate the game device when the second storage medium is loaded in the game device. Hence, it can be understood that the "predetermined extended game program and/or data" mean(s) a game program and/or data stored entirely in the second storage medium and a game program and/or data divided and stored in the first storage medium and the second storage medium is not included in the "predetermined extended game program and/or data."

(b) Then, as stated in the above A(A), Description A describes "the invention of the present application" in the detailed description of the invention such that a first storage medium containing a predetermined game program and/or data and a predetermined key, and a second storage medium containing, in addition to a predetermined standard game program and/or data, a predetermined extended game program and/or data are prepared, and in loading the second storage medium in the game device, if the predetermined key is read by the game device, the game device is operated with both the standard game program and/or data and the extended game program and/or data.

Meanwhile, Description A provides no description explicitly stating or suggesting that the "predetermined extended game program and/or data" are/is configured to be divided and stored in the first storage medium and the second storage medium. On the contrary, it is understood from the descriptions in [0035] to [0037] in relation to the embodiment of Invention A1 that reading the extended game program and data from the first CD-ROM (first storage medium) is not assumed, which also supports the above understanding.

Note that Description A recites "the first, second, and third keys C₁, C₂, C₃ may be, in a narrow sense, information with no direct relevance to game contents, such as a game title, version No., release timing, and destination,

but are not prevented from containing a part of game data such as game results and a program" ([0032]). However, said description can be understood to suggest that a predetermined key may contain a part of game data and a program, not to suggest that game data and a program stored in the first storage medium may be used as an extended game program and data.

- (c) According to the above descriptions in the scope of claims (Claim 1) of Invention A1 and in Description A, it is understood that the "predetermined extended game program and/or data" in Invention A1 are/is meant to be entirely stored in the "second storage means" and a game program and/or data divided and stored in the "first storage means" and "second storage means" are/is not included in the "predetermined extended game program and/or data."
- b. In contrast, Appellant alleges that the "extended game program and/or data" mean(s) a game program and/or data "useful" in realizing a higher level and a greater variety of game contents and do(es) not mean a game program and/or data realizing a higher level and more variety of game contents "independently."
- However, the "extended game program and/or data" are/is understood as stated in the above a, and the above Appellant's allegation is inadmissible.
- (C) Fulfillment of the constituent features by Method A
- a. Method A except for Method A-1, etc.

According to the evidence (Exhibits Ko A5, A7 to A9, A11, A14, A19, and A21 to A25) and the entire import of the oral argument, the structure of Method A except for Method A-1, etc. (i.e. Methods A-9, A-16 to A-22, A-23[ii], and A-24 to A-40, hereinafter collectively referred to as "Method A-9, etc.") is found to be as stated in the "Structure of Method A" in Attachment 9.

Then, the comparison between the constituent features of Invention A1 and the features of Method A-9, etc. is as stated in the "Structure of Method A" in Attachment 9 and therefore Method A-9, etc. is found to satisfy all the constituent features of Invention A1 and belong to the technical scope of Invention A1.

Meanwhile, Appellee alleges that the structure of Method A-9, etc. is as stated in the "Explanation of Method A (Appellee)" in Attachment 3, and Method A-9, etc. does not satisfy the constituent features D, D-1, and D-2.

However, the above allegation is based on the understanding that the constituent features D, D-1, and D-2 involve determination, before operating the game device with the second storage medium, as to whether or not the

"predetermined key" is read. Such understanding is inadmissible as stated in the above (A)a.

Accordingly, the above Appellee's allegation lacks basis and is therefore inadmissible.

b. Method A-1, etc.

The Appellant's allegation is as follows: [i] Method A-1, etc. is as stated in "Explanation of Method A (Appellant)" in Attachment 2 and the comparison between the features of Method A-1, etc. and the constituent features of Inventions A1 and A2 is as stated in said attachment so that Method A-1, etc. satisfies all the constituent features of Inventions A1 and A2, and [ii] the capacity of RAM usable for the PlayStation 2 to process programs and/or data in its operation is 32 MB and, considering the capacity which is also usable to process programs and/or data contained in the Product A by execution of MIXJOY, the capacity must be extremely limited in Method A-1, etc. for programs and/or data read from a key disc associated with a series of Product A and stored in RAM, whereby it is reasonable to presume that most of programs and/or data to achieve expansion of scenes, etc. in Method A-1, etc. are recorded in Product A and these programs and/or data are used to "achieve more game characters and/or enriched functions of the game characters and/or expansion of scenes and/or enriched sound" of the constituent features C and H.

Meanwhile, Appellee alleges that it is not possible to achieve "more game characters and/or enriched functions of the game characters and/or expansion of scenes and/or enriched sound" in Method A-1, etc. unless a key disc program recorded in an append disc is combined with a program and/or data recorded in a key disc, and therefore Method A-1, etc. has no "extended game program and/or data" and no "second storage medium" containing an extended game program and/or data (constituent features B-2 and G-2), thus failing to satisfy the constituent features C and H.

Therefore, it is discussed below whether or not Method A-1, etc. satisfies the constituent features of Inventions A1 and A2.

(a) According to the evidence (Exhibits Ko A3, A12, and A17) and the entire import of the oral argument, the following facts are found in connection with Methods A-1 to A-5.

When the PlayStation 2 is operated with a DVD-ROM of "Sengoku Musou Moushouden [*Samurai Warriors: Xtreme Legends*]" and the

"combine" mode is selected, a message is displayed to urge the user to load a DVD-ROM of "Sengoku Musou [*Samurai Warriors*]". When the user removes the "Sengoku Musou Moushouden" DVD-ROM and loads the "Sengoku Musou" DVD-ROM according to the message, a message is displayed to load the "Sengoku Musou Moushouden" DVD-ROM again. Then, when the user removes the "Sengoku Musou" DVD-ROM and loads the "Sengoku Musou Moushouden" DVD-ROM according to the message, MIXJOY is enabled so that the user can play the game with the "Sengoku Musou" stories and characters.

Specifically, [i] 16 characters are added to the "Musou Enbu [*Warriors Demonstration*]" game mode, and stories based on the added characters are added, [ii] 16 chapters are added to the "Mogi Enbu [*Mock Demonstration*]" game mode, [iii] the "Naraku Kai [*Abyss Revised*]" stage and the "Koku Kai [*Empty Space Revised*]" stage are added to the "Mugenjo [*Infinity Fortress*]" game mode, [iv] the "Kessen [*Final Battle*]" stage, the "Torimono [*Capture*]" stage, and the "Sokko [*Swift Attack*]" stage are added to the "Shiai [*Battle*]" game mode, and [v] the "Udedameshi [*Trial*]" game mode is added.

Also, when the user selects "combine" from the menu to enable MIXJOY, an instruction such that "Do you allow data to be read from the 'Sengoku Musou' disk?" is displayed.

(b) As stated above, on the ground of the capacity of RAM usable in the PlayStation 2 or the like, Appellant alleges that most of key disc programs and data are recorded in an append disc and such programs and/or data are used to achieve expansion of scene, etc. However, there is no objective evidence to support said allegation.

On the contrary, considering the facts as stated in the above (a) such that selection of the "combine" from the menu to enable MIXJOY is followed by the display of the instruction "Do you allow data to be read from the 'Sengoku Musou' disk?" and all the functions added by the "combine" are limited to the "Sengoku Musou" stages and characters, it is difficult to consider that all of these programs and/or data exist in the "Sengoku Musou Moushouden" DVD-ROM. Thus, it is presumed that at least a part of these programs and/or data exists in the "Sengoku Musou" DVD-ROM and when the "Sengoku Musou" DVD-ROM is inserted according to the message, a part of the "Sengoku Musou" game programs

and/or data is read from said DVD-ROM.

It is therefore found that the structures of Method A-1 to A-5 are as stated in the "Structure of Method A" in Attachment 9 and there is no evidence to affect said finding.

(c) Similar to the above (b), according to the evidence (Exhibits Ko A4, A6, A12, A14, A18, and A20) and the entire import of the oral argument, it is found that the structures of Method A-6 to A8, A10 to A15, and A23[i] are as stated in the "Structure of Method A" in Attachment 9.

(d) As stated above, the structure of Method A-1, etc. is as stated in the "Structure of Method A" in Attachment 9 and the comparison between the features of Method A-1, etc. and the constituent features of Inventions A1 and A2 is as stated in said attachment.

Then, as stated in the above (B), it is understood that the "predetermined extended game programs and/or data" of Invention A1 are/is entirely recorded in the "second storage medium," not divided and stored in the "first storage medium" and the "second storage medium." Method A-1, etc. does not have the "predetermined extended game program and/or data" "contained" in the "second storage medium," so that Method A-1, etc. does not satisfy the constituent features B-2, C, and D-1 of Invention A1. Due to the same reason, Method A-1, etc. do not satisfy the constituent features G-2, H, and I-1 of Invention A2.

Hence, Method A-1, etc. is not found to belong to the technical scope of Inventions A1 and A2.

(2) Issue 1-1-2 (Establishment of infringement under the doctrine of equivalent)

As stated in the above (1)B(C)b, Method A-1, etc. are different from Inventions A1 and A2 in that the "predetermined extended game program and/or data" are/is not "contained" in the "second storage medium." With regard to such a difference, Appellant does not make an allegation to the effect that Method A-1, etc. are equivalent to Inventions A1 and A2 in the structure.

Hence, Method A-1, etc. are not found to be equivalent to Inventions A1 and A2 in the structure.

(3) Issue 1-1-3 (Establishment of indirect infringement (Article 101, paragraph (4) of the Patent Act))

A. As stated in the above (1), Method A-9, etc. belong to the technical scope of Invention A1.

Then, Product A-9, etc. are, as stated in the "Structure of Method A" in

Attachment 9, game software to operate a game system by being loaded in game devices including Wii (Product A-9), PlayStation 2 (Products A-16 to A22, A23[ii], A24 to A30, and A35 to A40) and PlayStation 3 (Products A-31 to A-34) and have, under the social standards, except for the above use of being loaded and used in the game devices, no other economical, commercial, or practical uses, so that Product A-9, etc. are found to be an article whose only use is in Method A-9, etc.

Hence, under Article 101, paragraph (4) of the Patent Act, the Appellee's act of manufacturing, selling, and offering for sale of Product A-9, etc. in the course of trade is deemed to be infringement of Patent Right A.

B. Meanwhile, Appellee alleges as follows: [i] "a first storage medium ... and a second storage medium ... are prepared" of Invention A1 mean that each of the storage media is prepared so as to be loaded in the game device by a person working the invention, a user who has only Product A-9, etc. without having a key disc cannot select MIXJOY and therefore does not work the method of Invention A1, and Product A-9, etc. provide a game program with contents being sufficiently enjoyable alone so that Product A-9, etc. have, under the social standards, other economical, commercial, or practical purposes and are not an article whose only use is in the method of Invention A1; and [ii] Invention A1 is worked by the "game system made of the PlayStation loaded with a key disc and an append disc" and Product A-9, etc. are merely used for manufacture of devices by which Method A-9, etc. are worked and therefore do not fall under "an article ... that is used in that process."

Hence, the above Appellee's allegation is discussed below.

(A) a. Firstly, with regard to the above [i], according to the description in the scope of claims (Claim 1) of Invention A1, Invention A1 can be understood to be "a method for operating a game system" (constituent feature E) wherein "a first storage medium containing a predetermined game program and/or data and a predetermined key, and a second storage medium containing, in addition to a predetermined standard game program and/or data, a predetermined extended game program and/or data are prepared" (constituent features B-1 and B-2), and "in loading the second storage medium in the game device" (constituent feature D), "if the predetermined key is read by the game device, the game device is operated with both the standard game program and/or data and the extended game program and/or data, or if the predetermined key is not read by the game device, the game device is

operated with only the standard game program and/or data" (constituent features D-1 and D-2).

Then, according to the descriptions of the constituent features D, D-1, and D-2, it can be understood that the case where a user has only the second storage medium and does not have the first storage medium also falls under "in loading" "the second storage medium" "in the game device," "when the predetermined key is not read" and therefore "the game device is operated with only the standard game program and/or data" is possible.

Meanwhile, with regard to "a first storage medium ... and a second storage medium ... are prepared," the scope of claims (Claim 1) of Invention A1 does not provide description serving as a basis for interpretation such that a subject who "prepares" is a person working the invention (i.e., user who plays the game) and the term "prepare" refers to preparing each of the storage media so as to be loaded in the game device or more specifically means that "in loading the second storage medium in the game device" a person working the invention has the first storage medium.

b. Then, as stated in the above (1)A(B), Description A recites technical significance of "the invention of the present application" in the detailed description of the invention. It is difficult to find the necessity of specifying that "a first storage medium ... and a second storage medium ... are prepared" means preparing each of the storage media so as to be loaded in the game device by a person working the invention (i.e., user who plays the game) in order to achieve such a technical significance. Without specifying the meaning as such, the above technical significance appears to be achievable in a situation where the first storage medium and the second storage medium can be provided by game software manufacturers, etc. and obtained by users.

c. According the description in the scope of claims (Claim 1) of Invention A1 and the description in Description A as stated above, it is understood that "a first storage medium ... and a second storage medium ... are prepared" of Invention A1 means a situation where the first storage medium and the second storage medium can be provided by game software manufacturers and obtained by users, and does not mean that the user actually has each of the storage media. Then, due to the same reason, it is not understood that possession of the first storage medium by a person working the invention is necessary "in loading the second storage medium in the game device."

Hence, the fact that a user who has Product A-9, etc. but does not have a key disc does not affect the decision to the effect that Product A-9, etc. are an article whose only use is in the method of Invention A1.

(B) Then, with regard to the above [ii], Invention A1 is "a method for operating a game system by loading a storage medium ... in the game device" (constituent feature A) and involves "in loading the second storage medium in the game device" (constituent feature D) as the matter used to specify the invention. Product A-9, etc. corresponding to "the second storage medium" are found to fall under "an article ... that is used in that process." Besides, "an article whose only use is in that process" in Article 101, paragraph (4) of the Patent Act is not stipulated as being restricted to be an article used exclusively for working of the patent invention and an article working the patent invention in combination with other articles is also included in the "article."

(C) Based on the above, the Appellee's allegation as stated above is inadmissible.

(4) Issue 1-1-4 (Establishment of tort by act leading to act of working)

Appellant alleges that manufacturing, selling, and offering for sale of Product A-1, etc. by Appellee fall under the act leading to the act of working Inventions A1 and A2 by users and therefore, even if direct infringement is not established because users do not work the patent invention "in the course of trade," the Appellee's act constitutes a tort.

However, as stated in the above (1) and (2), because Method A-1, etc. are not found to belong to the technical scope of Inventions A1 and A2, manufacturing, selling, and offering for sale of Product A-1, etc. by Appellee are not found to fall under the act leading to the act of working Inventions A1 and A2 by users.

Hence, the Appellant's allegation as stated above lacks its basis and is therefore inadmissible.

(5) Issue 1-2-1 (Presence/absence of lack of inventive step in Inventions A1 and A2 based on the invention publicly known or publicly worked by Game System A1)

A. The invention publicly known or publicly worked by Game System A1

(A) According to the evidence (Exhibits Otsu A2 to A6, A8 to A10, A13, and A14 (including branch numbers)) and the entire import of the oral argument, the following facts are found.

A method for operating game system realized by using articles released before Patent Application A (December 9, 1994) including the Family Computer (released in 1983, Exhibit Otsu A5-3), the Family Computer Disk System

(released on February 21, 1986, Exhibit Otsu A6-2), the game software "Madou Senki [*The Hell Cave of the Military History*]" (released on December 19, 1986, Exhibit Otsu A3-2), the game software "Yuushi no Monshou" (released on May 29, 1987, Exhibit Otsu A3-4) , and a TV was publicly known prior to Patent Application A (hereinafter referred to as "Publicly Known Invention 1").

The structure of Publicly Known Invention 1 is as follows.

- a. A method for operating the Family Computer Game System comprising the Family Computer, a disk system, and a TV and using a disk to play a game, the disk being capable of storing saved data, storing a game program and/or data, and being replaceable during operation of the Family Computer Game System, and the disk being inserted into the disk system,
- e. the method for operating the Family Computer Game System being characterized in that
 - b. the disk is an RWM (readable writable memory),
 - b-1. a Madou Senki DDI containing a Madou Senki game program and/or data, and information indicating that the level of a character saved in Madou Senki is 21, and
 - b-2. a Yuushi no Monshou DDII containing, in addition to a standard game program and/or data to execute a standard game function part, an extended game program and/or data to execute an operation function for a character transferred from the Madou Senki DDI having a level of 16 or above in Madou Senki by setting the character to have a level of 2 initially in Yuushi no Monshou, displaying a message "Yukenshi no shison Junku yo, Ganbaru no da zo [*Junku, as a descendant of brave swordsman, do your best*]" responsive to prayer in a shrine, and increasing the number of items "Kusa no tsuyu" and "Shiro kinoko" by one are prepared,
- c. the extended game program and/or data are/is formed to achieve more levels of the character and more items for the character relative to the standard game program and/or data,
- d. in insertion of the Yuushi no Monshou DDII in the disk system,
 - d-1. when information indicating that the level of a character is 21 or 16 or above is read from the Madou Senki DDI by the Family Computer, the Family Computer is operated with both the standard game program and/or data to execute the standard game function part and the extended game program and/or data to execute an extended game function part, or
 - d-2. when information indicating that the level of a character is 16 or above is

not read from the Madou Senki DDI by the Family Computer, the Family Computer is operated with only the standard game program and/or data to execute the standard game function part.

(B) Meanwhile, Appellant alleges that there are Differences 1-3 to 1-5 in addition to Differences 1-1 and 1-2 between Invention A1 and Publicly Known Invention 1 because the "extended game program and/or data" of Invention A1 allows users to enjoy the extended game contents in addition to the standard game contents (Description A, [0020], etc.) and it is understood that a game program and/or data replacing the standard game contents is not included therein.

The above allegation is discussed. According to the description in the scope of claims (Claim 1) of Invention A1, it can be understood that the "predetermined extended game program and/or data" is a "game program and/or data to achieve, in addition to the standard game program and/or data, more game characters and/or enriched functions of the game characters and/or expansion of scenes and/or enriched sound" and "contained" in the "second storage medium" and "in loading the second storage medium in the game device" "when the predetermined key" "contained" in the "first storage medium" is "read" by "the game device," "the game device is operated with both the standard game program and/or data and the extended game program and/or data."

Meanwhile, the above scope of claims provides no description serving as a basis for limited interpretation such that "the standard game program and/or data" operating when "the game device is operated with both the standard game program and/or data and the extended game program and/or data" represent(s) the entirety of "the standard game program and/or data." Then, the detailed description of the invention in Description A also provides no description serving as a basis for interpretation such that the case where "the game device is operated with both the standard game program and/or data and the extended game program and/or data" does not include the case of operation of only a part of "the standard game program and/or data" and the entirety of "the standard game program and/or data" needs to be operated.

As stated in the above (A), the "Yuushi no Monshou DDII" of Publicly Known Invention 1 contains a game program and/or data to execute an operation function for a character transferred from the Madou Senki DDI having a level of 16 or above in Madou Senki by [i] setting the character to have a level

of 2 initially in Yuushi no Monshou, [ii] displaying a message "Yukenshi no shison Junku yo, Ganbaru no da zo [*Junku, as a descendant of brave swordsman, do your best*]" responsive to prayer in a shrine, and increasing the number of items "Kusa no tsuyu" and "Shiro kinoko" by one.

Thus, with regard to the above [i], a game character which starts from the level 1 in the standard game contents of "Yuushi no Monshou" (Exhibit Otsu A4-2/sheet 11 and Exhibit Otsu A8-1/page 8) is allowed to start from the level 2 (Exhibit Otsu A4-1/sheet 8). With regard to the above [ii], an item which cannot be obtained without payment in gold in the standard game contents (Exhibit Otsu A4-1/sheet 13 and Exhibit Otsu A4-2/sheet 8) can be obtained by prayer in a shrine (Exhibit Otsu A9/page 2 and Exhibit Otsu A10/page 3). Therefore, both provide new functions for the game character, which obviously falls under "enriched functions of the game characters."

Additionally, with regard to the above [ii], instead of the scene displaying the message "Anata no tatakai ga buji owarimasuyou. Akuma ni wazawai wo! [*May your battle end in peace. Bring an evil upon the devil!*]" responsive to prayer in a shrine in the standard game contents of "Yuushi no Monshou," the scene displaying the message "Yukenshi no shison Junku yo, Ganbaru no da zo [*Junku, as a descendant of brave swordsman, do your best*]" responsive to prayer in a shrine and increasing the number of items "Kusa no tsuyu" and "Shiro kinoko" by one is provided, which obviously falls under "expansion of scenes."

From the above, it is found that "Yuushi no Monshou DDII" as Publicly Known Invention 1 contains, in addition to "a standard game program and/or data to execute a standard game function part," a game program and/or data to achieve "enriched functions of the game characters" and "expansion of scenes" or the "extended game program and/or data" of Invention A1.

Hence, the Appellant's allegation as stated above is inadmissible.

(C) On the other hand, Appellee alleges that the "information indicating that the level of a character (Junku) is 16 or above" of Publicly Known Invention 1 corresponding to the "predetermined key" is [i] data indicating that Madou Senki DDI is loaded, and [ii] saved data of the character (Junku) at the level of 16 or above.

