

★★★ <第23回知的財産翻訳検定試験【第11回英文和訳】> ★★★

≪ 1 級課題 -知財法務実務- ≫

【解答にあたっての注意】

1. 問題の指示により和訳してください。
2. 解答語数に特に制限はありません。適切な箇所で改行してください。
3. 課題文に段落番号がある場合、これを訳文に記載してください。
4. 課題は2題あります。それぞれの課題の指示に従い、2題すべて解答してください。

問1 下に示す英文は、拒絶の決定を受けたヨーロッパ特許出願について請求された審判事件における審決から抜粋したものです。この英文の下線を付した部分を日本語に翻訳してください。なお、下線部に含まれる語句、T1543/06 (Gameaccount)と、T0641/00 (OJ EPO 2003, 352)は、日本語に翻訳せずそのまま転記してください。

問題文ここから→

(前略)

Reasons for the Decision

1. The appeal is admissible.
2. Background, and "mixed" inventions
 - 2.1 The present invention concerns an online poker game. One of the problems with a conventional online poker is boredom (see published application, page 2, third paragraph). Active players must await their turn, even if they have decided to resign from the particular

round of the game, that is "to fold". Then they must wait until the round comes to an end before joining a fresh round at the same table. To reduce the time players are inactive it is known for players to play at two or more different tables simultaneously. This reduces their boredom, but it is not seamless in that they may be active at more than one table simultaneously. Furthermore, they may still get bored because the player may be inactive at both tables (see published application, paragraph bridging pages 2 and 3).

2.2 An aim of the invention is to reduce the time a player is inactive (published application, page 4, second complete paragraph). To this end, one idea of the invention is to allow players to decide to fold before their turn arrives and immediately move them to a new table so that they can seamlessly continue playing (page 5, middle paragraph, page 9, first full paragraph, page 20, lines 6 to 11 and claim 1).

2.3 It is not disputed that the method of claim 1 includes subject matter related to schemes, rules or methods for playing games. For example, the method step of providing players with one or more cards is anchored in the rules of all poker games. This subject matter, as such, is excluded from patentability under Articles 52(2)(c) and 52(3) EPC. However, claim 1 also includes technical features: it is, inter alia, a computerised method of computer gaming operating in a communications network. Therefore, claim 1 possesses overall technical character (following T0258/03 OJ EPO 2004, 575), even if it is "mixed" (with both technical and non-technical aspects).

2.4 In dealing with such "mixed" inventions, the Board adopts the approach as set out in T1543/06 (Gameaccount), reasons 2.1-2.9, which is based foremost on T0641/00 (OJ EPO 2003, 352). Thus, only those features that contribute to technical character are to be taken

into account when assessing inventive step. That requirement cannot rely on excluded (nontechnical) subject matter alone, however original it may be. The mere technical implementation of something excluded cannot therefore form the basis for inventive step. A consideration of the particular manner of implementation must focus on any further technical advantages or effects associated with the specific features of implementation over and above the effects and advantages inherent in the excluded subject-matter. In the present case it is necessary to consider what claimed aspects are non-technical, how they have been technically implemented, and whether such implementation is inventive over the prior art.

2.5 The Board considers game rules to form part of "...a regulatory framework agreed between players and concerning conduct, conventions and conditions that are meaningful only in a gaming context. It is important to note that it is normally so perceived by the players involved, and as serving the explicit purpose of playing a game. As such an agreed framework it is a purely abstract, mental construct, though the means for carrying out the game play in accordance with such a set may well be technical in nature", See T0336/07, reasons 3.3.1. As noted in T0012/08, reasons 4.6, game rules "form the abstract formal structure of a game describing the interplay between player actions and the choices offered within the game." A set of game rules thus determines, inter alia, how game-play evolves from beginning to end in response to player actions and decisions and the goals to be achieved to conclude game-play.

(中略)

4. Following the problem-solution approach, the Board must now develop the problem to be solved. It may well be that the above rules have the effect of increasing the number of

games a player plays or hands per unit time or play rate, and that consequently the gaming server is more active. However, any such effects are directly derived from the rules themselves. In particular, an increase in hands per unit time is a direct consequence of the second rule which has the player moved to a new table as soon as they decide to fold, rather than waiting till the end of the round. Likewise, it is the game rules that link the fold request and the compulsory move to another table, so that the former triggers the latter. This "single trigger" and concomitant reduction in data transfer are thus inherent in the game rules. Any such enhanced operational aspects of the modified gaming system are thus inevitably realized as a bonus effect of the implementation of these game rules on a gaming system.

Instead of providing a purely technical solution to increasing player throughput or more efficiently using a gaming server, the differing features offer a gaming solution which effectively circumvents the problem by changing the rules. It is these new rules that may increase player throughput and thus may make better use of the gaming server, similar to T 258/03, reasons 5.7. Therefore, adopting the approach outlined above (point 2.4), the objective technical problem cannot be derived from these effects.

Rather, inventive step is seen to lie in the particular manner of implementation of the above game rules. The technical problem is then formulated accordingly as how to implement on a known online poker gaming system the above game rules.

(後略)

←問題文ここまで

参考 問題文の審判事件で審理の対象となったクレーム 1

A computerised method of computer gaming operating in a gaming network comprising a gaming system connectable via a communications network to a plurality of player access elements that provide communication services to a player, comprising:

providing a first virtual table of a first group of players grouped together to play a first hand;

providing to each of the first group of players one or more cards for the first hand;

receiving from a first player of the first group of players a request to fold the one or more cards of the first hand, wherein the request to fold the one or more cards of the first player is made out of turn;

without waiting for the first player's turn in the first hand, automatically moving the first player to a second virtual table of a second group of players grouped together to play a second hand;

maintaining the first virtual table such that the first player appears to the other players of the first group to remain active at that virtual table, waiting his turn; and

at the first player's turn in the first hand, automatically folding his hand.

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以下問題文

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