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(NICE UNION)

PREPARATORY WORKING GROUP

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PROPOSALS CONCERNING
“AMUSEMENT APPARATUS OR APPARATUS FOR GAMES”

Document prepared by the International Bureau

1. The Annex to this document contains proposals on “amusement apparatus or apparatus for games”, submitted by Japan according to the recommendation made by the Preparatory Working Group at its twenty-sixth session held in Geneva, from November 26 to 30, 2007 (see paragraph 11, document CLIM/GTP/26/7 Prov.).

2. *The Preparatory Working Group is invited to consider the above-mentioned proposals and to express its views thereon.*

[Annex follows]

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ANNEX

PROPOSALS FOR CHANGES TO THE 9TH EDITION OF THE NICE CLASSIFICATION CONCERNING AMUSEMENT APPARATUS OR APPARATUS FOR GAMES

1. INTRODUCTION

The Japan Patent Office would like to submit the following proposal to the Nice working Group for changes to the Nice Classification system.

At the Twenty-Sixth Session of the Preparatory Working Group, Japan made proposals concerning “amusement apparatus or apparatus for games.” As no agreement was reached on the proposals, Japan agreed, as suggested by the WIPO Secretariat, to withdraw them and to make a fresh proposal at the Twenty-Seventh Session after a more detailed study of “amusement apparatus or apparatus for games” and related goods.

In response to this, Japan reviewed the contents of its previous proposals concerning “amusement apparatus or apparatus for games.” In the course of the review, it also studied “game programs for game apparatus.”

As a result, Japan has decided that its proposals for the Twenty-Seventh Session will include additions to the proposals made at the Twenty-Sixth Session, though without making fundamental changes thereto.

Specifically, Japan intends to once again make proposals aimed at transferring all “amusement apparatus or apparatus for games whose main function/purpose is gaming” into Class 28 regardless of whether or not they are “adapted for use with an external display screen or monitor.”

Japan will not make any proposals with respect to “game programs for game apparatus.”

2. THE OUTLINE OF JAPAN’S PROPOSALS

2.1. Regarding current classification

Under the current ninth edition of the Nice Classification, “amusement apparatus or apparatus for games” are classified under Class 9 or Class 28 depending on whether or not the apparatus in question is “adapted for use with an external display screen or monitor.”

Specifically, those that are “adapted for use with an external display screen or monitor” belong to Class 9, whereas the rest belongs to Class 28.

Since the explanatory note for Class 9 states that all computer programs and software are included in Class 9, all “game programs for game apparatus” are classified under Class 9, regardless of their intended apparatus and forms, such as cartridge form, CD-ROM format, DVD format, and downloadable format via the Internet.

2.2. Regarding “amusement apparatus or apparatus for games”

Concerning “amusement apparatus or apparatus for games,” Japan intends to propose once again that the current criterion regarding whether or not an apparatus is “adapted for use with an external display screen or monitor” be deleted and that all “amusement apparatus or apparatus for games” be transferred to Class 28 (regardless of whether or not they are “adapted for use with an external display screen or monitor”) even if they have multiple functions, such as Internet connectivity and DVD player functions, as long as their main function/purpose is gaming.

The first ground for this proposal is that, according to General Remark (a), a finished product is in principle classified according to its function or purpose. While Class 28’s class heading indicates “games,” neither the class heading nor the explanatory note for Class 9 states “games.”

The second ground for the proposal is as follows:

“Amusement apparatus or apparatus for games” are currently divided into two classes depending on whether or not they are “adapted for use with an external display screen or monitor.” However, both “game consoles adapted for use with an external display screen or monitor”—which are presumably classified under Class 9 judging from one of Class 9’s indications, which covers “games (apparatus for -) adapted for use with an external display screen or monitor”—and “game apparatuses with a display screen or monitor”—which are presumably classified under Class 28 judging from one of Class 28’s indications, which covers “games other than those adapted for use with an external display screen or monitor”—both are manufactured and sold by the same producers.

For the reasons stated above, Japan considers that it has become less necessary to classify “amusement apparatus or apparatus for games” according to the criterion of whether or not said apparatuses are “adapted for use with an external display screen or monitor.”

2.3. Regarding the relation between game apparatuses and goods listed under Class 9

Firstly, in the case of games played on a display screen, those that use home computer display screens and hardware, such as “personal computers” under Class 9, are now in widespread use, in addition to “game consoles adapted for use with an external display screen or monitor” under Class 9 and “game apparatus with display screens or monitors” under Class 28.

However, “Computers”(Basic No. 090372) under Class 9, their main function/purpose is “comprehensive information processing functions” and they have, as part of their comprehensive functions, a feature that allows one to play games on their display screen, a video game function.

Therefore, “computers” whose main function/purpose constitutes “comprehensive information processing functions” are clearly different from “game apparatuses,” which should be classified under Class 28.

Secondly, Japan considers it inappropriate to classify “games (apparatus for -) adapted for use with an external display screen or monitor” under Class 9 by regarding them as

exclusive parts of goods listed under Class 9 on the ground that they cannot be used on their own for the playing of games and thus have to be connected to “monitors [computer hardware]” or “television apparatus” belonging to Class 9.