The above allegation is discussed. According to the evidence (Exhibits Ko A4-1, A4-2, and A13-2) and the entire import of the oral argument, it is found in Game System A1 that users can play the game with the character "Junku" in

Yuushi no Monshou as well by loading the Yuushi no Monshou DDII first, then loading the Madou Senki DDI based on the instruction such that "Madou Senki no A men wo irete kudasai [*Insert the side A of Madou Senki*]" and selecting the character "Junku," followed by loading the Yuushi no Monshou DDII again.

However, it does not mean that loading the Madou Senki DDI naturally causes the family computer to be operated with both the game program and/or data to achieve "enriched functions of the game characters" and "expansion of scenes" of Publicly Known Invention 1, corresponding to the "extended game program and/or data" of Invention A1, and the standard game program and/or data. As stated in the above (A) and (B), the feature "the Family Computer is operated with both the standard game program and/or data and the extended game program and/or data" of Publicly Known Invention 1 requires reading the saved data of the character (Junku) at the level of 16 or above from the Madou Senki DDI. If such data are not read, operation such as loading the Madou Senki DDI based on the instruction as stated above leads to "the Family Computer is operated with only the standard game program and/or data" of Publicly Known Invention 1.

From the above, it is found that the data in the above [i] do not serve as a condition to activate the "extended game program and/or data" of Publicly Known Invention 1 and is therefore not included in the "information indicating that the level of the character (Junku) is 16 or above" of Publicly Known Invention 1 corresponding to the "predetermined key" of Invention A1.

Hence, the Appellee's allegation as stated above is inadmissible.

B. Comparison of Invention A1 and Publicly Known Invention 1

When Invention A1 and Publicly Known Invention 1 are compared, the following differences are found.

(Difference 1-1)

Invention A1 has the first storage medium and the second storage medium as a "storage medium (excluding a storage medium capable of storing saved data)," whereas Publicly Known Invention 1 has the "disk capable of storing saved data."

(Difference 1-2)

The "first storage medium" of Invention A1 excludes a storage medium capable of storing saved data, and therefore the "predetermined key" does not include saved data, whereas in Publicly Known Invention 1, the "predetermined key" contained in the Madou Senki DDI is saved data stored in the Madou Senki DDI and information indicating that the level of a character saved in the Madou

Senki DDI is 21.

C. Whether Differences are easily conceivable

(A) Technical idea of Publicly Known Invention 1

Considering, in addition to the details of Publicly Known Invention 1, each evidence listed in the above A and the entire import of the oral argument comprehensively, it is found that [i] "Yuushi no Monshou" is a sequel to the previous work "Madou Senki" in the Deep Dungeon (DD) series and both games have a series of stories such that Satan was overturned by the brave swordsmen and peace returned in Madou Senki, but rebirth of Satan causes the brave swordsmen to have an adventure again in Yuushi no Monshou, [ii] by transferring the character of the brave swordsmen in "Madou Senki" to "Yuushi no Monshou," the "Yukenshi [*brave swordsmen*]" in "Madou Senki" can be revived as "Yushi [*warrior*]" in "Yuushi no Monshou," [iii] the character at the level of 16 or above in "Madou Senki" can be played as a character in the level 2 instead of the level 1 in "Yuushi no Monshou," [iv] in this case, the character at the level of 16 or above which was transferred from "Madou Senki" can be revived as a "Yukenshi no Shison [*descendant of the brave swordsmen*]" in "Yuushi no Monshou," and [v] the list of characters in "Madou Senki" is understood to be saved in a disc because the game is discontinued in the middle of playing with a certain character in "Madou Senki" and then starts again from the discontinued scene.

According to the facts found above, Publicly Known Invention 1 is found to have a technical idea of providing stories to be continuous from the previous work to the subsequent work and then allowing players to play the subsequent game with characters from the previous game or play the subsequent game advantageously based on play results of the previous game, thereby evoking users who have played the previous game to have a desire to play the subsequent game as a sequel to the previous game and therefore urging the users to purchase the subsequent game.

(B) Difference 1-1

As stated in the above (A), Publicly Known Invention 1 allows, in the game played with characters, transferring characters saved in the previous game to the subsequent game, saving data in the previous game in the middle of playing, and offering a privilege of playing the subsequent game advantageously with a character that achieved the level of 16 or above.

Thus, essential conditions to play the subsequent game advantageously in

Publicly Known Invention 1 include at least saving data in the middle of playing the previous game and achieving a certain degree of the game or having the result of playing the previous game until a character achieves the level of 16 or above. Publicly Known Invention 1 is based on the premise that information indicating "characters" and "play results" is saved in the storage medium of the previous game. If a storage medium which is unable to save information of "characters" and "play results" is adopted, information of "characters" and "play results" in the previous game is not stored in the storage medium. In this case, it is clearly impossible to realize Publicly Known Invention 1 involving "play the subsequent game with characters from the previous game" and "a character at the level of 16 or above in the previous game allows operation of the extended game program in the subsequent game."

Hence, even if use of CD-ROM as a medium for storing a game program and/or data was the well-known art prior to filing of application of Patent A and it is a common practice to transplant a game of the same title to a CD-ROM or ROM cassette as alleged by Appellee, no motivation is found in the Publicly Known Invention 1 to replace the storage medium with a "storage medium (excluding a storage medium capable of storing saved data)" which cannot save game characters and play results. Thus, there is a factor teaching away from adopting such a storage medium.

As stated above, it is not found to have been easily conceivable for a person ordinarily skilled in the art to provide the feature of Invention A1 in connection with Difference 1-1 in Publicly Known Invention 1.

(C) Difference 1-2

Due to the same reason as stated in the above (B), there is no motivation and there should be a factor teaching away from adopting the feature of Invention A1 in connection with Difference 1-2 in Publicly Known Invention 1. Thus, the feature of Invention A1 is not found to have been easily conceivable to a person ordinarily skilled in the art.

(D) Appellee's allegation

Meanwhile, Appellee alleges, based on the premise that Differences 1-1 and 1-2 are caused by Correction A made to exclude the "storage medium capable of storing saved data" from the "first storage medium" and the "second storage medium" and, as a result, exclude saved data from the "predetermined key" (to provide the "excluding claim"), in case of finding any differences in formality between Invention A1 and main cited invention due to the correction in the

excluding claim, [i] whether or not a structure relevant to the difference provides a function and operation different from the main cited invention should be investigated from the technical viewpoint, [ii] in case of finding no technical significance, such differences should be interpreted as constituting no substantial difference and leading to denial of novelty, or [iii] in case of finding technical significance, whether or not such differences merely fall under a design matter to be achieved appropriately by a person ordinarily skilled in the art should be investigated, and in case of merely falling under a design matter, such differences should be interpreted as leading to denial of inventive step, whereas Correction A is not regarded as exhibiting technical solution means and has no technical significance in relation to the problem of Invention A1 which is to allow users to enjoy a game with a variety of contents by purchasing and collecting a series of game software, and the function and operation as well as technical idea of Invention A1 remain unchanged before and after Correction A, whereby Differences 1-1 and 1-2 are not regarded as substantial differences and at least fall in a design matter to be achieved appropriately by a person ordinarily skilled in the art.

However, as stated in the above (B) and (C), no motivation is found and there should be a factor teaching away from adopting the feature of Invention A1 in connection with Differences 1-1 and 1-2 in Publicly Known Invention 1

In addition, providing the "first storage medium" and the "second storage medium" by "excluding a storage medium capable of storing saved data" in Invention A1 exhibits a function and operation and has technical significance in allowing users to play the subsequent game with the extended game program and/or data irrespective of play results in the previous game. Therefore, Differences 1-1 and 1-2 are found be substantial differences and are not found to fall under a design matter to be achieved appropriately by a person ordinarily skilled in the art.

Hence, the Appellee's allegation as stated above is inadmissible.

(E) Summary

As stated above, no motivation is found and there should be a factor teaching away from adopting the feature of Invention A1 in connection with Differences 1-1 and 1-2 in Publicly Known Invention 1. Thus, the feature of Invention A1 is not found to have been easily conceivable to a person ordinarily skilled in the art.

Hence, Invention A1 is not found to have been easily achieved by a person

ordinarily skilled in the art based on Publicly Known Invention 1.

(6) Issue 1-2-2 (Presence/absence of lack of inventive step in Inventions A1 and A2 based on the invention publicly known by the game system realized by the MSX-based game software "Gambler Jiko Chuushinha" and "Gambler Jiko Chuushinha 2 Jishou! Kyougou Janshi Hen" and the MSX-based machine)

A. Invention publicly known by the game system realized using "Gambler," "Gambler 2" and the MSX-based machine

(A) According to the evidence (Exhibits Otsu A17, A29, A30, A36, A39, A40, A61, and A62 (including branch numbers)) and the entire import of the oral argument, the following facts are found.

A method for operating a game system realized by articles released prior to Patent Application A (December 9, 1994) including the MSX-based machine "MSX2" (Exhibits Otsu A29 and A61), the MSX-based game software "Gambler" (released on November 11, 1987, Exhibit Otsu A62-1), the MSX-based game software "Gambler 2" (released on April 21, 1989, Exhibit Otsu A17-1), and a TV was publicly known prior to filing of Patent Application A (hereinafter referred to as "Publicly Known Invention 3").

The structure of Publicly Known Invention 3 is as follows.

- a. A method for operating a game system by loading a ROM cassette storing a game program in an MSX-based machine "MSX2" having a ROM cassette slot 1 and a ROM cassette slot 2,
- e. the method for operating a game system being characterized in that
- b. as the ROM cassette,
 - b-1. a "Gambler" ROM cassette containing a "Gambler" game program and data to allow playing a "free battle" and a "tournament battle" with 12 "Gambler" characters and a predetermined key, and
 - b-2. a "Gambler 2" ROM cassette containing, in addition to a game program and data to allow playing a "free battle" with 16 "Gambler 2" characters, a predetermined extended game program and data are prepared,
- c. the extended game program and data allow selection of three kinds of modes including a "free battle," a "tournament battle," and an "octopus punitive battle," selection of the "free battle" mode allows playing the "free battle" with a total of 28 characters including 16 "Gambler 2" characters and 12 "Gambler" characters, selection of the "tournament battle" mode allows playing the "tournament battle" with a total of 28 characters including 16 "Gambler 2" characters and 12 "Gambler" characters, and selection of the "octopus punitive

battle" mode allows playing the "'octopus punitive battle' in which a total of 28 characters combining 'Gambler' and 'Gambler 2' characters are divided into an 'octopus side' and an 'anti-octopus side' to compete for which side conquers a mah-jongg parlor in Tokyo," and

- d. in turning on power and operating the machine "MSX2" with the "Gambler 2" ROM cassette loaded in the ROM cassette slot 1,
 - d-1. if the machine "MSX2" is operated in a state of reading the predetermined key by loading the "Gambler 2" ROM cassette in the ROM cassette slot 1 and loading the "Gambler" ROM cassette in the ROM cassette slot 2, the machine "MSX2" is operated with the game program and data to allow playing the "free battle" with 16 "Gambler 2" characters, the game program and data of "Gambler," and extended game program and data, or
 - d-2. if the machine "MSX2" is operated in a state without reading the predetermined key by loading only the "Gambler 2" ROM cassette in the ROM slot 1, the machine "MSX2" is operated with only the game program and data to allow playing the "free battle" with 16 "Gambler 2" characters.

(B) Meanwhile, Appellee makes allegations as follows: [i] on the ground that the name font data of added 12 characters is recorded in the "Gambler 2" ROM cassette and the "octopus punitive battle" graphics are recorded in the "Gambler 2" ROM cassette when the "Gambler 2" ROM cassette and the "Gambler" ROM cassette are used, and the game device MSX2 is operated with the "extended game program" of the "Gambler 2" as long as the "Gambler" ROM cassette is inserted in operation of the game device MSX2 and even if the "Gambler" ROM cassette is not inserted thereafter (Exhibits Otsu A36-1 and A36-3), the entirety of the extended game data and the extended game programs is recorded in the "Gambler 2" ROM cassette, and [ii] it is not necessarily the case in Publicly Known Invention 3 that the game device is not operated with the extended game program of "Gambler 2" unless "Gambler" is loaded constantly, and as shown in the flowchart provided in the attachment 4, "Gambler 2" determines in several stages whether or not a switch key stored in "Gambler" is read so as to determine whether the game device should be operated with the extended game program of "Gambler 2."

However, with regard to the above [i], according to the evidence (Exhibit Ko A53 and Exhibit Otsu A76) and the entire import of the oral argument, it is found that in the case of selecting the free battle by loading both the "Gambler 2" ROM cassette and the "Gambler" ROM cassette in the machine MSX2 and then

removing the "Gambler" ROM cassette, the game device restarts without displaying the screen for opponent selection (face image of "Mochisugi Dorao," a character in the "Gambler"), and similarly in the case of selecting the tournament battle and then removing the "Gambler" ROM cassette, the game device freezes without displaying the "Gambler" character face screen in the opponent display screen, or in the case of selecting the octopus punitive battle and then removing the "Gambler" ROM cassette, the game device freezes without displaying the "Mochisugi Dorao" face image in the screen for selection of "accompanied person" (character).

It is found that these facts allow a presumption such that the "Gambler 2" ROM cassette records the name font data to select 12 characters appearing in "Gambler" and graphic data of the octopus punitive battle, and data to play the game such as face images, personalities, fortunes, and technical skills of 12 characters appearing in "Gambler" are recorded only in the "Gambler" ROM cassette.

According to the evidence (Exhibits Otsu A36-1 and A36-3), it is found that the game is advanced by one half-game in a state displaying the opponent screen when both the "Gambler 2" ROM cassette and the "Gambler" ROM cassette are loaded in the machine MSX2, the free battle is selected, "Gambler" characters are selected as opponents from the opponent selection screen to start the free battle, and then the "Gambler" ROM cassette is removed. However, it is reasonable to presume that the game can be advanced in a state of removing the "Gambler" ROM cassette, because upon selection of "Gambler" characters as opponents, data of these characters are read from the "Gambler" ROM cassette loaded in the machine MSX2. Thus, such a fact does not affect the above presumption.

In addition, when only the "Gambler 2" ROM cassette is loaded in the game device, the tournament battle mode in "Gambler" is an inoperable play mode (Exhibits Otsu A39 and A40) and thus there is no evidence that is sufficient to find that the tournament battle game program is recorded in the "Gambler 2" ROM cassette.

From the above, in the "free battle," "tournament battle," and "octopus punitive battle" played by loading both the "Gambler 2" ROM cassette and the "Gambler" ROM cassette, data of 12 added "Gambler" game characters are recorded in the "Gambler" ROM cassette. Thus, it is found that both the "Gambler 2" ROM cassette and the "Gambler" ROM cassette need to be loaded continuously in the machine MSX2 when the game is played with 28 characters.

Next, with regard to the above [ii], as stated in the above (a), Publicly Known Invention 3 allows selection of three kinds of modes including the "free battle," the "tournament battle," and the "octopus punitive battle" when the "Gambler 2" ROM cassette is loaded in the ROM cassette slot 1, the "Gambler" ROM cassette is loaded in the ROM cassette slot 2, and power is turned on to operate the machine "MSX2", in which these game battles can be played with a total of 28 characters, while it is also possible to play only the free battle with 16 "Gambler 2" characters by operating the machine "MSX2" with only the "Gambler 2" ROM cassette loaded in the ROM slot 1. Thus, it is found that only the fact of the "Gambler" ROM cassette loaded in the ROM cassette slot 2 in Publicly Known Invention 3 corresponds to the "predetermined key" of Invention A1.

Note that, as stated above, to play the "free battle," the "tournament battle," and the "octopus punitive battle" with a total of 28 characters in Publicly Known Invention 3, both the "Gambler" ROM cassette and the "Gambler 2" ROM cassette need to be loaded continuously in the machine MSX2 to successively read data of 12 characters appearing in "Gambler" and data of the "tournament battle" or other data into the game device from the "Gambler" ROM cassette. However, these operations are merely required to execute the game and do not fall under the "predetermined key."

Hence, the Appellee's allegation as stated above is inadmissible.

B. Comparison between Invention A1 and Publicly Known Invention 3

When Invention A1 and Publicly Known Invention 3 are compared, the following differences are found.

(Difference 1)

The storage medium of Invention A1 is a storage medium being replaceable during operation of the predetermined game device, whereas the storage medium of Publicly Known Invention 3 is not replaceable during operation of the game device.

(Difference 2)

If the predetermined key is read by the game device and the game device is operated with both the standard game program and data and the extended game program and data, Invention A1 involves loading of the second storage medium, whereas Publicly Known Invention 3 requires loading of both the first storage medium ("Gambler" ROM cassette) and the second storage medium ("Gambler 2" ROM cassette).

(Difference 3)

If the predetermined key is read by the game device and the game device is operated with both the standard game program and data and the extended game program and data, the extended game program and data are contained in the second storage medium in Invention A1, whereas the entirety of the extended game program and data is not recorded in the second storage medium ("Gambler 2" ROM cassette) but a part thereof is recorded in the first storage medium ("Gambler" ROM cassette) according to Publicly Known Invention 3.

C. Whether Differences are easily conceivable

In light of this case, Differences 2 and 3 are discussed below.

As stated in the above A, in Publicly Known Invention 3, the entirety of the extended game program and data is not recorded in the second storage medium ("Gambler 2" ROM cassette) but a part thereof is recorded in the first storage medium ("Gambler" ROM cassette), and when the game device is operated with both the standard game program and data and the extended game program and data, both the first storage medium and the second storage medium need to be loaded. The game device is allowed to function appropriately by adopting such a structure. Hence, no motivation is found to dare to change such a structure and make the second storage medium record the same extended program and data as those recorded in the first storage medium. Also, there is no evidence that is sufficient to find that such a technology was well known to a person ordinarily skilled in the art prior to Patent Application A.

Hence, it cannot be found to have been easily conceivable to a person ordinarily skilled in the art to [i] operate the game device with both the standard game program and data and the extended game program and data by loading only the second storage medium without loading both the first storage medium and the second storage medium simultaneously if the predetermined key is read by the game device (feature of Invention A1 in connection with Difference 2), and [ii] make the second storage medium ("Gambler 2" ROM cassette) record the entirety of the extended game program and data when the game device is operated with both the standard game program and data and the extended game program and data (feature of Invention A1 in connection with Difference 3) in Publicly Known Invention 3.

D. Summary

As stated above, it is not found to have been easily conceivable to a person ordinarily skilled in the art to provide the features of Invention A1 in connection with Differences 2 and 3 in Publicly Known Invention 3.

Hence, Invention A1 is not found to have been easily achieved by a person ordinarily skilled in the art based on Publicly Known Invention 3.

(7) Issue 1-3 (Presence/absence of damages suffered by Appellant and the amount of damages)

Appellant alleges the amount of damages calculated under Article 102, paragraph (3) of the Patent Act. Article 102, paragraph (3) provides a statutory provision of the minimum amount of damages to be claimed by the patentee in case of patent infringement. The damages under Article 102, paragraph (3) should be, in principle, calculated based on sales of an infringing product which is multiplied by a rate to be received for working.

A. The amount equivalent to the amount of money to be received for working of the patent invention

(A) As a background of "the amount equivalent to the amount of money to be received for working of the patent invention" stipulated in Article 102, paragraph (3) of the Patent Act, it was specified as "the amount of money equivalent to the amount of money to be normally received for working of the patent invention" before the amendment by Act No. 51 of 1998, but the term "normally" was deleted in said amendment because "the amount of money to be normally received" makes it beneficial to infringe the patent invention.

In the license agreement of patent invention, a rate of royalty is determined in advance in an uncertain stage as to whether or not a product belongs to the technical scope of the patent and whether or not the patent should be invalidated, in circumstances usually subject to various contractual restrictions such that the minimum guaranteed amount is paid by the licensee and it is not permitted to demand a refund for the paid royalty even if the patent is invalidated. However, if infringement of the patent is determined on the ground that a product belongs to the technical scope of the patent and the patent is not found to be deemed invalid, the infringer is not subject to the contractual restrictions as stated above. Then, in light of the background of amendment of the Patent Act as stated above, there is no necessity of being always based on the rate of royalty in the license agreement of the patent to calculate damages under Article 102, paragraph (3), and it should be taken into consideration that a rate to be received for working, which should be determined ex post facto to the person who infringed the patent, will become naturally higher than the usual rate of royalty.

Hence, a reasonable rate to be received for working should be determined by comprehensively considering [i] while taking into account the actual rate of

royalty in the license agreement of the patent invention, or if the rate of royalty is not clear, the market value of royalty in the industry, [ii] the value of the patent invention per se; i.e., technical contents, importance, and substitutability of the patent invention, [iii] contribution to sales and profits or the state of infringement if the patent invention is used for the product, and [iv] various circumstances appearing in the litigation such as competitive relationship between the patentee and the infringer and business principles of the patentee.

(B) Found facts

a. Actual rate of royalty of Patent A in the license agreement is not expressed in this litigation.

Then, according to the evidence (Exhibits Otsu A115 and A116 and Exhibit Otsu B28) and the entire import of the oral argument, the following facts are found.

(a) In Table 2-2 showing the result of the survey of information of royalty rate for patent (hereinafter referred to as "Survey") conducted by Teikoku Databank, Ltd. in preparation for "Chitekizaisan no kachihyouka wo fumaeta tokkyo tou no katsuyou no arikata ni kansuru chousakenkyu houkokusho - chitekizaisan (shisan) kachi oyobi royalty ryouritsu ni kansuru jittai haaku - (Heisei 22 nen 3 gatsu) [*Report on research about the direction of utilization of patents based on intellectual property value evaluation - understanding of actual situation concerning the intellectual property (asset) value and the royalty rate - (March 2010)*]" (Exhibit Otsu B28, Research Report), the averaged royalty rate for patents in the technical classification of "furniture and games" is 2.5% (maximum: 4.5%, minimum: 0.5%, standard deviation: 1.5%) (14 answers).

(b) Research Report states preconditions for answering and counting in the research results of Survey as follows: [i] answer from the standpoint of out-licensing (granting a license); [ii] assume that licensing is granted to other companies in the industry in Japan; [iii] assume that licensing is granted under non-exclusive license (in the form of allowing a license to be granted to multiple parties instead of having an exclusive receiver of license); [iv] assume a rate relative to net sales; [v] special circumstances (such as royalty calculation under the entire market value rule (i.e. rule to calculate the amount of damages based on the unit price of the product as a whole containing the infringed part even if the patent technology is used only partially in the product), and circumstances of contract partner) are eliminated in this case; and [vi] answer the market value of royalty rate from multiple choices in each

category but count a median in each choice as a royalty rate in counting.

(c) "II. Kakkoku no royalty ryouritsu [*Royalty rate in each country*]" of "Royalty ryouritsu data handbook - Tokkyo-ken Shouhyou-ken Program chosaku-ken Gijutsu know-how - [*Royalty rate data handbook - Patent Right Trademark Right Programing Copyright Technical Know-How -*]" edited by Intellectual Property Policy Office, Ministry of Economy, Trade and Industry (issued on August 31, 2010) states as follows: [i] the most widely adopted royalty calculation method is a fixed-rate method in which the royalty is calculated by "selling price of subject product \times royalty rate"; [ii] for a royalty base covered by a selling price, a gross selling price, a net selling price (actual selling price), a retail price, etc. are used, but a net selling price (actual selling price) is adopted relatively often in practical affairs; and [iii] the net selling price (actual selling price) is defined as a price remaining after deducting certain expense items from the gross selling price and the deducted expense items are, in general, centered on cost items that may be variable depending on the sales location, such as transport cost, insurance cost, warehouse storage cost, rebate, packing/packaging cost, but these cost items vary depending on common practices in the industry, product types, etc.

b. As stated in the above (1)A, Invention A1 relates to a method for operating a game system by loading a storage medium for storing a game program and/or data in a predetermined game device, wherein as the storage medium, at least a first storage medium containing a predetermined game program and/or data and a predetermined key, and a second storage medium containing, in addition to a predetermined standard game program and/or data, a predetermined extended game program and/or data are prepared, and in loading the second storage medium in the game device, if the predetermined key is read by the game device, the game device is operated with both the standard game program and/or data and the extended game program and/or data. Thus, an effect is provided such that, for users, purchasing and collecting a series of storage media priced appropriately to purchase at once is ultimately the same as obtaining game software with extremely rich contents, and for manufacturers, it becomes possible to provide game software with a huge amount of contents requiring significant development costs in a manner allowing users to purchase easily.

As such, Invention A1 is a method for operating a game system with the features and effects as stated above, while Method A-9, etc. belong to the technical scope of Invention A1, and Product A-9, etc. that are game software

loaded in a game device to execute the game correspond to the "second storage medium" of Invention A1 and inevitably involve working of Invention A1. Then, as stated in the above (1)B, Product A-9, etc. allow activating the extended game program and/or data, in addition to the standard game program and/or data stored in the append disc (second storage medium), by reading the predetermined key from the key disc (first storage medium). Thus, Invention A1 is found to have considerable importance to Product A-9, etc.

In addition, with regard to the system operating method for information processing devices such as home game machines, an alternative technology to the above technology of Invention A1 cannot be seen.

- c. (a) As stated in the above b, Invention A1 is an inevitable technology for activating the extended game program and/or data recorded in Product A-9, etc. It is found that varieties of functions of game characters, scenes, and sound in game software loaded in the home game machine body to enjoy the game usually affect the incentive for consumers to purchase.

Then, Appellee introduces MIXJOY function in the product manual (Exhibits Ko A5, A7, A8, A10, and A11) in selling Product A-9, etc. and explains that users having the disk of the previous work (key disc) can enjoy MIXJOY in combination with the current work (append disc) such as playing the game with characters of the current work according to the story of the previous work and reaching the ending scene with all the characters, as opposed to the ending scene reached with only certain characters in the previous work.

Considering these circumstances, it is found that use of Invention A1 in Product A-9, etc. contributes to Appellee's sales and profits.

- (b) Meanwhile, according to the evidence (Exhibits Otsu A84, A94 to A96, A98 to A101, and A104 to A114 (including branch numbers)) and the entire import of the oral argument, the following facts are found.

[i] Among Product A-9, etc., Products A-9, A-16 to A-22, A-23[ii], and A-24 to A-34 are game software developed by Appellee including "Shin Sangoku Musou [*True Three Kingdoms Unrivaled*] series" released for sale in 2000 and "Sengoku Musou [*Samurai Warriors*] series" released for sale in 2004. Game software of said series has been continuously achieving a high-ranking number of sales in the game software market.

As a factor behind the popularity of said series, there is an evaluation such that it is an action game based on the history inspired by the Sengoku period,

the period of warring states, and the Sangokushi, the three kingdoms, with a refreshing feeling given by characters who beat numerous enemies while running around the field freely, simple operation for all the attacks including normal attack, charge, and Musou Ranbu [*warrior boisterous dance*] by pressing a button, and attractive good-looking characters inspired by Busho [*Japanese military commanders*].

According to the result of the survey to users who purchased Product A-9, etc. (Exhibits Otsu A84-1 to A84-6), most of the respondents to the question about what made them to purchase the product answered "fan of Sengoku Musou," "fan of Sangokushi," and "fan of Musou series" and about twenty percent of them answered "fan of Koei (Appellee)."

To sell Product A-9, etc., Appellee advertised said product through TV commercials, advertisement in magazines, magazine articles, etc. In these advertisements, it was also introduced that MIXJOY function can be used as well by having the key disc of the previous work, although as a whole, the emphasis was placed on introducing the game story and characters.

[ii] Among Product A-9, etc., Products A-35 to A-40 are game software of "Harukanaru toki no naka de [*In a Distant Time*]" series developed by Appellee and released for sale in 2000. "Harukanaru toki no naka de" series is a Japanese-style fantasy love simulation game in which a high school girl is moved to a different world like old Japan and aims at achieving the success of love with a man in the setting of the different world. The "Neo Romance series" game software including said series as a love game for women produced by Appellee has been continuously achieving a high-ranking number of sales in the market of simulation game software for women.

According to the result of the survey to users who purchased Product A (Exhibit Otsu A106), most of the respondents to the question about what made them to purchase the product answered "fan of said series" and about thirty percent of them answered "fan of Ruby Party (Appellee's in-house development team for the game targeted at women)." Additionally, according to the result of the survey to users of "Neo Romance series," more than half of those answered that characters motivated them to purchase.

The "Harukanaru toki no naka de" series started as a comic book series prior to the sales of the game software and the number of sales reached 2.5 million copies altogether (when volume 11 out of the total of 14 volumes was released). Appellee promoted sales of the game software by, in addition to

the above, hosting various kinds of events, broadcasting animated TV series, selling CDs and DVDs, etc.

According to the above, Product A-9, etc. come up with various ingenious ideas for the game characters and contents and the sales method which deliver a great appeal to consumers. Compared to these factors, the degree of contribution of Invention A1 to the sales of Product A-9, etc. is found to be low.

In addition, among the MIXJOY function described by Appellee in the instruction manual or handbook (Exhibits Ko A5, A7, A8, A10, and A11 and Exhibit Otsu A82 (including branch numbers)) and the functions advertised by Appellee (Exhibit Otsu A82-1/page 9 and Exhibit Otsu A82-6/page 3, etc.) in selling Product A-9, etc., the function to allow data saved in the key disc (corresponding to the "first storage medium" of Invention A1) to be taken over is not a function relevant to Invention A1.

(c) According to the evidence (Exhibits Otsu A80, A118, and A119) and the entire import of the oral argument, the following facts are found.

[i] Among Product A-9, etc., Products A-17 to A-19, A-21, A-23[ii], A-25 to A-27, A-30, A-32, A-36, A-38, and A-40 are, as stated in the "Sales (after correction)" "Item details" column in Attachment 7, package commodities containing, in addition to the game software (storage medium) corresponding to the "second storage medium" of Invention A1, one to five pieces of game software (storage medium) of the same series as the above game software ("Shin Sangoku Musou series," "Sengoku Musou series" or "Harukanaru toki no naka de series").

[ii] Among Product A-9, etc., Products A-19 and A-23[ii] are provided with the "CD-ROM containing the most powerful data" in addition to the above multiple game software. This CD-ROM is not a storage medium to play the game itself but records data (data of characters having the maximum ability value, etc.) used in the game software corresponding to the "second storage medium" of Invention A1.

[iii] Among Product A-9, etc., Product A-39 includes, as stated in the "Sales (corrected)" "Item details" column in the attachment 7, goods (collection of original images by MIZUNO Toko, 8 pieces of still illustration art cards) in addition to the game software corresponding to the "second storage medium" of Invention A1.

Note that the recommended retail price of Product A-39 is 9800 yen and

the recommended retail price of the game software (Product A-35) released on the same date is 4980 yen.

[iv] Among Product A-9, etc., Product A-40 is packed with goods stated in "Sales (corrected)" "*Included goods" in Attachment 7.

d. Appellant and Appellee are both stock companies engaged in manufacturing, sales, etc. of game equipment and software and are competitors to each other.

(C) Amount of money to be received for working

a. As stated in the above (B), in this litigation, an actual rate of royalty in the license agreement of Patent A is not expressed. However, the result of Survey shows that the recent statistical average rate of royalty in the field to which the technical field of Patent A belongs is 2.5% (maximum: 4.5%, minimum: 0.5%, standard deviation: 1.5%) and said rate of royalty is found to be a rate estimated relative to net sales. Then, based on the above, even though it is undeniable that ingenious ideas for the game characters and contents and the sales method, etc. significantly contribute to the sales in the game software associated with infringing articles, it is also found that the technology of Invention A1 reasonably contributes to the increase of sales, there is no technology replacing Invention A1, and Appellant and Appellee are competitors to each other. Considering such circumstances emerging in this litigation, it is reasonable to find that a rate to be received for working in this case which should be defined ex post facto against a person who infringed the patent (hereinafter referred to as "Rate of Royalty A") is not to be less than 3.0% of the Appellee's actual selling price including the amount equivalent to consumption tax.

b. Appellee alleges that the amount of sales of Product A-9, etc. (wholesale price set by Appellee) from the sale start date stated in the "List of sale start dates" in Attachment 1 to the expiration date of the duration of Patent Right A is as stated in the "Sales (corrected)" "Sales" column in Attachment 7. Meanwhile, there is no evidence that is sufficient to find that the amount of sales of Product A-9, etc. (wholesale price set by Appellee) exceeds the above amount. Hence, it is reasonable to define the amount calculated by adding the amount equivalent to consumption tax (5%) to the above amount as a price serving as the basis of calculation of royalty.

However, as stated in the above (B)c(c), Product A-9, etc. include, in addition to the game software corresponding to the "second storage medium" of Invention A1, package commodities containing game software (storage medium) of the series identical to one to five pieces of the above game software. These

pieces of game software do not infringe Patent Right A of Invention A1 and are products to be sold alone without being included in Product A-9, etc. In addition, as stated in the above (B)a(b), Research Report states, as the preconditions for answering and counting in the research results of Survey, this case excludes special circumstances (such as royalty calculation under the entire market value rule (i.e., rule to calculate the amount of damages based on the unit price of the product as a whole containing the infringed part even if the patent technology is used only partially in the product), and circumstances of contract partner). Thus, it should be reasonable to deduct the amount equivalent to the price of game software other than the infringing articles from the selling price to be multiplied by Rate of Royalty A. Hence, it is reasonable that the amount obtained by dividing the selling price of Product A-9, etc. by the total number of pieces of game software as infringing articles and other pieces of game software is used as the amount of sales to be multiplied by Rate of Royalty A.

Additionally, as stated in the above (B)c(c), some of Products A-19 and A-23[ii] may contain, in addition to the game software corresponding to the "second storage medium" of Invention A1, "CD-ROM containing the most powerful data" and goods. However, the above CD-ROM merely records data (data of characters having the maximum ability value, etc.) used in the game software and is not distributed alone as a product. Thus, it is reasonable that the entire selling price of said Products is used as the amount of sales to be multiplied by Rate of Royalty A.

Meanwhile, the price of Product A-39 ("Harukanaru toki no naka de 3 Izayoiki [*In a Distant Time 3: Chronicle of the Sixteen-Day-Old Moon*] premium box" (recommended retail price: 9800 yen)) is set higher than Product A-35 ("Harukanaru toki no naka de 3 Izayoiki" (recommended retail price: 4980 yen)) released on the same date by 4820 yen. The difference of these products is only whether goods are included. The price of the goods included in Product A-39 is found to fall under about one-half of said product. Hence, it is reasonable that one-half of the selling price of said product is used as the amount of sales to be multiplied by Rate of Royalty A.

Further, Product A-40 ("Harukanaru toki no naka de premium box complete") contains, in addition to the game software corresponding to the "second storage medium" of Invention A1, five pieces of game software of the same "Harukanaru toki no naka de series." In the same manner as Product A-

39, the price of the goods contained in said product is also found to fall under about one-half of the price of the corresponding game software. Thus, it is reasonable that one-twelfth of the selling price of said product is used as the amount of sales to be multiplied by Rate of Royalty A.

c. As stated above, with regard to infringement of Patent Right A, the amount of damages calculated under Article 102, paragraph (3) of the Patent Act is calculated as stated in Attachment 10 and the total sum thereof amounts to 116,673,710 yen.

(D) Appellant's allegation

Appellant alleges as follows: [i] Inventions A1 and A2 are game system operating methods worked by users of Product A, and when the patentee grants manufacture and sales of products such as Product A, which constitute indirect infringement of Patent Right A, selling such products to users is naturally counted as a premise, so that the amount of sales of Product A-9, etc. serving as the basis of calculation of rate of royalty should be based on the Appellee's retail price, not the wholesale price; and [ii] even if there are other items included in Product A-9, etc., Product A is one piece of product (sales unit) as a whole containing included items and the act of selling the product as a whole constitutes infringement of one patent, so that the entire selling price of Product A-9, etc. should be used as the price to be multiplied by Rate of Royalty A.

However, with regard to the above [i], there is no objective evidence that is sufficient to support the Appellant's allegation. As stated in the above (B)a, the recent statistical average rate of royalty in the field to which the technical field of Patent A belongs is a rate estimated relative to the net sales. Hence, it is reasonable that the Appellee's selling price or the wholesale price of Product A-9, etc. is used as the amount of sales serving as the basis of calculation of royalty.

With regard to the above [ii], as stated in the above (C)b, it is reasonable to deduct the amount equivalent to the price of game software and goods in, among Product A-9, etc., products containing game software other than the game software corresponding to the "second storage medium" of Invention A1, and products in which contained goods obviously have a different value or can be determined to be treated as a separate product from the game software due to the product features and pricing structure, from the price to be multiplied by Rate of Royalty A.

The remaining Appellant's allegations do not affect the judgement in the above (C).

(E) Appellee's allegation

Appellee alleges as follows: [i] the amount equivalent to consumption tax should not be included in the actual selling price serving as the basis of calculation of rate of royalty; [ii] according to Research Report, the technical field of "furniture, games" includes, in addition to those such as "video games" in which a patent invention is worked as part of entirety, "furniture," "card games, board games, roulette games, indoor games using small game moving bodies" and therefore the rate of royalty of Patent A should be less than the above average rate of royalty (2.5%); [iii] the amount of sales of included goods should also be modified according to the number of items stated in the "Sales (corrected)" in Attachment 7; [iv] Invention A1 can be avoided while exhibiting function and operation similar to those of said invention by the method using saved data as the "predetermined key," the method of using a part of the "extended game program, etc." as the "predetermined key," and the method storing only the "extended game program, etc." in the second storage medium; [v] Appellant has concluded a patent cross-licensing agreement with competitors and published a press release stating "promotion of effective use of the patent such as licensing" (Exhibits Otsu A83-1 to A83-3), thus adopting a rather open licensing policy; and [vi] Product A was "developed under the concept of providing a different game" rather than adding a new Busho, Japanese military commander, and stage and mainly focuses on providing a mode that cannot be played in the key disc, thus providing sufficiently enjoyable contents by itself but also allowing by MIXJOY the mode or story played in the key disc to be played in the append disc, in which the scene using MIXJOY is limited.

However, with regard to the above [i], the amount equivalent to consumption tax is also inclusive as a part of the Appellee's selling price and there is no reason to find that the amount equivalent to consumption tax should be deducted in calculation of the amount of damages.

With regard to the above [ii], as stated in the above (B)a(a), in Table 2-2 of Research Report showing the result of Survey, the average of royalty rates of patents in the technical classification of "furniture, games" is 2.5% among 14 cases, although there is no specific description about the details of the patents owned by the survey respondents and articles to work the patents. Hence, it is not possible to find based on the description in Research Report that the rate of royalty of Patent A should be less than the above average rate of royalty.

With regard to the above [iii], as stated in the above (B)c(c), goods included in

Product A-9, etc. should be regarded as accessories of the game software corresponding to the "second storage medium" of Invention A1 and are not distributed alone as a product. Hence, it is reasonable that the entire selling price of said product excluding goods included in Products A-39 and A-40 is used as the amount of sales to be multiplied by Rate of Royalty A.

With regard to the above [iv], it is found as follows: i) as stated in the above (5)C(D), providing as the "first storage medium" and the "second storage medium" as a storage medium while "excluding a storage medium capable of storing saved data" in Invention A1 has technical significance of allowing the user to enjoy the game with the extended game program and/or data in the subsequent work irrespective of play results in the previous work, the method of treating saved data as the "predetermined key" does not exhibit the same sort of function and operation as those of Invention A1, and a storage medium capable of storing saved data has a large amount of storage capacity but prevents use of inexpensive mass-producible read-only memories such as CD-ROM and DVD-ROM; ii) Invention A1 allows the game device to be operated with the standard game program and the extended game program recorded in the second storage medium by simply reading the "predetermined key" stored in the first storage medium and allows the first storage medium to be replaced during operation, whereas the method of using a part of the "extended game program, etc." as the "predetermined key" requires continuous loading of the first storage medium during operation of the game device with the standard game program and the extended game program; and iii) the method of storing only the "extended game program, etc." in the second storage medium does not allow the second storage medium as a solo item to operate the game device with the standard game program and the extended game program, and therefore such a method is not an alternative technology to Invention A1.

With regard to the above [v], even if the patentee has an open licensing policy, this does not give the ground for setting a lower rate of royalty defined ex post facto against the patent infringer.

With regard to the above [vi], as stated in the above (B)c(a), the effect that functions of game characters, scenes, and sound are enriched by Invention A1 is, in general, found to affect the incentive for consumers to purchase. In Product A-9, etc., the MIXJOY function also allows the game to be played according to the story of the previous work with characters of the present work and allows reaching the ending scene with all the characters as opposed to the ending scene

reached with only certain characters in the previous work. Appellee has introduced and advertised such functions in the product handbook. Thus, it is found that use of Invention A1 in Product A-9, etc. considerably contributes to the Appellee's sales and profit. The above decision is not affected by whether or not Product A-9, etc. are sufficiently enjoyable as a solo item and whether or not the scene using MIXJOY is limited.

The remaining Appellee's arguments do not affect the decision in the above (C).

B. Summary

As stated above, for Appellant, the amount obtained by adding the attorneys' fees and the patent attorneys' fees to the amount of damages calculated under Article 102, paragraph (3) of the Patent Act is found to be the amount of damages granted for Appellant.

Then, it is reasonable to find that the attorneys' fees and the patent attorneys' fees that are considerably associated with the Appellee's tort should not be less than about ten percent of the amount of damages calculated above, or 11.66 million yen. Hence, the amount of damages granted for Appellant amounts to 128,333,710 yen (116,673,710 yen +11,660,000 yen).

2. Patent Right B

(1) Issue 2-1-1 (Establishment of literal infringement)

A. Matters described in Description B

(A) Descriptions of Inventions B1 and B8 in the scope of claims (Claims 1 and 8) are as stated in the above No. 2, 2(3)C.

Description B (Exhibits Ko B2 and B24) provides the following description in the detailed description of the invention (see the attachment 11 for "Figs. 1 and 2" mentioned in the following description).

a. [0001]

[Field of Industrial Application]

The invention of the present application relates to a game device and a control method thereof or more specifically relates to a game device and a control method thereof configured to allow the player to participate in advancing the game using an input means operated by the player in advancing the game in a commercial game machine or a home game machine, and configured to physically transmit vibration to the player according to the state of advancement of the game.

[0002]

[Conventional art]

In recent years, as a game played by using a commercial game machine, a home game machine, etc., in addition to a game configured to allow the player to one-sidedly determine or control the entire progress of the game irrespective of characters, etc. in the game, the game which has been put in practical use is configured to allow the player to participate in advancing the game with the presence of characters, etc. moved in response to input operation by the player.

[0003]

In the game realized by participation of the player, an input means composed of a joy stick lever and a pushbutton or the like is installed in any of the aforementioned various kinds of game machines and the player operates the input means while visually confirming an image output means such as CRT and LCD provided in or connected to the game machine, in which the player controls action of a virtual character image, etc. corresponding to the player during progress of the game.