The reason for this view is as follows:

According to General Remarks (d), “goods intended to form part of another product are in principle classified in the same class as that product in cases where the same type of goods cannot normally be used for other purposes.” The purpose of “games (apparatus for -) adapted for use with an external display screen or monitor” is to play games, which is different from the purpose of “monitors [computer hardware]” and “television sets,” which belong to Class 9. Furthermore, “games (apparatus for -) adapted for use with an external display screen or monitor” are not intended to form part of “monitors [computer hardware]” or “television apparatus” in the first place.

For the above-mentioned reason, Japan considers it inappropriate to classify “games (apparatus for -) adapted for use with an external display screen or monitor” under Class 9 by regarding them as exclusive parts of the goods listed under Class 9.

2.4. Regarding “game programs for game apparatus”

As Japan supports the current classification, which classifies all game software and programs under Class 9, it will not make any proposals with respect to “game programs for game apparatus.”

The ground for this view is that since the explanatory note for Class 9 states that “all computer programs and software regardless of recording media or means of dissemination, that is, software recorded on magnetic media or downloaded from a remote computer network” are included in Class 9, it is not appropriate to classify programs separately depending on their contents.

3. DETAILS OF JAPAN’S PROPOSALS

Japan’s proposals with respect to “amusement apparatus or apparatus for games” are detailed as following list.

[Proposals follow]

PROPOSALS FOR CHANGES TO THE 9TH EDITION OF THE NICÈ CLASSIFICATION
CONCERNING AMUSEMENT APPARATUS OR APPARATUS FOR GAMES

CATEGORY 1
New indications

Class	Basic No.	Serial No.	Proposal	Remarks
28			Video game machines	Among amusement apparatus or apparatus for games, those intended for playing games on a display screen or monitor are called "video game machines." Some of these video game machines are adapted for use with an external display screen or monitor, while others have an integrated display screen. However, regardless of whether or not they are adapted for use with an external display screen or monitor, game apparatuses intended for playing games on a display screen or monitor are included within the scope of "video game machines."
28			Portable games with liquid crystal displays	Recent "portable games with liquid crystal displays," with internet connectivity and music player functions, such units are also included within the scope of "portable games with liquid crystal displays" as long as their main function/purpose is gaming.
28			Arcade video game machines	"Arcade video game machines" are amusement apparatus or apparatus for games with a display screen that are located at commercial establishments, such as game arcades and restaurants. They are designed for commercial use and operate automatically upon the payment of a specific amount of money. Although Class 28 of the alphabetical list contains "amusement machines, automatic and coin-operated," such machines are not always coin-operated these days. Therefore, a new "arcade video game machines" indication should be included in the list.

CATEGORY 2
Indications to be deleted

Class	Basic No.	Serial No.	Proposal	Remarks
28	280053	G0035	Games other than those adapted for use with an external display screen or monitor	Japan considers it appropriate to transfer all "amusement apparatus or apparatus for games whose main function/purpose is gaming" to Class 28 regardless of whether or not they are "adapted for use with an external display screen or monitor." Since Class 28 includes "Games" indication, proposed indication should be deleted from Class 28.

CATEGORY 3
Modification of existing indications of goods or services

Class	Basic No.	Serial No.	Proposal	Remarks
9	90576	A0273	Transfer "Amusement apparatus adapted for use with an external display screen or monitor" to Class 28	Japan considers it appropriate to transfer all "amusement apparatus or apparatus for games whose main function/purpose is gaming" to Class 28 regardless of whether or not they are "adapted for use with an external display screen or monitor."
9	90542	G0030	Transfer "Games (Apparatus for -) adapted for use with an external display screen or monitor" to Class 28	
28	280128	G0036	Change "Games other than those adapted for use with an external display screen or monitor (Apparatus for -)" to "Apparatus for games"	Japan considers it appropriate to transfer all "amusement apparatus or apparatus for games whose main function/purpose is gaming" to Class 28 regardless of whether or not they are "adapted for use with an external display screen or monitor." Although Class 28 includes "Games" indication, the scope of "Games" is broad. Therefore, a new "Apparatus for games" indication should be added to Class 28 of the alphabetical list.

PROPOSALS FOR CHANGES TO THE 9TH EDITION OF THE NICE CLASSIFICATION
CONCERNING AMUSEMENT APPARATUS OR APPARATUS FOR GAMES

Changes in the Explanatory Notes

Class	Place	Proposal	Remarks
9	Explanatory Note	Under "This class includes, in particular:" delete: "- amusement apparatus adapted for use with an external display screen or monitor;"	Japan considers it appropriate to transfer all "amusement apparatus or apparatus for games whose main function/purpose is gaming" to Class 28 regardless of whether or not they are "adapted for use with an external display screen or monitor."
28	Explanatory Note	Under "This class does not include, in particular:" delete: "- amusement apparatus adapted for use with an external display screen or monitor (Cl. 9);"	

[End of Annex and of document]