[0004]

As specific contents for this kind of games, for example, sport games such as fighting, adventure or race games, and treasure hunting games or the like have been proposed or put in practical use over various kinds of fields. Then, during progress of this kind of games, various kinds of sound are emitted from a sound output means such as a speaker provided in or connected to the game machine.

b. [0005]

[Problem to be Solved by the Invention]

Meanwhile, the mainstream of such player participating games that can be realized in various kinds of the conventional game machines is a game with sound emitted from the speaker exclusively used for the game machine if the situation in which a virtual character image, etc. corresponding to the player is placed changes in the middle of the game. Hence, in the game to determine a match between the player and other players, sound emitted from the speaker can be heard by not only the player but also other players and therefore if, for example, there is a secret to be kept from other players, it is not possible to maintain the secret state.

[0006]

Thus, there are problems such that players cannot feel a sufficient sense of thrill due to the entirely exposed game contents, emission of sound prevents players from advancing the game secretly based on the information known

only to each player, and the degree of freedom or the width of selection is narrow in manufacturing this kind of game.

[0007]

In addition, in the real state of this kind of game, an attempt is made to give a certain degree of reality and intensity to players through sound or sound effects emitted during progress of the game. However, such a method gives players nothing more than an auditory/visual atmosphere without giving a higher level of reality or sufficient intensity and there is a drawback due to lack of entertainment or fun feel.

[0008]

The invention of the present application was conceived in the above circumstances and a problem to be solved thereby is to provide a game device that enables players to recognize a situation in which each player is placed during progress of the game by a sense other than visual or auditory sense and allows players to advance the game in a secret state against the opponent, thereby increasing a degree of freedom in manufacturing the game and allowing players to have a high level of reality and sufficient intensity.

c. [0009]

[Means for Solving the Problem]

In order to solve the above problem, the invention of the present application takes the following technical measures.

[0010]

Specifically, the invention according to Claim 1 of the present application is a game device provided with a game machine having an input means operated by a player, a game progress control means for determining or controlling a progress state of a game based on a signal from the input means, and an output means for outputting image information including a character that is at least moved responsive to operation of the input means by the player based on a signal from the game progress control means, the game device comprising a particular situation determination means for determining, based on a signal from the game progress control means, whether or not a situation in which the character operated by the player is placed during progress of the game falls in a particular situation, a vibration information control means for transmitting, upon determination of falling in the particular situation by the particular situation determination means, information being unrecognizable from the image information as a physically sensible vibration information signal, and a

vibration generating means for generating vibration based on the physically sensible vibration information signal from the vibration information control means.

[0013]

In this case, in the game device according to any of the above Claims 1 to 3, the particular situation determination means for determining whether or not a situation in which the above character is placed during progress of the game is changing according to predetermined regularity may also be configured to trigger, upon determination of such changing, the vibration information control means to transmit a physically sensible vibration information signal that changes according to a changing mode of the situation of the character (Claim 4).

[0017]

Meanwhile, the invention according to Claim 8 of the present application is a method for controlling a game device provided with a game machine having an input means operated by a player, a game progress control means for determining or controlling a progress state of a game based on a signal from the input means, and an output means for outputting image information including a character that is at least moved responsive to operation of the input means by the player based on a signal from the game progress control means, wherein, upon determination based on a signal from the game progress control means that a situation in which the character operated by the player is placed during progress of the game falls in a particular situation, information being unrecognizable from the image information is transmitted to the vibration generating means as a physically sensible vibration information signal.

d. [0022]

[Functions and Effects of the invention]

According to the invention of the above Claim 1, by operating the input means by the player, constantly changing images are outputted from the output means (comprising at least a display, etc.) based on the signal from the game progress control means, whereby the game is advanced. In this case, the player is brought into a state of participating in the game by operating the input means. Specifically, if, for example, images displayed by the output means contain a character such as a character image changing its action according to operation of the input means by the player, the player is in a state of participating in the game by moving the character based on the player's own

will.

[0023]

Then, during progress of the game as such, based on the signal from the game progress control means, the particular situation determination means determines whether or not a situation in which the player is placed or a situation in which the character operated by the player is placed falls in a particular situation. Then, at the point of determination of falling in a particular situation, information being unrecognizable from image information is transmitted as a physically sensible vibration information signal from the vibration information control means to the vibration generating means.

[0024]

Thus, a content that is not displayed as an image by the output means is generated as predetermined physically sensible vibration in the vibration generating means. Accordingly, if the player is physically in contact with the vibration generating means, vibration generated at this time can be felt physically to understand a particular situation in the progress of the game, as opposed to other players or surrounding spectators who cannot recognize such a particular situation by simply looking at the screen.

[0025]

As a result, the player can advance the game in a secret state known to only the player without making surrounding people aware of such a particular situation and can feel more intensity or an enhanced sense of reality by physically feeling vibration.

[0031]

Meanwhile, according to the invention according to the above Claim 4, when the game status is constantly changing, the particular situation determination means determines that the status falls in a particular situation if the game situation is changing according to predetermined regularity. Then, this determination triggers transmission of a physically sensible vibration information signal corresponding to a changing mode of the game, such as, for example, a physically sensible vibration information signal for making the amplitude of vibration greater as the degree of risk increases in the situation in which the player is placed or for making the cycle of occurrence of vibration shorter. This allows the player to feel a higher level of reality and thrill.

e. [0036]

[Description of Embodiments]

Preferable embodiments of the invention of the present application are described specifically below with reference to drawings.

[0037]

Fig. 1 is a block diagram showing a schematic system of a game device according to the invention of the present application. As shown in Fig. 1, a game device 20 is divided broadly into a sound sensing device 1 serving as a vibration generating means, a home or commercial game machine 21, and a control means 31 that controls the sound sensing device 1 based on a signal outputted from the game machine 21.

[0038]

More specifically, the game machine 21 comprises an input means 24 having, for example, a joy stick lever 22 and a pushbutton-type switch 23, a game information storage means 25 that stores various kinds of game information, a game progress control means 26 that determines or controls a progress state of a game based on signals from the input means 24 and the game information storage means 25, a sound output means 27 that emits audible sound to a user in response to a sound signal a from the game progress control means 26, and an image output means 28 that displays images to the user in response to an image signal b from the game progress control means 26.

[0039]

Meanwhile, the control means 31 comprises a particular situation determination means 32 that determines whether or not a situation in which an image character operated by the player using the input means 24 during progress of the game falls in a particular situation, based on a signal from the game progress control means 26, and a vibration information control means 33 that applies a predetermined control to the sound signal a based on a signal from the particular situation determination means 32 and transmits the sound signal as a physically sensible vibration information signal c to a speaker 6 of the sound sensing device 1.

[0040]

The particular situation determination means 32 determines, for example, whether the situation in which a character operated by the player during progress of the game is placed falls in a dangerous situation or a safe situation, or whether the situation is an advantageous situation or a disadvantageous situation to the character. Then, when the determination result indicates a dangerous situation or an advantageous situation, information that is not

transmitted in other cases is transmitted as the physically sensible vibration information signal c from the vibration information control means 33 to the sound sensing device 1.

[0041]

In this case, information that is not included in the image signal b transmitted from the game progress control means 26 to the image output means 28 is inputted in the physically sensible vibration information signal c transmitted from the vibration information control means 33. Thus, information that is unrecognizable by only looking at images presented by the image output means 28 composed of a CRT, LCD, etc. is transmitted as physically sensible vibration information to the speaker 6 of the sound sensing device 1.

[0042]

Besides, when the particular situation determination means 32 determines that the situation in which a character is placed during progress of the game falls in a particular situation, information that is not transmitted in other cases is transmitted as the physically sensible vibration information signal c from the vibration information control means 33 to the sound sensing device 1. As an example, when the determination result shows determination of falling in a dangerous situation or advantageous situation, the physically sensible vibration information signal c for generating vibration is transmitted for the first time at the point of the determination. Additionally, as another example, if the physically sensible vibration information signal c is set to cause intermittent vibration, a signal to change the intermittent cycle (occurrence cycle) is transmitted or the physically sensible vibration information signal c is transmitted to change the frequency or amplitude of vibration.

[0044]

Meanwhile, a specific example of a use mode of the game device 20 configured as stated above is as follows.

[0045]

That is, as shown in Fig. 2, a predetermined display area of the image output means 28 is virtually divided into multiple vertical and lateral blocks 40 to assume that land mines are laid at points indicated by a sign X in a predetermined number of the blocks 40. Then, the state of the land mines X being laid is not displayed as an image. Thus, the player is unable to recognize which block has the land mine X being laid in the blocks 40.

[0046]

In such a state, the player operates the input means 24 appropriately to move a specific character 41 as shown in Fig. 2. At the point at which the character 41 moves into a block adjacent to any of the blocks 40 with the land mines X being laid as indicated by the chain line, the particular situation determination means 32 determines that the situation in which the player is placed falls in a dangerous situation. Although the situation shown in the example of Fig. 2 assumes the case where the character moves into a block vertically adjacent to one of the blocks 40 with the land mines X present, the particular situation determination means 32 also determines that the player is in a dangerous situation in the case of moving into a block laterally adjacent to such a block.

[0047]

As such, upon determination of a dangerous situation, based on a signal from the particular situation determination means 32, the vibration information control means 33 applies a predetermined control to the sound signal a so that a low frequency range of sound signal which is inaudible to the ear is transmitted as the physically sensible vibration information signal c to the speaker 6 of the sound sensing device 1. In this case, the particular situation determination means 32 determines whether the character 41 is approaching or moving away from the land mines X. In the case of approaching, the particular situation determination means 32 may cause vibration to occur more frequently by gradually shortening the intermittent cycle of the low frequency range of sound signal as the distance of the interval becomes shorter. In contrast, in the case of moving away, the particular situation determination means 32 may reduce the frequency of occurrence of vibration by gradually lengthening the intermittent cycle as the distance of the interval becomes longer. In other words, the player can feel the atmosphere as if the level of proximity to the land mines X would coincide with the player's heart beats.

(B) According to the matters described in the above (A), Description B is found to provide the following disclosures in the detailed description of the invention in relation to Invention B1.

In recent years, as a game played by using a commercial game machine, a home game machine, etc., the game which has been put in practical use is configured to allow the player to operate the input means while visually confirming an image output means of the game machine and thus control action of a virtual character image, etc. corresponding to the player ([0002] and

[0003]).

In the above game, the mainstream is the game with sound emitted from the speaker of the game machine if the situation in which a virtual character image, etc. is placed changes, and in the game to determine a match between the player and other players, sound emitted from the speaker can be heard by other players as well, in which there are problems such that players cannot feel a sufficient sense of thrill due to the entirely exposed game contents, emission of sound prevents players from advancing the game secretly based on the information known only to each player, and the degree of freedom is narrow in manufacturing the game. In addition, sound or sound effects give(s) players nothing more than an auditory/visual atmosphere without giving a higher level of reality or sufficient intensity and there is a drawback due to lack of entertainment or fun feel. ([0005] to [0007]).

A problem of the invention of the present application is to provide a game device that enables players to recognize a situation in which each player is placed during progress of the game by a sense other than visual or auditory sense and allows players to advance the game in a secret state against the opponent, thereby increasing a degree of freedom in manufacturing the game and allowing players to have a high level of reality and sufficient intensity ([0008]).

A game device of "the invention of the present application" is a game device provided with a game machine having an input means operated by a player, a game progress control means for determining or controlling a progress state of a game based on a signal from the input means, and an output means for outputting image information including a character that is at least moved responsive to operation of the input means by the player based on a signal from the game progress control means, the game device comprising a particular situation determination means for determining, based on a signal from the game progress control means, whether or not a situation in which the character operated by the player is placed during progress of the game falls in a particular situation, a vibration information control means for transmitting, upon determination of falling in the particular situation by the particular situation determination means, information being unrecognizable from the image information as a physically sensible vibration information signal, and a vibration generating means for generating vibration based on the physically sensible vibration information signal from the vibration information control

means ([0009] and [0010]). The particular situation determination means for determining whether or not a situation in which the above character is placed is changing according to predetermined regularity may also be configured to trigger, upon determination of such changing, the vibration information control means to transmit a physically sensible vibration information signal that changes according to a changing mode of the situation of the character ([0013]).

Owing to "the invention of the present application" configured as stated above, an effect is exhibited such that the player can advance the game in a secret state known to only the player without making surrounding people aware of such a particular situation and can feel more intensity or an enhanced sense of reality by physically feeling vibration ([0025]).

There is also an effect such that the particular situation determination means determines that the situation falls in a particular situation if the game situation is changing according to predetermined regularity, and then this determination triggers transmission of a physically sensible vibration information signal corresponding to a changing mode of the game, such as, for example, a physically sensible vibration information signal for making the occurrence cycle (intermittent cycle) of vibration shorter, whereby allowing the player to feel a higher level of reality or thrill ([0031], [0042], and [0047]).

B. Whether or not to belong to the technical scope

(A) Meaning of the constituent features E to G

a. According to the description in the scope of claims (Claim 1) of Invention B1, it is understood that the "particular situation" (constituent features E and F) refers to the "situation in which the character is placed" that is determined by the "particular situation determination means" as to "whether or not to fall in said situation" and the "vibration information control means" (constituent features F and G) is a means by which "upon determination of falling in the particular situation by the particular situation determination means, information being unrecognizable from the image information is transmitted as a physically sensible vibration information signal for changing the intermittent cycle of vibration generated intermittently according to the situation in which the character is placed."

Meanwhile, no definition specifying the "particular situation" is found in the scope of claims and there is no description serving as a basis for interpreting that the "particular situation" is a situation "being unrecognizable from the image information" in all the scenes in the game.

In addition, the scope of claims involves no description serving as a basis for interpreting that the "physically sensible vibration information signal" "transmitted" from the "vibration information control means" is provided exclusively for using "the information being unrecognizable from the image information as a trigger to change the intermittent cycle of vibration generated intermittently according to the situation in which the character is placed."

- b. Then, as stated in the above A(B), Description B recites in the detailed description of the invention as follows. A game device according to "the invention of the present application" is provided with a game machine having an input means operated by a player, a game progress control means for determining or controlling a progress state of a game based on a signal from the input means, and an output means for outputting image information including a character that is at least moved responsive to operation of the input means by the player based on a signal from the game progress control means, the game device comprising a particular situation determination means for determining whether or not a situation in which the character operated by the player is placed during progress of the game falls in a particular situation based on a signal from the game progress control means, a vibration information control means for transmitting, upon determination of falling in the particular situation by the particular situation determination means, information being unrecognizable from the image information as a physically sensible vibration information signal, and a vibration generating means for generating vibration based on the physically sensible vibration information signal from the vibration information control means. By adopting such a structure, an effect is exhibited such that the player can advance the game in a secret state known to only the player without making surrounding people aware of such a particular situation and can feel more intensity or an enhanced sense of reality by physically feeling vibration. There is also an effect such that the particular situation determination means determines that the situation falls in a particular situation if the game situation is changing according to predetermined regularity, and then this determination triggers transmission of a physically sensible vibration information signal corresponding to a changing mode of the game, such as, for example, a physically sensible vibration information signal for making the occurrence cycle (intermittent cycle) of vibration shorter, thereby allowing the player to feel a higher level of reality or thrill. Technical significance of Invention B1 is found in such features.

Then, in light of the above technical significance of Invention B1, it is difficult to find the necessity of limiting the above "particular situation" to the situation "being unrecognizable from the image information" in all the screens of the game, or interpreting that the "physically sensible vibration information signal" "transmitted" from the "vibration information control means" is provided exclusively for using "the information being unrecognizable from the image information as a trigger to change the intermittent cycle of vibration generated intermittently according to the situation in which the character is placed." For example, even if it is possible in a scene in the game to recognize from the image information that the situation in which the character is placed falls in a particular situation and the information is transmitted as a physically sensible vibration information signal, in the case where it is not possible to recognize from the image information that the situation in which the character is placed falls in the particular situation in another scene in the game, the effect of Invention B1 as stated in the above A(B) is found to be exhibited by transmitting, in such a scene, a physically sensible vibration information signal for changing the intermittent cycle of vibration generated intermittently according to the situation in which the character is placed.

Additionally, in view of Description B as a whole, there is no description or suggestion of technical significance such that an advantageous effect is exhibited by limiting the "particular situation" or the "physically sensible vibration information signal" "transmitted" from the "vibration information control means" as stated above in comparison with the case without having such limitation.

- c. Considering comprehensively the above description in the scope of claims (Claim 1) of Invention B1 and the above description in Description B, it is understood that [i] the term "particular situation" (constituent features E and F) refers to "the situation in which the character is placed," "whether or not a situation falls in said situation" is determined by the "particular situation determination means", and said situation does not need to be a situation "being unrecognizable from the image information" in all the scenes in the game as long as "upon determination of falling in the particular situation by the particular situation determination means, information being unrecognizable from the image information is transmitted as a physically sensible vibration information signal for changing the intermittent cycle of vibration generated intermittently according to the situation in which the character is placed" and

[ii] the "vibration information control means" (constituent features F and G) may be any means having the function of "transmitting" "information being unrecognizable from the image information as a physically sensible vibration information signal for changing the intermittent cycle of vibration generated intermittently according to the situation in which the character is placed" and is not limited to the means having only said function.

d. Meanwhile, Appellee alleges that [i] the constituent feature F involves, after all, a control made to transmit information being unrecognizable from the image information as a physically sensible vibration information signal, rather than simply causing generation of vibration upon determination of falling in a particular situation and what is considered to be a feature of such a vibration information control means and a control method thereof is limited to the case in which the "particular situation" per se to be determined by the particular situation determination means is "information being unrecognizable from the image information," [ii] according to the description, information being recognizable from the image information in a certain moment during progress of the game but unrecognizable from the image information in another moment is not allowed to be transmitted as physically sensible vibration information and therefore the "particular situation" per se is understood to be limited to "information being unrecognizable from the image information," and [iii] Appellant made an amendment in the course of examination of Patent Application B by restricting, in Claims 2 and 3, etc., the vibration control means to be configured to transmit "information being unrecognizable from the image information" as a physically sensible vibration information signal (Exhibit Otsu B4-7-4), stated in the details of the opinion (Exhibit Otsu B4-7-2) that "the purport of this amendment is, in short, to limit in Claims 2, 3, 9, and 10 the physically sensible vibration information to be the information being unrecognizable from the image information in the same manner as in Claims 1 and 8," and added the same constituent features as Invention B1 to limit that only the information being unrecognizable from the image information is transmitted by the vibration control means as the physically sensible vibration information.

However, with regard to the above [i] and [ii], as stated in the above c, according to the description in the scope of claims (Claim 1) of Invention B1 and the description in Description B, it should be understood that the "particular situation" does not need to be the situation "being unrecognizable

from the image information" in all the scenes in the game.

Then, with regard to the above [iii], according to the evidence (Exhibit Otsu B4 (including branch numbers)), it is found that Appellant originally specified Claim 2 in the scope of claims with "a vibration information control means for transmitting information that is not transmitted in a state other than the dangerous state as a physically sensible vibration information signal," and Claim 3 with "a vibration information control means for transmitting information that is not transmitted in a state other than the advantageous state as a physically sensible vibration information signal" but in response to the notice of reasons of refusal issued in the examination of Patent Application B by the examiner stating that Cited Document 1 (Exhibit Otsu B6) discloses a physically sensible signal provided in a dangerous state and Cited Document 2 (Exhibit Otsu B7) discloses physically sensible vibration provided in an advantageous state, Appellant amended Claim 2 by specifying "a vibration information control means for transmitting information being unrecognizable from the image information and not transmitted in a state other than the dangerous state as a physically sensible vibration information signal" and amended Claim 3 by specifying "a vibration information control means for transmitting information being unrecognizable from the image information and not transmitted in a state other than the advantageous state as a physically sensible vibration information signal," stating that the purport of the amendment is "to limit the physically sensible vibration information signal to be the information being unrecognizable from the image information in the same manner as in Claims 1 and 8."

Then, considering the above amendment and the details of the written opinion as a whole, said amendment is made by merely specifying that information transmitted as the physically sensible vibration information signal is simply the information being unrecognizable from the image information, but said amendment is not found to be made by excluding the feature of transmitting information being unrecognizable from the image information in a certain scene but recognizable from the image information in another scene as the physically sensible vibration information signal.

Hence, the Appellee's allegation as stated above is inadmissible.

(B) Fulfillment of the constituent feature by Device B

- a. According to the evidence (Exhibits Ko B3 to B5 and B13 to B15) and the entire import of the oral argument, the structure of Device B is found to be as

stated in the attachment "Explanation of Device B (Appellant)" provided in the judgment in prior instance.

Then, comparison between the constituent features of Invention B1 and the features of Device B is as stated in "Explanation of Device B (Appellant)" attached to the judgment in prior instance. Hence, Device B is found to satisfy all the constituent features of Invention B1 and to belong to the technical scope of Invention B1.

- b. Meanwhile, Appellee alleges that [i] in Device B, even if vibration itself occurs in a state in which a spirit itself or filament emission cannot be confirmed from the image information in one scene, a character approaching the spirit and the distance thereto can be understood from the image information before and after the scene by the spirit itself, filament emission and its luminance, etc. so that Device B does not involve the constituent feature F specified by "a vibration information control means for transmitting information being unrecognizable from the image information as a physically sensible vibration information signal," and because the scene in which information relevant to a particular situation is unrecognizable from the image information last for several seconds in Device B, even if there is a scene unrecognizable from the image information during such a short period of time, Device B does not exhibit the function and operation of Invention B1 such that "the player can advance the game in a secret state known to only the player without making surrounding people aware of such a particular situation" and therefore does not satisfy the constituent feature F, and [ii] Products B-7 to B-9 are different from Products B-1 to B-6 because a situation in which a situation with the spirit near the character can be recognized constantly by the information being recognizable from the image information displaying the filament itself, and therefore at least Devices B7 to B9 do not satisfy the constituent feature F.

Therefore, the above Appellee's allegation is discussed below.

(a) Found facts

According to the evidence (Exhibits Ko B8, B13 to B15, and B21 to B23 and Exhibits Otsu B1 to B3 and B29 to B31 (including branch numbers)) and the entire import of the oral argument, the following facts are found.

- [i] Each of Products B-1 to B-3 is a game in which the player operates a leading game character to look for a missing older brother in a ruined house "the Himuro residence" and advances the game while taking a photo of the

attacking spirit by a projection device (camera) and absorbing and repelling the soul of the spirit, and the game is over when the physical strength falls in 0 after having been attacked by the spirit several times.

Methods to notify the player that the character is approaching a vengeful spirit and a floating spirit include filament lighting with red color, vibration, sound, and presentation of spirit on the screen.

The filament lighting with red color is displayed within 270 degrees of the character's field of vision when the distance between the character and the spirit is within 8 m, and is turned off when the spirit does not exist within said range.

The vibration occurs within 360 degrees of the character's field of vision when the distance to the spirit is within 8 m, and the vibration occurs intermittently with the intermittent cycle that becomes shorter when the distance between the character and the spirit becomes closer or becomes longer when the distance becomes longer. That is, the vibration occurs even in the case where the red light is not turned on because the spirit is within 90 degrees behind the character.

[ii] Products B-4 to B-6 are a game in which the player operates a leading game character to explore the "Minakami village" in which the character went astray and find a measure to escape from the village. In the process of the game, in the same manner as with Products B-1 to B-3 described in the above [i], the player uses a projection device to take a photo of the spirit. Methods to notify the player that the character is approaching a vengeful spirit and a floating spirit include filament lighting with red color, vibration, sound, and presentation of the spirit on the screen.

In the same manner as with Products B-1 to B-3, it is not possible in Products B-4 to B-6 to recognize that the spirit is near the character from the image information when the distance between the character and the spirit is within 8 m, the spirit is not displayed on the screen and the spirit is not within 270 degrees of the character's field of vision (or the spirit is behind the character). However, intermittent vibration is generated with the intermittent cycle that becomes shorter when the spirit is approaching the character as expected or becomes longer when the spirit is moving away from the character.

[iii] Each of Products B-7 to B-9 is a game in which the player operates a leading game character to explore the "sleepy house" which the character

visits in a nightmare and solve the mystery. In the process of the game, in the same manner as with Products B-1 to B-6 described in the above [i] and [ii], the player uses a projection device to take a photo of the spirit.

Methods to notify the player that the character is approaching a vengeful spirit, a random spirit, and a floating spirit include filament lighting with red color, vibration, sound, and presentation of the spirit on the screen.

The filament is displayed when the distance between the character and the spirit is within 10 m, the filament lighting with red color is displayed when the distance to the spirit is within 8 m except for at least the case in which the spirit is behind the character, and the lighting is turned off when the spirit has disappeared from said range. Note that according to the report prepared by the Appellee's employee (Exhibit Otsu B29), the filament lighting with red color is displayed within 360 degrees of the character's field of vision, although there is no objective evidence to support such a statement. On the contrary, according to the evidence (Exhibit Ko B8-2 (around 0:40) and Exhibit Ko B23-2 (1:30 to 1:34, etc.)), it is found that filament lighting with red color is not displayed in the scene in which the spirit is behind the character in Products B-7 to B-9. The vibration occurs within 360 degrees of the character's field of vision when the distance to the spirit is within 8 m, and the vibration occurs intermittently with the intermittent cycle that becomes shorter when the distance between the character and the spirit becomes closer or becomes longer when the distance becomes longer.

(b) Appellee's allegation in the above [i]

As stated in the above (A), it is understood that the "vibration information control means" of Invention B1 may be any means having the function of "transmitting" "information being unrecognizable from the image information as a physically sensible vibration information signal for changing the intermittent cycle of vibration generated intermittently according to the situation in which the character is placed" and is not limited to the means having only said function.

Then, according to the found facts in the above (a), it is found that, in all the Products B, it is not possible to recognize that the spirit is near the character from the image information when the distance between the game character and the spirit is within 8 m, the spirit is not displayed on the screen and the spirit is not within 270 degrees of the character's field of

vision (or the spirit is behind the character), but intermittent vibration occurs with the intermittent cycle that becomes shorter when the spirit is approaching the character as expected or becomes longer when the spirit is moving away from the character. It is therefore obvious that Product B has "a vibration information control means for transmitting information being unrecognizable from the image information as a physically sensible vibration information signal."

(c) Appellee's allegation in the above [ii]

Products B-7 to B-9 also have, in the same manner as Products B-1 to B-6, "a vibration information control means for transmitting information being unrecognizable from the image information as a physically sensible vibration information signal" of Invention B1 as stated in the above (a) [iii]. Hence, in the same manner as with Products B-1 to B-6, it is also reasonable to find that filament lighting with red color is displayed within the restricted angle of a field of vision and is not turned on at least when the spirit is behind the character in Products B-7 to B-9.

(d) Summary

From the above, the above Appellee's allegation is inadmissible.

(2) Issue 2-1-2 (Establishment of indirect infringement (Article 101, paragraph (1) of the Patent Act))

Product B is game software loaded in the main body of the PlayStation 2, which constitutes Device B, to execute a game and has, to said extent, under the social standards, no other economical, commercial, or practical purposes other than the purpose of being loaded and used in the main body of the PlayStation 2.

Hence, Product B is an article whose only use is to produce Device B.

Then, as stated in the above (1), Device B is a game device belonging to the technical scope of Invention B1 and it is therefore found that Product B is an article whose only use is to produce a product associated with Invention B1 which is a product invention.

Meanwhile, Appellee alleges that the game machine loaded with Product B may be used while turning off the vibration function (Exhibits Otsu B5-1 and B5-2) and therefore Product B does not fall under an article whose "only" use is to produce a product associated with Invention B1.

However, because Device B comprises respective constituent features of Invention B1 which is a product invention, whether the user actually uses the vibration function of the apparatus in Device B is not found to be a matter

affecting the decision as to whether Product B is "an article whose only use is to produce that product."

Accordingly, it is found that manufacturing and selling Product B infringe Patent Right B under Article 101, paragraph (1) of the Patent Act.

(3) Issue 2-2-1 (Presence/absence of lack of inventive step in Invention B1 based on the invention publicly known or publicly worked by the game device operated with the game called "Ninja Warriors")

A. The invention publicly known or publicly worked by the game device in which the game called "Ninja Warriors" is operated

"Ninja Warriors" is a TV game machine released by Taito Corporation in late February of 1988, in which a big screen consisting of continuous triple lateral screens is adopted and contents of the game are based on a story such that a cyborg Ninja formed by revolutionaries plays an active part to overthrow Satan exercising dictatorship by a spell and the cyborg Ninja moves to the right direction of the screen while defeating attacking enemies using knives and guns with evolving background sceneries such as a slum district, a military base, and a building district and with emerging jet planes, tanks, etc. (Exhibit Otsu B12).

(A) Features a to d, g, and h

There is no issue between the parties about Features a to d, g, and h that are as stated in the "Structure of Publicly Known Invention b-1 (Appellee's (Defendant's) allegation)" attached to the judgment in prior instance.

(B) Feature e

According to the evidence (Exhibits Ko B18-1 to B18-3 and B25) and the entire import of the oral argument, it is found that in "Ninja Warriors", the bench seat starts vibrating when a column to the right of the rightmost container (container numbered 5) among five containers arranged in the background scenery in the game stage comes to substantially the center position of the game screen. Hence, in "Ninja Warriors," the specific state determination unit does not directly determine whether or not the tank exists near the Ninja character.

However, in light of the fact that the background screen scrolls only in one direction from right to left along with the movement of the Ninja character to the right of the screen and the background that has once passed the left end of the screen is not displayed again even if the player moves the Ninja character to the left of the screen (Exhibits Ko B18-1 to B18-3), determination of a situation in which the background of the game stage was scrolled to a predetermined position is exactly the determination of a situation in which the Ninja character

moved to said stage position. Then, according to the evidence (Exhibits Otsu B14 to B16), it is found that the bench seat starts vibration resembling vibration from the traveling tank upon reaching said situation. Hence, it is found that determination of a situation near the tank is determined when the Ninja character has moved to said stage position.

Then, there is no issue between the parties about the remaining aspect of Feature e.

Thus, Feature e is found to be as stated in the "Structure of Publicly Known Invention b-1 (Appellee's (Defendant's) allegation)" attached to the judgment in prior instance.

(C) Feature f

According to the evidence (Exhibits Ko B18-1 to B18-3, Exhibits Otsu B14, B16, and B17), it is found that [i] after a while from the start of vibration of the bench seat in "Ninja Warriors," a tank emerges on the game screen and then disappears from the game screen and, shortly after that, vibration of the bench seat stops, [ii] the situation of vibration during this period is as shown in the drawing "Vibration situation in Publicly Known Invention b" attached to the judgment in prior instance, and [iii] the surrounded portion [ii] in said drawing shows a shell landing and explosion on the screen, which is found to cause the vibration to be weakened. Then, with regard to such a situation of vibration, Appellee alleges that the portion [ii] in said drawing involves vibration generated intermittently at an intermittent cycle differently from the portion [i] in said drawing.

The above allegation is discussed below. The portion [i] in said drawing shows alternate occurrence of trembling large amplitude and weak amplitude. However, physically sensible vibration is in general caused by applying strong and weak forces to the body. In Description B, it is based on the premise that such vibration includes intermittent vibration and non-intermittent vibration ([0042]). Hence, "vibration generated intermittently" in Invention B1 is understood to mean continuation of a period with vibration and a period without vibration, not continuation of simply strong and weak forces. Then, it is understood that "changing the intermittent cycle" of such vibration generated intermittently means changing the cycle brought by repeating such a continuous strong and weak vibration period and non-continuous period according to the situation in which the character is placed. In this case, trembling vibration in the portion [i] in said drawing is uninterrupted vibration that is merely

continuous strong and weak vibration and is therefore not found to fall under intermittent vibration. In this regard, Appellee points out [0047] of Description B and alleges that trembling vibration is also regarded as intermittent vibration in Invention B1. However, based on the above discussion, it is reasonable to understand that "gradually reducing the intermittent cycle" and "gradually increasing the intermittent cycle" recited in said paragraph mean shortening or lengthening the cycle brought by repeating a continuous strong/weak period and a non-continuous period. Thus, the Appellee's allegation is inadmissible.

Hence, it is reasonable to find that Feature f is "a body-sonic drive information control unit for transmitting, upon determination of a situation in which a tank is near the Ninja character by the specific state determination unit, the presence of the tank near the Ninja character, which is unrecognizable from the image information, as a body-sonic drive information signal."

B. Comparison between Invention B1 and Publicly Known Invention b1

When Invention B1 and Publicly Known Invention b1 are compared, it is found that there is a difference as follows.

(Difference 1)

Invention B1 is different from Publicly Known Invention b1 in that the "vibration information control means" of Invention B1 is configured to "transmit, upon determination of falling in the particular situation by the particular situation determination means, information being unrecognizable from the image information as a physically sensible vibration information signal for changing the intermittent cycle of vibration generated intermittently according to the situation in which the character is placed," whereas the "body-sonic drive information control unit" of Publicly Known Invention b1 is configured to "transmit, upon determination of a situation in which a tank is near the Ninja character by the specific state determination unit, the presence of the tank near the Ninja character, which is unrecognizable from the image information, as a body-sonic drive information signal" and does not change the intermittent cycle of vibration according to the situation in which the character is placed.

C. Whether Difference is easily conceivable

(A) Combination with the invention disclosed in Exhibit Otsu B18

a. Exhibit Otsu B18 (Unexamined Utility Model Application Publication No. 1994-34693, published on May 10, 1994) provides the following description (see Attachment 12 for "Figs. 1 to 3" mentioned in the following description).

(a) [0001]

[Field of Industrial Application]

The present utility model relates to a game machine for the player to physically feel movement by riding on a cart resembling a train, car, airplane, ship, animal, plant, or doll, and mainly relates to a game machine suitable for a vehicle travelling on the rail.

[0002]

[Conventional Art]

There have been various kinds of swinging game machines to allow the player to experience movement by having a ride, including many examples suggested to swing the driver seat by an air system (Unexamined Patent Application Publication No. 1986-31185 and Unexamined Utility Model Application Publication No. 1983-77785, etc.).

In each of the above examples, it is possible to swing the driver seat by using the air cylinder but it is not possible to reproduce vibration occurring in the actual vehicle.

[0003]

Utility Model Application No. 1989-35510 (Unexamined Utility Model Application Publication No. 1990-126687) filed by the same applicant provides an example of a game machine realizing vibration applied to a vehicle body during travelling.

In said example, two cylinders that support and swing a swinging member provided with a cockpit are arranged in series to use one of the cylinders for swinging and the other one exclusively for vibration.

(b) [0004]

[Problem to be Solved]

Series connection of the two cylinders causes a problem of an increased number of cylinders and increased costs.

In addition, the game machine disclosed in said publication is configured to support the front end of the swinging member at one point and support the rear end thereof by interposing the cylinders. Therefore, a large load is applied to the cylinders, and the swinging member operated by the cylinders being constantly loaded may provide movement at fast and slow speeds which is inevitably smooth movement and vibration.

Thus, it is difficult to reproduce instantaneous vibration at the rail joint which is received by the vehicle travelling on the rail and rapid movement in

changing the direction.

It is also impossible to express subtle vibration or quick response in the motor-driven swinging method.

[0005]

The present utility model was achieved in view of such issues and an object thereof is to provide a swinging game machine that can cause swing and vibration by one cylinder and reproduce instantaneous vibration and movement.

(c) [0006]

[Means and Operation for Solving the Problem]

In order to achieve the above object, the present utility model provides a swinging game machine comprising: a swinging member provided with a driver seat for the player to ride on; a support member for supporting the swinging member in one central point above a base; two double acting cylinders provided at left and right positions in a front part of the swinging member and interposed between the swinging member and the base to move the swinging member; a pressure supply means for switching and supplying two kinds of pressures, a high pressure and a low pressure, to each of the cylinders; and a control means for controlling the pressure supply means.

[0007]

Because the pressure supply means can switch and supply two kinds of pressures, a high pressure and a low pressure, to the double acting cylinders, vibration can be reproduced by reversely applying or removing a high pressure to the cylinders driven at a low pressure. In addition, because the swinging member is supported at one center point and there is not much load applied to the two cylinders, vibration can be reproduced invariably at the upper or lower part of the cylinders and the swinging member can be moved easily and instantaneously by driving the cylinders.

(d) [0008]

[Embodiment]

One embodiment according to the present utility model as shown in Fig. 1 to Fig. 28 is described.

Fig. 1 is an entire perspective view of a swinging game machine 1 according to the present utility model.

[0009]

The swinging game machine 1 imitates movement of a truck travelling on rails, in which a double-seated seat 3 having a backrest swings above a base 2.

An upright casing 4 is provided in front of the seat 3 and a monitor TV 5 is fitted in the casing 4. Below the monitor TV 5, a control panel 6 protruding forward is provided.

[0010]

At left and right positions on the control panel 6, shooting sticks 7 are erected to be swingable omnidirectionally, and pushbutton-type shooting buttons 8 are arranged at heads of the shooting sticks 7.

Two start buttons 9 are also arranged side by side next to the shooting sticks 7.

[0011]

Thus, when two players sit on the seat 3 side by side, the monitor TV 5 is positioned in front of them. When both players press the start buttons 9, the game starts and the monitor TV 5 projects rails 10 to be seen by the person riding on a truck in a travelling direction, a circumferential situation, and an enemy 12 riding a truck 11 and travelling in front, etc. as shown in Fig. 2 and Fig. 3.

[0056]

In synchronization with video images projected on the monitor TV 5 as shown in Fig. 2 and Fig. 3, the seat 3 swings and vibrates, whereby subtle vibration during travelling as stated above can be reproduced, and acceleration and deceleration in going up and down can also be expressed by changing vibration. For example, the interval of vibration expressing rail joints is gradually shortened in acceleration but, on the contrary, said interval is lengthened in deceleration, thus allowing the players to feel as if the speed had changed due to the synergistic effect with video images and sound effects.

[0057]

It is also possible to adopt methods such as stopping vibration during flying in the air in the situation such that the truck is jumping, and effectively applying vibration according to changing sceneries.

In arriving at a place with the rails being curved, it is swiftly switched to make the seat 3 inclined to the right or left according to the rails, thus giving the players a sense of being swayed around by the truck to be able to enjoy the game with an abundant sense of presence.

It is further possible to express going up and down the hill by making the seat 3 inclined forward and backward.

[0058]

Note that the players can have a simulated experience with a further sense of presence by making the seat 3 inclined forward in a sudden stop such as collision and inclined backward in rapid acceleration when suddenly facing a slope.

(e) [0060]

[Effect of the Invention]

The present utility model uses the cylinders that swing the swinging member and cause vibration at the same time, thereby realizing cost reduction without requiring a special cylinder for vibration.

Because vibration in the upper and lower parts of the cylinders can be reproduced invariably in the swinging member supported at one central point by reversely applying or removing a high pressure to/from the cylinders in a state of being driven at a low pressure, several movements or various kinds of vibration ranging from subtle vibration to rolling and pitching, etc. can be reproduced by simple movement, and particularly players can enjoy the game with a sense of presence resembling movement of a vehicle travelling on the rails.

b. According to the matters described in the above a, it is found that Exhibit Otsu B18 provides the following disclosure.

Exhibit Otsu B18 relates to a game machine for the player to physically feel movement by riding on a cart, and mainly relates to a game machine suitable for a vehicle travelling on the rail ([0001]). To be able to realize instantaneous vibration and movement such as instantaneous vibration at the rail joint which is received by the vehicle travelling on the rail and rapid movement in changing the direction, a swinging game machine that can cause swing and vibration by one cylinder is provided ([0004] and [0005]). The swinging game machine imitates movement of a truck travelling on rails ([0009]). In synchronization with video images projected on the monitor TV, the seat swings and vibrates, whereby subtle vibration during travelling can be reproduced and acceleration and deceleration in going up and down can also be expressed by changing vibration; for example, the interval of vibration expressing rail joints is gradually shortened in acceleration but, on the contrary, said interval is lengthened in deceleration, thus allowing the players to feel as if the speed had changed due to the synergistic effect with video images and sound effects, and there are adopted methods such as stopping vibration during flying in the air in the situation such that the truck is jumping, and effectively applying vibration

according to changing sceneries. In arriving at a place with the rails being curved, it is swiftly switched to make the seat 3 inclined to the right or left according to the rails, thus giving the players a sense of being swayed around by the truck, going up and down the hill can be expressed by making the seat 3 inclined forward and backward, several movements or various kinds of vibration ranging from subtle vibration to rolling and pitching, etc. can be reproduced by simple movement such as making the seat 3 inclined forward in a sudden stop such as collision and inclined backward in rapid acceleration when suddenly facing a slope, and particularly players can enjoy the game with a sense of presence resembling movement of a vehicle travelling on the rails ([0056] to [0060]) (hereinafter referred to as "Exhibit Otsu B18 Invention").

According to the above, Exhibit Otsu B18 discloses that, owing to the synergistic effect in combination with video images projected on the monitor TV, changing speed of the truck is expressed by changing the interval of vibration of rail joints and thus a sense of presence is expressed.

Meanwhile, changing speed of the truck as stated above can be recognized by video images projected on the monitor TV and it is therefore not found that vibration in Exhibit Otsu B18 is based on information being unrecognizable from the image information.

Hence, Exhibit Otsu B18 does not disclose the feature of Invention B1 in connection with Difference 1 or "transmit, upon determination of falling in the particular situation by the particular situation determination means, information being unrecognizable from the image information as a physically sensible vibration information signal for changing the intermittent cycle of vibration generated intermittently according to the situation in which the character is placed."

- c. The body-sonic driven vibration in Publicly Known Invention b1 starts when a column in the background screen scrolling from right to left comes to the center of the game screen. Then, a tank moves into the frame from the right direction of the game screen, followed by moving out of the frame to the left direction of the game screen. Then, after a predetermined period of time passed, the vibration stops (Exhibit Otsu B14, Exhibit Otsu B16 and Exhibit Ko B18 (including branch numbers)). Such vibration is generated corresponding to the appearance of the tank in the game stage and is accompanied by generating travelling sound of the tank and expressing a state of occurrence of "rumbling" caused by the travelling tank obviously for the purpose of allowing

players to have a sense of presence and a high level of reality. The tank travels on the ground of endless track and is therefore found to rumble continuously due to travelling.

Meanwhile, in the Exhibit Otsu B18 Invention, the nature of the truck travelling on the rail such as occurrence of vibration at each rail joint and change of the time interval of occurrence of vibration according to the speed is used and reproduced in the game, thereby enhancing a sense of presence in the game using the synergistic effect with video images and sound effects.

Thus, it should be said that application of the Exhibit Otsu B18 Invention in which speed change of the truck is expressed by changing the time interval of vibration at the rail joint to rumbling of the tank travelling on the ground of endless track apart from the premise of travelling on the rail is not easy. Thus, it is not found that changing the intermittent cycle of vibration according to the situation in which the character is placed would have been easily conceivable to a person ordinarily skilled in the art based on Publicly Known Invention b1 and the Exhibit Otsu B18 Invention.

d. Meanwhile, Appellee alleges that [i] Publicly Known Invention b1 and the Exhibit Otsu B18 Invention are common in the operation/function of providing a game having a sense of presence by causing vibration according to a situation in which a character is placed and further in the operation/function of transmitting information being unrecognizable from the image information as a physically sensible vibration signal to the vibration generating means, [ii] when the tank stops, it is natural to have, in theory, no rumbling by the travelling tank, so that affinity exists between rumbling by the travelling tank and change of the intermittent cycle of intermittent vibration, and [iii] vibration of a vehicle travelling on the road is intermittent (Exhibit Otsu B41).

Firstly, with regard to the above [i], as stated in the above b, the Exhibit Otsu B18 Invention allows players to enjoy the game with an abundant sense of presence resembling the movement of the truck, in which the speed of the truck is approximated by vibration of the truck passing through rail joints and the speed of the truck can be recognized by video images projected on the monitor TV. Thus, the Exhibit Otsu B18 Invention does not transmit information being unrecognizable from image information as a physically sensible vibration signal to the vibration generating means and is, in this regard, crucially different from Publicly Known Invention b1.

Then, with regard to the above [ii], causing occurrence of vibration when the

tank is travelling and preventing vibration from occurring when the tank is not travelling are realized by the control of causing or preventing occurrence of vibration depending on whether the tank is travelling or not, in which intermittent vibration is not generated according to the situation in which the character is placed or the intermittent cycle of vibration generated intermittently is not changed.

Further, with regard to the above [iii], Exhibit Otsu B41 indicates, as a result of measurement of road traffic vibration regarded as a vibration pollution problem in the state in which several vehicles are travelling at a certain point on the roadside, that vibration at that point of the road is intermittent, not that vibration by the travelling vehicles is intermittent, and therefore has no relevance to vibration expressing rumbling by the travelling tank in Publicly Known Invention b1.

As stated above, the above Appellee's allegation is entirely inadmissible.

(B) Combination with the well-known art involving "change the intermittent cycle of vibration generated intermittently according to the situation in which the character is placed"

a. Exhibit Otsu B6

(a) Exhibit Otsu B6 (Unexamined Patent Application Publication No. 1993-192449) provides the following description.

[0001]

[Field of Industrial Application]

The present invention relates to a video-type gun battle game device and a method for controlling the game device.

[0005]

[Problem to be Solved by the Invention]

An object of the present invention is to inexpensively provide a video-type gun battle game device that allows players to directly feel a sense of a bullet hitting an ally and to provide a new method for controlling the game device.

[0006]

[Means for Solving the Problem]

The above problem is achieved by providing a simulated gun and its support device with a vibration generator in the above publicly known video-type gun battle game device and by providing a circuit for operating the vibration generator for a certain period of time upon occurrence of a bullet shot signal.

[0020]

Meanwhile, when a bullet fired by an enemy hits the player, damage is given to the player and a life memory is reduced. At the same time, an explosion pattern is displayed on the screen, and a life memory panel flashes. The development of the game so far is the same as the publicly known game.

[0021]

Then, in the video-type gun battle game device according to the present invention, the above process is followed by activation of a vibration generator 7 to make the player's gun vibrate hard to the right and left. In this case, it is difficult for the player to align the sights due to the vibration and therefore the player strongly holds a gun grip 43 to continue firing while pressing a simulated gun 4 downward with his/her utmost effort as if the player were placed in a fierce hand-to-hand fighting state. Then, after passing through a predetermined period of time according to the damage suffered by the player, the vibration generator 7 is turned off to stop vibration of the simulated gun 4.

[0022]

As stated above or as shown in Fig. 2, in the video-type gun battle game device according to the present invention, the simulated gun support device 6 is provided with the vibration generator 7. Thus, when the player is hit by a bullet, strong vibration is given to the simulated gun 4, which is physically transferred to the player, whereby the player perceives a strong sense of presence, and obstruction of firing due to the vibration makes the game unfavorable for the player. Therefore, the player is to fight back continuously while strongly holding the gun grip. This makes the player feel more excited and the player's interest in the game is maintained.

(b) According to the matters described in the above (a), Exhibit Otsu B6 discloses a video-type gun battle game device ([0001]) to allow players to directly feel a sense of bullet shot ([0005]) by providing a simulated gun and its support device with a vibration generator and providing a circuit for operating the vibration generator for a certain period of time upon occurrence of a bullet shot signal ([0006]), and when a bullet fired by an enemy hits the player, the vibration generator is activated and strong vibration is given to the simulated gun ([0020]) to make the player's gun vibrate hard to the right and left, followed by, after passing through a predetermined period of time determined by the damage suffered by the player, turning off the vibration generator to stop vibration of the simulated gun ([0021]).

Meanwhile, Exhibit Otsu B6 discloses a technology of generating vibration continuously for a certain period of time depending on the degree of damage suffered by the player when the character is shot by a bullet, not a technology of making the vibration intermittent. Intermittent shots of bullets fired by the enemy may result in having intermittent gun vibration. However, such a technology is different from the technology of causing physically sensible vibration by changing the intermittent cycle of vibration according to the situation in which the character is placed.

In addition, a bullet shot can be recognized by an explosion pattern on the screen of the display device ([0020]) and therefore the degree of damage suffered by the player due to the bullet shot does not fall under the information being unrecognizable from the image information.

Hence, it is not found that Exhibit Otsu B6 discloses a feature corresponding to the feature "vibration information control means for transmitting information being unrecognizable from the image information as a physically sensible vibration information signal for changing the intermittent cycle of vibration generated intermittently according to the situation in which the character is placed" of Invention B1.

(c) Meanwhile, Appellee alleges that "when an enemy fires a shot precisely towards the player," such a shot stops and then starts again during the game and therefore "vibration" given to the "simulated gun 4" also stops and starts again, in which the interval (cycle) of occurrence of "vibration" is not constant but variable, or "vibration" is given to the "simulated gun 4" at a variable intermittent cycle. However, this technology does not change the intermittent cycle of vibration according to a situation of a character, as pointed out in the above (b).

Hence, the Appellee's allegation as stated above is inadmissible.

b. Exhibit Otsu B19

(a) Exhibit Otsu B19 (Unexamined Utility Model Application Publication No. 1993-58184) provides the following description.

[0001]

[Field of Industrial Application]

The present utility model relates to a steering wheel vibration device for a driving video game machine.

[0002]

[Conventional Art]

In the driving video game device installed in arcades, etc., a player operates a handle, accelerator, brake, and clutch changeover to drive a car on a video display panel to compete in driving technique.

[0008]

[Problem to be Solved by the Utility Model]

... in the conventional driving video game machine, a problem arises with increased costs due to the enlargement in the size of a steering device as a whole due to a steering wheel 4 containing a centering mechanism and a vibration mechanism that are provided separately.

[0009]

There is another problem such that repetitive drive of the motor 13 gives repetitive vibration to the steering wheel 4, but such repetitive drive of the motor 13 cannot provide high-speed vibration and players can feel only a completely different sense of vibration in the steering wheel from a sense of vibration obtained by actual operation of a real car.

[0010]

The present utility model aims at providing a steering wheel vibration device for a driving video game machine in which the above problems are solved.

[0012]

[Operation]

As such, in the steering wheel vibration device for driving video game machine according to the present utility model, the contact end surface of the centering cam is pressed against the rotary roller by the energizing means so that the steering shaft and the steering wheel are constantly energized to return to the reference position. Then, when the repetitive turning means causes the centering cam to turn repetitively, vibration in a rotation direction is given to the steering shaft and the steering wheel, because the contact end surface having different thicknesses in a circumferential direction of the centering cam is pressed strongly against the roller.

[0024]

Hence, by using a controller (not shown) to control the drive speed and duration, etc. of the motor 60 on the video display panel according to a situation of the game such as a collision between the player's car and another car or another object, travelling on a bad road and turning a sharp corner, vibration in a rotation direction can be given to the steering wheel 23 while

selecting the strength/weakness and duration of the vibration.

[0025]

[Effects of the Utility Model]

In the steering wheel vibration device for a driving video game machine according to the present utility model, the centering cam 40 having a centering function to the steering wheel 23 can also play a vibration function to the steering wheel 23 and therefore these functions which used to be provided separately can be combined as stated above, thereby allowing the device as a whole to be smaller and simplified.

[0026]

Additionally, owing to the conversion of a pressing force in the axial direction by the spring 52 into oscillating motion in the rotation direction via the centering cam 40, high-speed vibration like the one in actual traveling by a real car can be obtained. In addition, as it is clearly understood from Fig. 4 to Fig. 6, a pressing force given by the spring 52 in the case of oscillation of the arm plate 41 shown in Fig. 4 is different from that of the case of oscillation shown in Fig. 5 or Fig. 6. When rotation of the steering wheel 23 is made larger as shown in Fig. 6, a pressing force becomes larger, in which vibration becomes stronger and stronger vibration is generated when turning a sharp curve or operating the handle suddenly, so that a sense of presence that is more like actual driving can be given to the player in comparison with the conventional case as shown in Fig. 8 in which the same vibration force is generated for any turning angle.

- (b) According to the matters described in the above (a), Exhibit Otsu B19 relates to a steering wheel vibration device for a driving video game machine configured for players to drive a car on the video display panel to compete the driving techniques ([0001]), aims at solving problems such that repetitive drive of the motor 13 for the steering wheel 4 cannot provide high-speed vibration and players can feel only a completely different sense of vibration in the steering wheel from a sense of vibration obtained by actual operation of a real car ([0009] and [0010]), adopts the feature of conversion of a pressing force in the axial direction by the spring 52 into oscillating motion in the rotation direction via the centering cam so as to obtain high-speed vibration like the one in actual traveling by a real car ([0026]), and by using a controller to control the drive speed and duration, etc. of the motor on the video display panel according to a situation of the game such as a collision between the

player's car and another car or another object, travelling on a bad road, and turning a sharp corner, vibration in a rotation direction can be given to the steering wheel while selecting the strength/weakness and duration of the vibration ([0024]).

As such, Exhibit Otsu B19 discloses the technology of performing a control while selecting the strength/weakness and duration of vibration given to the steering wheel according to a situation of the game such as a collision between the player's car and another car or another object, travelling on a bad road, and turning a sharp corner, not the technology of performing a control to make the vibration intermittent.

In addition, a situation of the game such as a collision between cars, a bad road, and a corner can be recognized on the video display screen ([0024]) so that a situation of the game such as a collision between the player's car and another car or another object does not fall under the information being unrecognizable from the image information.

Hence, Exhibit Otsu B19 is not found to disclose a feature corresponding to "a vibration information control means for transmitting information being unrecognizable from the image information as a physically sensible vibration information signal for changing the intermittent cycle of vibration generated intermittently according to the situation in which the character is placed" of Invention B1.

(c) Meanwhile, Appellee alleges that vibration of the steering wheel which is generated or stops irregularly is clearly vibration generated intermittently and because, for example, the first cycle of the intermittent cycle from the time of occurrence of first vibration of the steering wheel to the time of occurrence of second vibration is usually different from the second cycle from the time of occurrence of said second vibration to the time of occurrence of third vibration, it is therefore obvious that the intermittent cycle of vibration of the steering wheel is variable.

However, on the assumption that the first cycle is from the time of occurrence of first vibration of the steering wheel to the time of occurrence of second vibration and the second cycle is from the time of occurrence of said second vibration to the time of occurrence of third vibration, even if the first cycle is different from the second cycle, in the same manner as in the above a(c), it is not found that such a technology changes the "intermittent cycle" of vibration given to the "steering wheel 23" according to a specific situation of

the game (e.g., collision with another car, collision with another object, travelling on a bad road, and turning a sharp corner,).

Hence, the above Appellee's allegation is inadmissible.

c. Exhibit Otsu B20

(a) Exhibit Otsu B20 (Unexamined Patent Application Publication No. 1993-277258) provides the following description.

[0001]

[Field of Industrial Application]

The present invention relates to a steering device for a video game device which is capable of giving steering reaction force in the steering wheel, kickback during travelling on unlevel ground, and vibration in the steering wheel during travelling in a video game device in which operation to rotate the steering wheel leads to left and right steering of vehicle video images and changes vehicle external video images to the left and right on a display screen of the video game device.

[0002]

[Conventional Art]

In travelling on unlevel ground by an ordinary car, an impact applied to the tire is transferred to the handle as a kickback and a steering reaction force is increased according to a steering angle. In the car provided with a power steering device, a steering reaction force is increased corresponding to an increased steering angle and a steering reaction force is also increased corresponding to an increased vehicle speed.

[0004]

[Problem to be Solved]

The device disclosed in Unexamined Utility Model Application Publication No. 1990-98989 uses one air cylinder which is connected to a steering shaft via a crank (embodiment shown in Fig. 3 of said publication) or via a rhombic link (embodiment shown in Fig. 4 of said publication), or uses two air cylinders arranged linearly with a relative attitude made between pistons tip ends thereof while interposing a crank tip end integrally formed with a steering shaft between both piston tip ends, in which a relatively large steering reaction force is likely to be obtained when the steering wheel is almost in a neutral state, whereas a steering reaction is not increased in the case of a large steering angle even if an air pressure inside the air cylinder is increased, which is inconvenient.

[0005]

Additionally, in the embodiment shown in Fig. 1 and Fig. 2 of said publication, one end of the air cylinder is pivoted on one end of an arm swinging around an axis parallel to a steering shaft, the steering shaft is integrally mounted on a cam, and a cam follower provided at a tip end of the arm is engaged with the cam. Therefore, irrespective of whether or not the steering wheel is almost in a neutral state, a large steering reaction force cannot be obtained in addition to having a small kickback and giving players a sense of steering different from the steering obtained in actually driving an automobile.

[0006]

[Means for Solving the Problem and Function/Operation]

The present invention relates to improvement of the steering device for a video game device in which such drawbacks are overcome, and is characterized by a steering device for a video game device in which operation to rotate the steering wheel leads to left and right steering of vehicle video images and changes vehicle external video images to the left and right on a display screen of the video game device, the steering device comprising a steering shaft integrally formed with the steering wheel, a crank arm integrally coupled to the steering shaft, two reciprocating actuators with tip ends pivoted on the crank arm at two positions in the circumferential direction and base ends pivoted on fixed portions, switching valves attached to both end ports of each of the reciprocating actuators, and a fluid source connected to both end ports of each of the reciprocating actuator via the switching valves.

[0007]

Owing to the structure of the present invention as stated above, in a neutral state of the steering wheel in which the centering reciprocating actuator as one of the two reciprocating actuators is oriented on a reference line connecting the base ends of the reciprocating actuators and the steering shaft, a pressurized fluid is supplied to the centering reciprocating actuator from the fluid source via the switching valves to shorten the centering reciprocating actuator, thereby making it possible to give a steering reaction force to the steering wheel steered to either left or right in a direction of returning to a neutral position.

[0011]

Also, in the present invention, a pressurized fluid is supplied selectively to

both ports of the two reciprocating actuators responsive to the direction of the crank arm and the state of supply is switched intermittently, whereby a vibration state or a kickback state can be given to the steering wheel.

[0024]

Further, when a vehicle speed exceeds a certain limit in a vehicle video image or in a vehicle external video image on the display screen on the video game device by depressing an accelerator pedal not shown, or when a road surface becomes uneven on the video image, a state of causing vibration in the steering wheel 1 can also be generated.

[0025]

More specifically, when the steering angle θ of the steering wheel 1 falls within a range of -45° to 45° , as shown in Fig. 6, neither the normally open three-port solenoid valve 22 nor the normally closed three-port solenoid valve 23 is subjected to switching operation and the centering air cylinder 15 has only the force p generated to make the centering air cylinder 15 shorter, whereas, while keeping a steering reaction force, the normally closed three-port solenoid valves 24, 25 are operated alternatively within a short period of time to alternatively generate a shortening force and a stretching force in the action air cylinder 16, whereby left and right vibration forces can be given to the steering wheel 1.

[0031]

As such, according to the embodiment shown in Fig. 1 to Fig. 11, irrespective of a range of the steering angle θ , owing to the cooperative motion of the two cylinders including the centering air cylinder 15 and the action air cylinder 16, an operational reaction force of a scale substantially proportional to an absolute value of the steering angle θ can be generated and it is also possible to generate vibration and kickback so that players can have a sense of driving similar to actual automobile driving.

- (b) According to the matters described in the above (a), Exhibit Otsu B20 discloses a video game device in which operation to rotate the steering wheel leads to left and right steering of vehicle video images and changes vehicle external video images to the left and right on the display screen of the video game device, owing to the mechanism using the air cylinder and the actuator, and when a vehicle speed exceeds a certain limit in a vehicle video image or in a vehicle external video image on the display screen on the video game device, or when a road surface becomes uneven on the video image, a state of causing

vibration in the steering wheel is generated and a kickback can also be generated so that players can have a sense of driving similar to actual automobile driving ([0001], [0024], and [0031]).

As such, Exhibit Otsu B20 discloses the technology of generating vibration in the steering wheel in cases such that a road surface becomes uneven on the display screen of the video game device, not the technology of transmitting information to make the vibration intermittent. Even if an intermittent uneven road surface results in causing vibration intermittently, such a technology is different from the technology of causing physically sensible vibration by changing the intermittent cycle of vibration according to the situation in which the character is placed.

In addition, the situation of a road surface can be recognized on the display screen ([0024]). Therefore, vibration in Exhibit Otsu B20 does not fall under the information being unrecognizable from the image information.

Hence, Exhibit Otsu B20 is not found to disclose a feature corresponding to "a vibration information control means for transmitting information being unrecognizable from the image information as a physically sensible vibration information signal for changing the intermittent cycle of vibration generated intermittently according to the situation in which the character is placed" of Invention B1.

(c) Meanwhile, Appellee alleges that occurrence of events such as "when a vehicle speed exceeds a certain limit" or "when a road surface becomes uneven" is intermittent during the game and the interval (or cycle) of occurrence is variable; i.e., the variable intermittent cycle of vibration in the steering wheel is obvious. However, it is different from changing the intermittent cycle of variation according to the situation in which the character is placed, as pointed out in the above (b).

Appellee also alleges, based on the description in [0011] of Exhibit Otsu B20, that Exhibit Otsu B20 discloses the technology capable of intermittently switching the presence or absence of occurrence of vibration and clearly causes vibration at the variable intermittent cycle. However, said paragraph involves providing a vibration state in the steering wheel by selectively supplying a pressurized fluid to both ports of the two reciprocating actuators and switching the state of supply intermittently, not switching the presence or absence of vibration intermittently.

Hence, the above Appellee's allegation is inadmissible.

d. Whether Difference is easily conceivable

Appellee alleges that Exhibits Otsu B6 and B18 to B20 disclose the technology of "changing the intermittent cycle of vibration generated intermittently according to the situation in which the character is placed" and therefore said technology is well known (Well-Known Art 1) so that the feature of Invention 1 in connection with the difference would have been easily conceivable by combining Well-Known Art 1 with Publicly Known Invention b1.

However, as stated in the above a to c, Exhibits Otsu B6, B19, and B20 cannot be found to disclose the technology of "changing the intermittent cycle of vibration generated intermittently according to the situation in which the character is placed" and therefore said technology cannot be found to have been well known at the time of filing of the Application B.

Hence, the above Appellee's allegation lacks basis and is unreasonable.

(C) Combination with the well-known art "differentiating the type of vibration according to the situation in which the character is placed"

a. Exhibits Otsu B7, B24, B39, and B40

(a) Exhibit Otsu B7 (Unexamined Patent Application Publication No. 1988-174681) discloses a fishing game machine to allow a player to enjoy a sense of actual fishing visually and physically by making the player physically feel a reaction corresponding to "bite" and "pull" from a fish responsive to operation by the player, in which a control unit determines a fishing state such as successful catching or still fishing from fishing conditions stored in a storage means and respective detection signals, causes a swing loading means and a rotation loading means to be driven according to the fishing state, notifies the player of a reaction corresponding to the fishing state through an imitated rod and a reel rotation handle, and creates an image signal corresponding to the fishing state to be transmitted to a display, whereby the player can visually understand the fishing state through the screen of the display (page 2, upper right column, line 15 to lower left column, line 10, etc.).

(b) Exhibit Otsu B24 (Unexamined Patent Application Publication No. 1992-8381) discloses a physically sensible game machine to allow a player to enjoy a maneuvering technique and a sense of shooting by performing predetermined operation responsive to a variable screen image simulating a high-speed drive or space war, in which a tracking scope 8 is positioned in front of the player at an angle easy to see, a swing means 6 is used to make a target video image 4

swing irregularly up and down and left and right in front of a background video image T rotating at a fixed speed, the player holds a physically sensible lever 10 with both hands to swing a tracking body 7 appropriately to make a sighting mark M_1 of the tracking scope 8 meet a target mark M_2 of the target video image 4, the player presses a fire button 9a of a trigger member 9 when the mark M_1 is about to meet the mark M_2 , which is followed by causing a member 9f to be pressed towards a press member 5a of a switch 5 via members 9b, 9c, 9d, 9e, and at this time, mismatch between the member 9f and a center line of the member 5a leads to occurrence of missile firing sound and transmission of small-amplitude vibration with an amount of eccentricity S1 to the physically sensible lever 10, or successful match between the member 9f and a center line of the member 5a leads to turning on the switch to a hit mode in which the background video image T and the target video image 4 are brightened sharply with simultaneous occurrence of firing sound and a large amplitude is transmitted to the physically sensible lever 10 (page 1, left column, line 17 to page 2, right column, line 10, etc.).

(c) Exhibit Otsu B39 (Unexamined Patent Application Publication No. 1993-303324) relates to a drive simulation apparatus to allow a player to simulate driving while boarding and discloses a drive simulation apparatus as follows. When a switch key 9 is turned on, a drive simulation apparatus 1 is started and road terrain is displayed in a still state on a road terrain display mechanism 6, in which if an accelerator pedal 8 is depressed by the player in this state, the road terrain moves continuously so that the player feels as if he or she were driving on the road terrain, or when the player rotates a steering wheel 5 in a left or right direction, the rotation of the steering wheel 5 causes a driving compartment body 4 to rotate with respect to the base 2 in the direction which the steering wheel 5 was turned, and the road terrain displayed in the road terrain display mechanism 6 moves to the direction opposite to the direction which the steering wheel 5 was turned, thus giving the player the feeling as if he or she were driving on the curved road displayed in the road terrain, and the magnitude of vibration is changed in accordance with the degree of pressure applied to the accelerator pedal 8 such that the vibrations are large in an idling state but smaller in travelling while the accelerator pedal 8 is depressed ([0014] to [0016], [0025], and [0028]).

(d) Exhibit Otsu B40 (Unexamined Utility Model Application Publication No. 1993-84385) discloses a TV game machine configured to allow a player to

develop a game by sitting on a seat 2 and operating a handle 4, a shift lever 5, and accelerator/brake pedals 6 while looking at a game screen 3, in which a vibration unit 10 having a motor 12 is provided to cause vibration beneath the seat, it is possible to cause vibration in various cycles by variably controlling a rotation speed of the motor 12, and rotation motion of the motor is converted into reciprocating linear motion to be transmitted to the seat, whereby the entire seat is made to vibrate according to operation by the player or the game screen so as to be able to give an enhanced sense of presence to the player ([0001], [0002], [0005], [0009], [0010], [0012], [0016], and [0017]).

(e) As stated above, each of Exhibits Otsu B7, B24, B39, and B40 discloses a game device giving a sense of presence to the player by causing vibration linked to the game screen.

b. Whether Difference is easily conceivable

As stated in the above (A)a, the above (B)a to c, and the above a, Exhibits Otsu B6, B7, B18 to B20, B24, B39, and B40 disclose "a technology of providing physically sensible vibration linked to the game screen according to the situation of the game" and therefore said technology is found to have been well known at the time of filing of the present Application B (Well-Known Art 2).

Then, Appellee alleges that changing the intermittent cycle of vibration generated intermittently as a means for changing the type of vibration means only selecting one of several options and as long as the technology of changing the magnitude (strength/weakness) of vibration according to the situation (Well-Known Art 2) is disclosed, changing the intermittent cycle of vibration generated intermittently for changing the type of vibration does not amount to a substantial difference and is merely a design matter to be selected appropriately by a person ordinarily skilled in the art.

However, to begin with, Well-Known Art 2 relates to the technology of changing vibration linked to the game screen and is, in this regard, crucially different from Publicly Known Invention b1 in which information being unrecognizable from the screen is transmitted as physically sensible vibration. Hence, it should be said that the two inventions cannot be combined.

Additionally, with regard to "a vibration information control means for transmitting as a physically sensible vibration information signal for changing the intermittent cycle of vibration generated intermittently according to the situation in which the character is placed" of Invention B1, Description B

recites as follows: "this determination triggers transmission of a physically sensible vibration information signal corresponding to a changing mode of the game, such as, for example, a physically sensible vibration information signal for making the amplitude of vibration greater as the degree of risk increases in the situation in which the player is placed or for making the cycle of occurrence of vibration shorter. This allows the player to feel a higher level of reality and thrill." ([0031]); and "As such, upon determination of a dangerous situation, based on a signal from the particular situation determination means 32, the vibration information control means 33 applies a predetermined control to the sound signal a so that a low frequency range of sound signal which is inaudible to the ear is transmitted as the physically sensible vibration information signal c to the speaker 6 of the sound sensing device 1. In this case, the particular situation determination means 32 determines whether the character 41 is approaching or moving away from the land mines X. In the case of approaching, the particular situation determination means 32 may cause vibration to occur more frequently by gradually shortening the intermittent cycle of the low frequency range of sound signal as the distance of the interval becomes shorter. In contrast, in the case of moving away, the particular situation determination means 32 may reduce the frequency of occurrence of vibration by gradually lengthening the intermittent cycle as the distance of the interval becomes longer. In other words, the player can feel the atmosphere as if the level of proximity to the land mines X would coincide with the player's heart beats." ([0047]).

Hence, in Invention B1, changing the intermittent cycle as a physically sensible vibration information signal exhibits functions and operation such that the player has a higher level of reality and thrill by making the player actually feel the degree of risk, and that the player can feel the atmosphere as if the level of proximity to the risk would coincide with the heart beats, as opposed to those exhibited by simply changing the amplitude of vibration. Thus, it cannot be found that changing the amplitude according to the situation in which the Ninja character is placed in Publicly Known Invention b1 does not amount to a substantial difference from changing the intermittent cycle of vibration generated intermittently in Invention B or falls under a design matter to be selected appropriately by a person ordinarily skilled in the art.

Hence, the above Appellee's allegation is inadmissible.

(4) Issue 2-3 (Presence/absence of damages suffered by Appellant and the amount of

damages)

A. Found facts

(A) Actual rate of royalty of Patent B in the license agreement is not expressed in this litigation.

Then, with regard to the recent statistical average rate of royalty in the field to which the technical field of Patent B belongs, the facts are found as stated in the above 1(7).

(B) As stated in the above (1)A, the game device of Invention B1 comprises a particular situation determination means for determining, based on a signal from the game progress control means, whether or not a situation in which the character operated by the player is placed during progress of the game falls in a particular situation, a vibration information control means for transmitting, upon determination of falling in the particular situation by the particular situation determination means, information being unrecognizable from the image information as a physically sensible vibration information signal, and a vibration generating means for generating vibration based on the physically sensible vibration information signal from the vibration information control means. By having such a structure, effects are exhibited such that the player can advance the game in a secret state known to only the player without making surrounding people aware of such a particular situation and can feel more intensity or an enhanced sense of reality by physically feeling vibration. Additionally, if the game situation is changing according to predetermined regularity, the particular situation determination means determines that the situation falls in a particular situation and causes transmission of a physically sensible vibration information signal corresponding to a changing mode of the game such as, for example, a physically sensible vibration information signal for making the occurrence cycle (intermittent cycle) of vibration shorter, thereby realizing an effect of allowing the player to feel a higher level of reality and thrill.

As such, Invention B1 is an invention of a game device and has the structure and effects as stated above. Meanwhile, Device B belongs to the technical scope of Invention B1, and Product B is game software to execute a game by being loaded in the main body of the PlayStation 2 which constitutes Device B. Then, as stated in the above (1) B, Product B allows the player to operate a leading game character to advance the game while taking a photo of a spirit attacking the character by a projection device (camera), absorbing and repelling

the soul of the spirit, and the game is over when the physical strength falls to 0 after having been attacked by the spirit several times. Thus, Invention B1 in connection with the scene of taking a photo of the spirit is found to have considerable importance to Product B.

Meanwhile, functions and operation of Invention B1 are found to be exhibited in Product B in the scene in which vibration is generated intermittently in the variable intermittent cycle determined according to the distance between the character and the spirit under the circumstance of having a spirit near the character but being unable to recognize the presence of the spirit on the screen with no light emitted from the filament. Product B may possibly have such a scene as stated in the above (1) B. However, in light of the positional relationship between the character and the spirit, the range of filament lighting, and the range of occurrence of vibration, it is considered that appearance of such a scene is limited to a part of scenes in which the player tries to take a photo of the spirit. Thus, it should be concluded that the importance of Invention B1 to Product B is not particularly high and the value of the importance is less than the value of the importance of Invention A to Product A-9, etc.

However, considering the fact that Product B allows the player to operate a leading game character to advance the game while taking a photo of a spirit attacking the character by a projection device (camera), and absorbing and repelling the soul of the spirit, it is important for the player to constantly grasp the distance between the character and the spirit. Thus, the effect of Invention B1 to enable the player to recognize the distance to the spirit by intermittent vibration generated in the variable intermittent cycle even in the case of being unable to recognize the presence of the spirit from the image information is found to have considerable importance in advancing the game. Therefore, it is not reasonable to evaluate the importance of Invention B1 in Product B to be excessively low.

Additionally, with regard to the game device configured to physically transmit vibration to the player according to the progress of the game in commercial game machines and home game machines, no alternative technology appears to exist to replace the above technology of Invention B1.

(C) As stated in the above (B), Invention B1 relates to the technology used in the scene of taking a photo of the spirit, which has important meaning to the game of Product B. This feature affects the incentive for consumers to

purchase. Hence, use of Invention B1 in Product B is found to contribute to the Appellee's sales and profits.

Meanwhile, according to the evidence (Exhibit Ko B13, Exhibits Otsu B32-11, B23, and Exhibits Otsu B33 to B35), compared to Product B in which the unique setting of overthrowing the spirit by the projection device (camera), visual persistence in the Japanese style, sound-based presentation, and the game characters have a significant appeal to the consumer, Invention B1 is found to have a low degree of contribution to the sales of Product B.

(D) Appellant and Appellee are both stock companies engaged in manufacturing, selling, etc. of game equipment and software and are competitors to each other.

B. Amount of money to be received for working

As stated in the above A, even though a royalty rate of an actual license contact of Patent B is not expressed in this litigation, the result of Survey shows that the average royalty rate on the recent statistics of the field to which the technical field of Patent B belongs is 2.5% (maximum: 4.5%, minimum: 0.5%, standard deviation: 1.5%). In addition to the above, the technology according to Invention B1 has its own meaning to the game software of an infringing article and is not substitutable. However, considering circumstances exhibited in this litigation such that Invention B1 has a low degree of contribution to the sales and profits of Product B in comparison with the high appeal of setting, visual, presentation, and characters provided in Product B and has a low value in comparison with the importance of Invention A in Product A-9, etc. and Appellant and Appellee are in a competitive relationship, the rate which should be determined ex post for the infringer of the patent right and should be received for the working in this case should be reasonably found to be not smaller than 1.5%.

Hence, with regard to the infringement of Patent Right B, the amount of damages calculated under Article 102, paragraph (3) of the Patent Act is 14.1 million yen (940 million yen \times 1.5%).

C. Interim summary

As stated above, for Appellant, the amount obtained by adding the attorneys' fees and the patent attorneys' fees to the amount of damages calculated under Article 102, paragraph (3) of the Patent Act is found to be the amount of damages granted for Appellant.

Then, it is reasonable to find that the attorneys' fees and the patent attorneys' fees having considerable causality to the Appellee's tort are not less than 10% of the amount of damages as calculated above, or 1.41 million yen. Hence, the

amount of damages granted for Appellant is 15.51 million yen (14.10 million yen +1.41 million yen).

3. Summary

- (1) According to the above 1, Appellant's claim for Patent Right A has the ground to the extent of claiming payment of 128,333,710 yen based on the tort due to indirect infringement of Patent Right A of Invention A1 and the relevant delay damages calculated at the rate of 5% per annum from July 11, 2014 after said tort (the day following service of complaint) until the completion of payment.

Then, Appellant selectively claims compensation for damage based on the tort due to indirect infringement of Patent Right A of Invention A2 and the tort by the act leading to the act of working Invention A2. However, even if these torts are found to exist, the amount of damages acknowledged for these torts is not found to be more than the above amount and therefore judgement therefor is not required.

- (2) According to the above 2, the Appellant's claim for Patent Right B has the ground to the extent of claiming payment of 15.51 million yen based on the tort due to the indirect infringement of Patent Right B of Invention B1 and the relevant delay damages from July 11, 2014 after said tort (the day following service of complaint) until the completion of payment at the rate of 5% per annum.

Then, Appellant selectively claims compensation for damage by the tort due to indirect infringement of Patent Right B of Invention B8 and the tort by the act leading to the act of working Invention B8. However, even if these torts are found to exist, the amount of damages acknowledged for these torts is not found to be more than the above amount, and therefore judgment therefor is not required.

- (3) According to the above, Appellant may claim payment of the total sum of the above (1) and (2) or 143,843,710 yen and the relevant delay damages from July 11, 2014 until the completion of payment at the rate of 5% per annum against Appellee, based on the right of claim for compensation for damage by the tort due to infringement of the patent.

Hence, the Appellant's claim has ground to the above limit.

4. Conclusion

According to the above, the Appellant's claim for 983,231,115 yen and the relevant delay damages from July 11, 2014 until the completion of payment at the rate of 5% per annum has ground and is therefore granted to the extent of claim for payment of 143,843,710 yen and the relevant delay damages from said date until the completion of payment at the rate of 5% per annum, but the remaining claim has no ground and shall be dismissed. The judgment in prior instance different from the

above judgement is partially unreasonable and the Appellant's appeal has ground partially. Hence, the judgment in prior instance is modified as stated above. The Appellee's incidental appeal has no ground and shall be dismissed. Consequently, the judgment is rendered as stated in the main text.

Intellectual Property High Court, Third Division

Presiding Judge TSURUOKA Toshihiko

Judge UEDA Takuya

Judge YAMAKADO Masaru

(Attachment 9) Structure of Method A

Constituent Features (Claim 1)		Structure of Methods A-1 to A-5
A	A method for operating a game system by loading a storage medium that stores a game program and/or data and is replaceable during predetermined operation of a game device (excluding a storage medium capable of storing saved data) in the game device,	A method for operating a game system by loading a replaceable DVD-ROM that stores a game program and/or data and is replaceable during operation of PlayStation 2 in the PlayStation 2,
E	the method for operating a game system being characterized in that	the method for operating a game system being characterized in that
B	as the storage medium, at least	as the DVD-ROM,
B-1	a first storage medium containing a predetermined game program and/or data and a predetermined key, and	a "Sengoku Musou [<i>Samurai Warriors</i>]" DVD-ROM containing a "Sengoku Musou" game program and/or data and a predetermined key, and
B-2	a second storage medium containing, in addition to a predetermined standard game program and/or data, a predetermined extended game program and/or data are prepared,	a "Sengoku Musou Moushouden [<i>Samurai Warriors: Xtreme Legends</i>]" DVD-ROM containing, in addition to a "Sengoku Musou Moushouden" game program and/or data," the "Sengoku Musou" predetermined key and a "part of the remaining game program and/or data of a 'Sengoku Musou' key disc" operated in reading a "part of the game program and/or data of the 'Sengoku Musou' key disc" stored in the "Sengoku Musou" DVD-ROM are prepared,
C	the extended game program and/or data are/is a game program and/or data to achieve, in addition to the standard game program and/or data, more game characters and/or enriched functions of the game characters and/or expansion of scenes and/or enriched sound, and	the "part of the remaining game program and/or data of the 'Sengoku Musou' key disc" stored in the "Sengoku Musou Moushouden" DVD-ROM are/is a game program and/or data to add, in addition to the "Sengoku Musou Moushouden" game program and/or data," [i]16 characters in a "Musou Enbu [<i>Warriors Demonstration</i>]" game mode and stories based on the added characters, [ii] 16 chapters in a "Mogi Enbu [<i>Mock</i>

		<i>Demonstration</i> " game mode, [iii] a "Naraku Kai [<i>Abyss Revised</i>]" stage and a "Koku Kai [<i>Empty Space Revised</i>]" stage in a "Mugenjo [<i>Infinity Fortress</i>]" game mode, [iv] a "Kessen [<i>Final Battle</i>]" stage, a "Torimono [<i>Capture</i>]" stage and a "Sokko [<i>Swift Attack</i>]" stage in a "Shiai [<i>Battle</i>]" game mode, and [v] a "Udedameshi [<i>Trial</i>]" game mode, and
D	in loading the second storage medium in the game device,	in loading the "Sengoku Musou Moushouden" DVD-ROM in the PlayStation 2,
D-1	if the predetermined key is read by the game device, the game device is operated with both the standard game program and/or data and the extended game program and/or data, or	if the predetermined key is read by the PlayStation 2, the PlayStation 2 is operated with the "'Sengoku Musou Moushouden' game program and/or data," the "part of the game program and/or data of the 'Sengoku Musou' key disc" read from the "Sengoku Musou" DVD-ROM, and the "part of the remaining game program and/or data of the 'Sengoku Musou' key disc," or
D-2	if the predetermined key is not read by the game device, the game device is operated with only the standard game program and/or data.	if the predetermined key is not read by the PlayStation 2, the PlayStation 2 is operated with only the "'Sengoku Musou Moushouden' game program and/or data."

Constituent Features (Claim 1)		Structures of Methods A-6 to A-8
A	A method for operating a game system by loading a storage medium that stores a game program and/or data and is replaceable during predetermined operation of a game device (excluding a storage medium capable of storing saved data) in the game device,	A method for operating a game system by loading a DVD-ROM that stores a game program and/or data and is replaceable during operation of PlayStation 2 in the PlayStation 2,
E	the method for operating a game system being characterized in that	the method for operating a game system being characterized in that
B	as the storage medium, at least	as the DVD-ROM,
B-1	a first storage medium containing a predetermined game program and/or data and a predetermined key, and	a "Sengoku Musou 2 [<i>Samurai Warriors 2</i>]" DVD-ROM containing a "Sengoku Musou 2' game program and/or data" and a predetermined key, and
B-2	a second storage medium containing, in addition to a predetermined standard game program and/or data, a predetermined extended game program and/or data are prepared,	a "Sengoku Musou 2 Moushouden [<i>Samurai Warriors 2: Xtreme Legends</i>]" DVD-ROM containing, in addition to a "'Sengoku Musou 2 Moushouden' game program and/or data," the "Sengoku Musou 2" predetermined key and a "part of the remaining game program and/or data of a 'Sengoku Musou 2' key disc" operated in reading a "part of the game program and/data of the 'Sengoku Musou 2' key disc" stored in the "Sengoku Musou 2" DVD-ROM" are prepared,
C	the extended game program and/or data are/is a game program and/or data to achieve, in addition to the standard game program and/or data, more game characters and/or enriched functions of the game characters and/or expansion of scenes and/or enriched sound, and	the "part of the remaining game program and/or data of the 'Sengoku Musou 2' key disc" stored in the "'Sengoku Musou 2 Moushouden" DVD-ROM are/is a game program and/or data to add, in addition to the "Sengoku Musou 2 Moushouden' game program and/or data," [i] 24 characters and stories based on the added characters in a "Musou Enbu [<i>Warriors Demonstration</i>]" game

		mode, and [ii] a "Mugenjo [<i>Infinity Fortress</i>]" game mode and a "Sugoroku [<i>Japanese backgammon</i>]" game mode, and
D	in loading the second storage medium in the game device,	in loading the "Sengoku Musou 2 Moushouden" DVD-ROM in the PlayStation 2,
D-1	if the predetermined key is read by the game device, the game device is operated with both the standard game program and/or data and the extended game program and/or data, or	if the predetermined key is read by the PlayStation 2, the PlayStation 2 is operated with the "'Sengoku Musou 2 Moushouden' game program and/or data," the "part of the game program and/or data of the 'Sengoku Musou 2' key disc" read from the DVD of "Sengoku Musou 2," and the "part of the remaining game program and/or data of the 'Sengoku Musou 2' key disc," or
D-2	if the predetermined key is not read by the game device, the game device is operated with only the standard game program and/or data.	if the predetermined key is not read by the PlayStation 2, the PlayStation 2 is operated with only the "'Sengoku Musou 2 Moushouden' game program and/or data."

Constituent Features (Claim 1)		Structure of Method A-9
A	A method for operating a game system by loading a storage medium that stores a game program and/or data and is replaceable during predetermined operation of a game device (excluding a storage medium capable of storing saved data) in the game device,	A method for operating a game system by loading an optical disk for Wii software that stores a game program and/or data and is replaceable during operation of the Wii in the Wii,
E	the method for operating a game system being characterized in that	the method for operating a game system being characterized in that
B	as the storage medium, at least	as the optical disk for Wii software,
B-1	a first storage medium containing a predetermined game program and/or data and a predetermined key, and	a "Sengoku Musou 3 [<i>Samurai Warriors 3</i>]" optical disk for Wii software containing a "'Sengoku Musou 3' game program and/or data" and a predetermined key, and
B-2	a second storage medium containing, in addition to a predetermined standard game program and/or data, a predetermined extended game program and/or data are prepared,	a "Sengoku Musou 3 Moushouden [<i>Samurai Warriors 3: Xtreme Legends</i>]" optical disk for Wii software containing, in addition to a "'Sengoku Musou 3 Moushouden' game program and/or data," a "game program and/or data" of a 'Sengoku Musou 3' key disc" operated in reading the "Sengoku Musou 3" predetermined key are prepared,
C	the extended game program and/or data are/is a game program and/or data to achieve, in addition to the standard game program and/or data, more game characters and/or enriched functions of the game characters and/or expansion of scenes and/or enriched sound, and	the "game program and/or data of the 'Sengoku Musou 3' key disc" stored in the "Sengoku Musou 3 Moushouden" optical disk for Wii software are/is a game program and/or data to add, in addition to the "'Sengoku Musou 3 Moushouden' game program and/or data," a story presented in the "Sengoku Musou 3," and
D	in loading the second storage medium in the game device,	in loading the "Sengoku Musou 3 Moushouden" optical disk for Wii software in the Wii,

D-1	if the predetermined key is read by the game device, the game device is operated with both the standard game program and/or data and the extended game program and/or data, or	if the predetermined key is read by the Wii, the Wii is operated with both the "Sengoku Musou 3 Moushouden' game program and/or data" and the "game program and/or data of the 'Sengoku Musou 3' key disc," or
D-2	if the predetermined key is not read by the game device, the game device is operated with only the standard game program and/or data.	if the predetermined key is not read by the Wii, the Wii is operated with only the "Sengoku Musou 3 Moushouden' game program and/or data."

Constituent Features (Claim 1)		Structure of Methods A-10 to A-15 and A-23[i]
A	A method for operating a game system by loading a storage medium that stores a game program and/or data and is replaceable during predetermined operation of a game device (excluding a storage medium capable of storing saved data) in the game device,	A method for operating a game system by loading a DVD-ROM that stores a game program and/or data and is replaceable during operation of the PlayStation 2 in the PlayStation 2,
E	the method for operating a game system being characterized in that	the method for operating a game system being characterized in that
B	as the storage medium, at least	as the DVD-ROM,
B-1	a first storage medium containing a predetermined game program and/or data and a predetermined key, and	a "Shin Sangoku Musou 2 [<i>Dynasty Warriors 3</i>]" DVD-ROM containing a "'Shin Sangoku Musou 2' game program and/or data" and a predetermined key, and
B-2	a second storage medium containing, in addition to a predetermined standard game program and/or data, a predetermined extended game program and/or data are prepared,	a "Shin Sangoku Musou 2 Moushouden [<i>Dynasty Warriors 3: Xtreme Legends</i>]" DVD-ROM containing, in addition to a "'Shin Sangoku Musou 2 Moushouden' game program and/or data," the "Shin Sangoku Musou 2" predetermined key and a "part of the remaining game program and/or data of a 'Shin Sangoku Musou 2' key disc" operated in reading a "part of a game program and/or data of the 'Shin Sangoku Musou 2' key disc" stored in the "Shin Sangoku Musou 2" DVD-ROM are prepared,
C	the extended game program and/or data are/is a game program and/or data to achieve, in addition to the standard game program and/or data, more game characters and/or enriched functions of the game characters and/or expansion of scenes and/or enriched	the "part of the remaining game program and/or data of the 'Shin Sangoku Musou 2' key disc" stored in the "Shin Sangoku Musou 2 Moushouden" DVD-ROM are/is a game program and/or data to add, in addition to the "'Shin Sangoku Musou 2 Moushouden' game program and/or data," [i] a story presented in a Musou mode and a free mode of "Shin

	sound, and	Sangoku Musou 2," [ii] a challenge mode course of "Shin Sangoku Musou 2," and [iii] a "VS mode," and
D	in loading the second storage medium in the game device,	in loading the "Shin Sangoku Musou 2 Moushouden" DVD-ROM in the PlayStation 2,
D-1	if the predetermined key is read by the game device, the game device is operated with both the standard game program and/or data and the extended game program and/or data, or	if the predetermined key is read by the PlayStation 2, the PlayStation 2 is operated with the "'Shin Sangoku Musou 2 Moushouden' game program and/or data," the "part of the game program and/or data of the 'Shin Sangoku Musou 2' key disc" read from the "Shin Sangoku Musou 2" DVD-ROM, and the "part of the remaining game program and/or data of the 'Shin Sangoku Musou 2' key disc," or
D-2	if the predetermined key is not read by the game device, the game device is operated with only the standard game program and/or data.	if the predetermined key is not read by the PlayStation 2, the PlayStation 2 is operated with only the "'Shin Sangoku Musou 2 Moushouden' game program and/or data."

Constituent Features (Claim 1)		Structure of Methods A-16 to A-22 and A-23[ii]
A	A method for operating a game system by loading a storage medium that stores a game program and/or data and is replaceable during predetermined operation of a game device (excluding a storage medium capable of storing saved data) in the game device,	A method for operating a game system by loading a DVD-ROM that stores a game program and/or data and is replaceable during operation of the PlayStation 2 in the PlayStation 2,
E	the method for operating a game system being characterized in that	the method for operating a game system being characterized in that
B	as the storage medium, at least	as the DVD-ROM,
B-1	a first storage medium containing a predetermined game program and/or data and a predetermined key, and	a "Shin Sangoku Musou 3 [<i>Dynasty Warriors 4</i>]" DVD-ROM containing a "'Shin Sangoku Musou 3' game program and/or data" and a predetermined key, and
B-2	a second storage medium containing, in addition to a predetermined standard game program and/or data, a predetermined extended game program and/or data are prepared,	a "Shin Sangoku Musou 3 Moushouden [<i>Dynasty Warriors 4: Xtreme Legends</i>]" DVD-ROM containing, in addition to a "'Shin Sangoku Musou 3 Moushouden' game program and/or data," a "game program and/or data of a 'Shin Sangoku Musou 3' key disc" operated in reading the "Shin Sangoku Musou 3" predetermined key are prepared,
C	the extended game program and/or data are/is a game program and/or data to achieve, in addition to the standard game program and/or data, more game characters and/or enriched functions of the game characters and/or expansion of scenes and/or enriched sound, and	the "game program and/or data of the 'Shin Sangoku Musou 3' key disc" stored in the "Shin Sangoku Musou 3 Moushouden" DVD-ROM are/is a game program and/or data to add, in addition to the "'Shin Sangoku Musou 3 Moushouden' game program and/or data," a Musou mode and a free mode of "Shin Sangoku Musou 3," and
D	in loading the second storage medium in the game device,	in loading the "Shin Sangoku Musou 3 Moushouden" DVD-ROM in the PlayStation 2,

D-1	if the predetermined key is read by the game device, the game device is operated with both the standard game program and/or data and the extended game program and/or data, or	if the predetermined key is read by the PlayStation 2, the PlayStation 2 is operated with both the "'Shin Sangoku Musou 3 Moushouden' game program and/or data" and the "game program and/or data of the 'Shin Sangoku Musou 3' key disc," or
D-2	if the predetermined key is not read by the game device, the game device is operated with only the standard game program and/or data.	if the predetermined key is not read by the PlayStation 2, the PlayStation 2 is operated with only the "'Shin Sangoku Musou 3 Moushouden' game program and/or data ."

Constituent Features (Claim 1)		Structure of Methods A-24 to A-30
A	A method for operating a game system by loading a storage medium that stores a game program and/or data and is replaceable during predetermined operation of a game device (excluding a storage medium capable of storing saved data) in the game device,	A method for operating a game system by loading a DVD-ROM that stores a game program and/or data and is replaceable during operation of the PlayStation 2 in the PlayStation 2,
E	the method for operating a game system being characterized in that	the method for operating a game system being characterized in that
B	as the storage medium, at least	as the DVD-ROM,
B-1	a first storage medium containing a predetermined game program and/or data and a predetermined key, and	a "Shin Sangoku Musou 4 [<i>Dynasty Warriors 5</i>]" DVD-ROM containing a "Shin Sangoku Musou 4' game program and/or data" and a predetermined key, and
B-2	a second storage medium containing, in addition to a predetermined standard game program and/or data, a predetermined extended game program and/or data are prepared,	a "Shin Sangoku Musou 4 Moushouden [<i>Dynasty Warriors 5: Xtreme Legends</i>]" DVD-ROM containing, in addition to a "'Shin Sangoku Musou 4 Moushouden' game program and/or data," a "game program and/or data of a 'Shin Sangoku Musou 4' key disc" operated in reading the "Shin Sangoku Musou 4" predetermined key are prepared,
C	the extended game program and/or data are/is a game program and/or data to achieve, in addition to the standard game program and/or data, more game characters and/or enriched functions of the game characters and/or expansion of scenes and/or enriched sound, and	the "game program and/or data of the 'Shin Sangoku Musou 4' key disc" stored in the "Shin Sangoku Musou 4 Moushouden" DVD-ROM are/is a game program and/or data to add, in addition to the "'Shin Sangoku Musou 4 Moushouden' game program and/or data," a Musou mode and a free mode of "Shin Sangoku Musou 4," and
D	in loading the second storage medium in the game device,	in loading the "Shin Sangoku Musou 4 Moushouden" DVD-ROM in the PlayStation 2,

D-1	if the predetermined key is read by the game device, the game device is operated with both the standard game program and/or data and the extended game program and/or data, or	if the predetermined key is read by the PlayStation 2, the PlayStation 2 is operated with both the "'Shin Sangoku Musou 4 Moushouden' game program and/or data" and the "game program and/or data of the 'Shin Sangoku Musou 4' key disc," or
D-2	if the predetermined key is not read by the game device, the game device is operated with only the standard game program and/or data.	if the predetermined key is not read by the PlayStation 2, the PlayStation 2 is operated with only the "'Shin Sangoku Musou 4 Moushouden' game program and/or data."

Constituent Features (Claim 1)		Structure of Methods A-31 to A-33
A	A method for operating a game system by loading a storage medium that stores a game program and/or data and is replaceable during predetermined operation of a game device (excluding a storage medium capable of storing saved data) in the game device,	A method for operating a game system by loading a BD-ROM that stores a game program and/or data and is replaceable during operation of the PlayStation 3 in the PlayStation 3,
E	the method for operating a game system being characterized in that	the method for operating a game system being characterized in that
B	as the storage medium, at least	as the BD-ROM,
B-1	a first storage medium containing a predetermined game program and/or data and a predetermined key, and	a "Shin Sangoku Musou 6 [<i>Dynasty Warriors 7</i>]" BD-ROM containing a "Shin Sangoku Musou 6' game program and/or data" and a predetermined key, and
B-2	a second storage medium containing, in addition to a predetermined standard game program and/or data, a predetermined extended game program and/or data are prepared,	a "Shin Sangoku Musou 6 Moushouden [<i>Dynasty Warriors 7: Xtreme Legends</i>]" BD-ROM containing, in addition to a "'Shin Sangoku Musou 6 Moushouden' game program and/or data," a "game program and/or data of a 'Shin Sangoku Musou 6' key disc" operated in reading the "Shin Sangoku Musou 6" predetermined key are prepared,
C	the extended game program and/or data are/is a game program and/or data to achieve, in addition to the standard game program and/or data, more game characters and/or enriched functions of the game characters and/or expansion of scenes and/or enriched sound, and	the "game program and/or data of the 'Shin Sangoku Musou 6' key disc" stored in the "Shin Sangoku Musou 6 Moushouden" BD-ROM are/is a game program and/or data to add, in addition to the "'Shin Sangoku Musou 6 Moushouden' game program and/or data," [i] a "story mode" game mode, and [ii] a "chronicle mode" game mode, and
D	in loading the second storage medium in the game device,	in loading the "Shin Sangoku Musou 6 Moushouden" BD-ROM in the PlayStation 3,

D-1	if the predetermined key is read by the game device, the game device is operated with both the standard game program and/or data and the extended game program and/or data, or	if the predetermined key is read by the PlayStation 3, the PlayStation 3 is operated with both the "'Shin Sangoku Musou 6 Moushouden' game program and/or data" and the "game program and/or data of the 'Shin Sangoku Musou 6' key disc," or
D-2	if the predetermined key is not read by the game device, the game device is operated with only the standard game program and/or data.	if the predetermined key is not read by the PlayStation 3, the PlayStation 3 is operated with only the "'Shin Sangoku Musou 6 Moushouden' game program and/or data."

Constituent Features (Claim 1)		Structure of Method A-34
A	A method for operating a game system by loading a storage medium that stores a game program and/or data and is replaceable during predetermined operation of a game device (excluding a storage medium capable of storing saved data) in the game device,	A method for operating a game system by loading a BD-ROM that stores a game program and/or data and can be operated during operation of the PlayStation 3 in the PlayStation 3,
E	the method for operating a game system being characterized in that	the method for operating a game system being characterized in that
B	as the storage medium, at least	as the BD-ROM,
B-1	a first storage medium containing a predetermined game program and/or data and a predetermined key, and	a "Shin Sangoku Musou 7 [Dynasty Warriors 8]" BD-ROM containing a "Shin Sangoku Musou 7' game program and/or data" and a predetermined key, and
B-2	a second storage medium containing, in addition to a predetermined standard game program and/or data, a predetermined extended game program and/or data are prepared,	a "Shin Sangoku Musou 7 Moushouden [Dynasty Warriors 8: Xtreme Legends]" BD-ROM containing, in addition to a "'Shin Sangoku Musou 7 Moushouden' game program and/or data," a "game program and/or data of a 'Shin Sangoku Musou 7' key disc" operated in reading the "Shin Sangoku Musou 7" predetermined key are prepared,
C	the extended game program and/or data are/is a game program and/or data to achieve, in addition to the standard game program and/or data, more game characters and/or enriched functions of the game characters and/or expansion of scenes and/or enriched sound, and	the "game program and/or data of the 'Shin Sangoku Musou 7' key disc " stored in the "Shin Sangoku Musou 7 Moushouden" BD-ROM are/is a game program and/or data to add, in addition to the "'Shin Sangoku Musou 7 Moushouden' game program and/or data," a story to a "story mode" game mode, and
D	in loading the second storage medium in the game device,	in loading the "Shin Sangoku Musou 7 Moushouden" BD-ROM in the PlayStation 3,

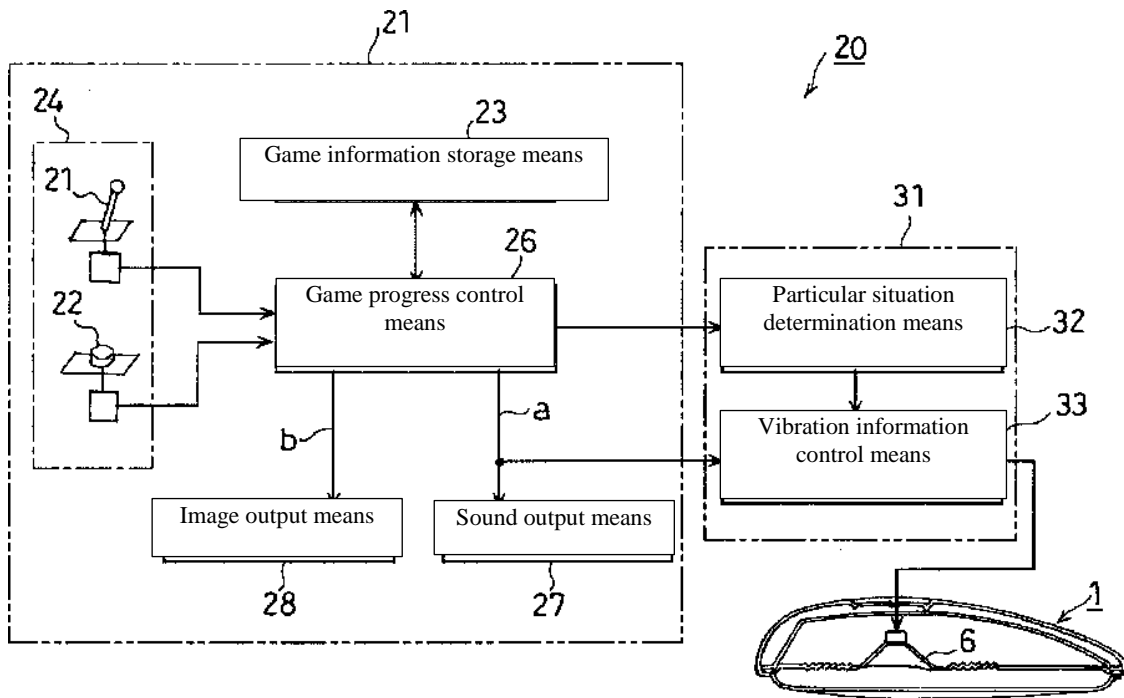
D-1	if the predetermined key is read by the game device, the game device is operated with both the standard game program and/or data and the extended game program and/or data, or	if the predetermined key is read by the PlayStation 3, the PlayStation 3 is operated with both the "'Shin Sangoku Musou 7 Moushouden' game program and/or data" and the "game program and/or data of the 'Shin Sangoku Musou 7' key disc," or
D-2	if the predetermined key is not read by the game device, the game device is operated with only the standard game program and/or data.	if the predetermined key is not read by the PlayStation 3, the PlayStation 3 is operated with only the "'Shin Sangoku Musou 7 Moushouden' game program and/or data."

Constituent Features (Claim 1)		Structure of Methods A-35 to A-40
A	A method for operating a game system by loading a storage medium that stores a game program and/or data and is replaceable during predetermined operation of a game device (excluding a storage medium capable of storing saved data) in the game device,	A method for operating a game system by loading a DVD-ROM that stores a game program and/or data and is replaceable during operation of the PlayStation 2 in the PlayStation 2,
E	the method for operating a game system being characterized in that	the method for operating a game system being characterized in that
B	as the storage medium, at least	as the DVD-ROM,
B-1	a first storage medium containing a predetermined game program and/or data and a predetermined key, and	a "Harukanaru toki no naka de 3 [<i>In a Distant Time 3</i>]" DVD-ROM containing a "'Harukanaru toki no naka de 3' game program and/or data" and a predetermined key, and
B-2	a second storage medium containing, in addition to a predetermined standard game program and/or data, a predetermined extended game program and/or data are prepared,	a "Harukanaru toki no naka de 3 Izayoiki [<i>In a Distant Time 3: Chronicle of the Sixteen-Day-Old Moon</i>]" DVD-ROM containing, in addition to a "'Harukanaru toki no naka de 3 Izayoiki' game program and/or data," a "game program and/or data of a 'Harukanaru toki no naka de 3 Izayoiki' key disc" operated in reading the "Harukanaru toki no naka de 3" predetermined key are prepared,
C	the extended game program and/or data are/is a game program and/or data to achieve, in addition to the standard game program and/or data, more game characters and/or enriched functions of the game characters and/or expansion of scenes and/or enriched sound, and	the "game program and/or data of the 'Harukanaru toki no naka de 3' key disc" stored in the "Harukanaru toki no naka de 3 Izayoiki" DVD-ROM are/is a game program and/or data to allow, in addition to the "'Harukanaru toki no naka de 3 Izayoiki' game program and/or data,"[i] leading to ending of characters other than "ARIKAWA Masaomi" and "Minamoto no Kuro Yoshitsune," and [ii] use of "Kyoryokuwaza [<i>cooperative skill</i>]" in a battle, and
D	in loading the second storage	in loading the "Harukanaru toki no

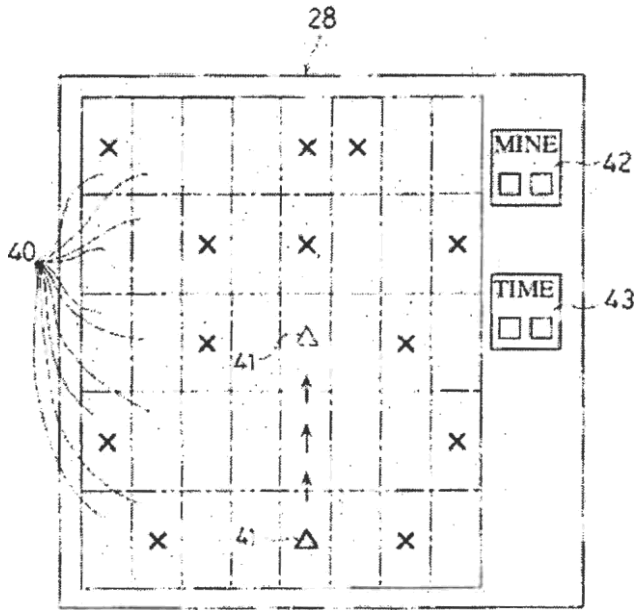
	medium in the game device,	naka de 3 Izayoiki" DVD-ROM in the PlayStation 2,
D-1	if the predetermined key is read by the game device, the game device is operated with both the standard game program and/or data and the extended game program and/or data, or	if the predetermined key is read by the PlayStation 2, the PlayStation 2 is operated with both the "'Harukanaru toki no naka de 3 Izayoiki' game program and/or data" and the "game program and/or data of the 'Harukanaru toki no naka de 3' key disc," or
D-2	if the predetermined key is not read by the game device, the game device is operated with only the standard game program and/or data.	if the predetermined key is not read by the PlayStation 2, the PlayStation 2 is operated with only the "'Harukanaru toki no naka de 3 Izayoiki' game program and/or data."

(Attachment 11)

[Fig. 1]

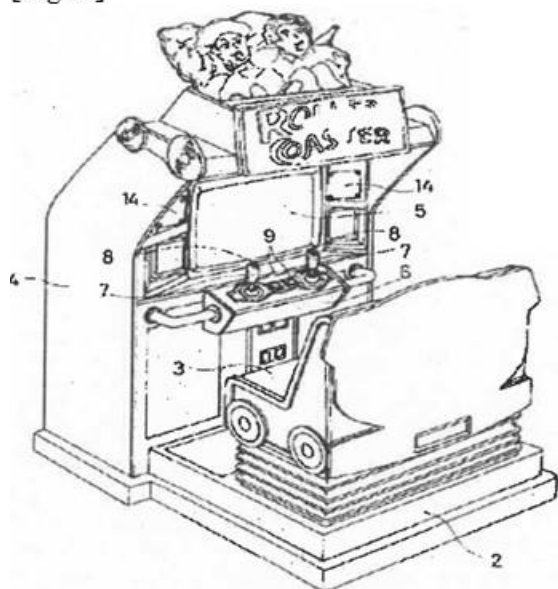


[Fig. 2]

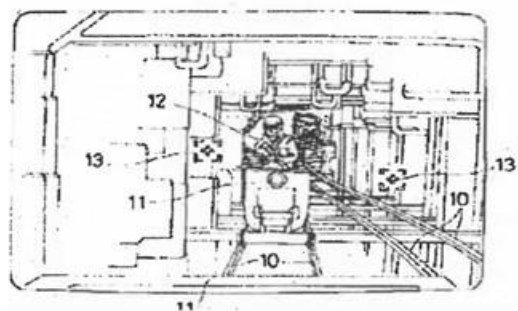


(Attachment 12)

[Fig. 1]



[Fig. 2]



[Fig. 3]

