

Software Patents in Japan, in comparisons with US and EPO



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Step 1: Method or Article?

Program claims can be patented in JP & EPO

	JP, EP, TW	US, KR, CN
Program claims	YES	NO
Memory or recording medium storing program	Acceptable	YES
Suggestion	Rewrite to YES	

- ∴ Selling program over the Internet:
directly infringes program claims, but not memory claims.

What about recording medium claims?

Forms of Program Claims

Japan Patent Examination Guideline (“JPEG”)

- A program which causes a computer to carry out procedures A, B ...
(operate as means A, B ... / realize functions A, B ...)

EPO Guideline for Examination (“EPGE”)

- A computer program comprising instructions which, when executed by a computer, cause the computer to carry out steps A, B, ...
(the method as claimed in claim 1.)

EPGE style is also acceptable in Japan.

Suggestions:

To support program claims in JP, EPO:

For JPO

Include at least standard descriptions such as below in the Priority base and PCT applications.

[0052] Software programs are provided via a network 2010, installed to flash memory 2040, and read out to RAM 2020 by CPU 2000. The software programs are then read by the CPU 2000 and make the CPU 2000 execute all steps that are described in this specification with reference to Figs -- and --.

For EPO

Write program claim-like descriptions in the “Summary of the Invention” or “General Disclosure” section.

Step 2: Eligibility of Software Inventions

JP, KR	US	EP
Utilizing law of nature?	Limited list of Abstract Idea <ul style="list-style-type: none"> - Math concept, - Method of organizing human activity, or - Mental process? 	Has technical features as well?
⇒ If YES: ○、If NO: ×	⇒ If No: Generally ○	⇒ If NO: ×
↓If Questionable	↓If YES	↓If YES
Utilizing hardware resources?	Are additional elements integrated into a practical application ?	Are the features that contribute to technical purpose inventive ?
Does software cooperatively work with hardware?	Are something in the claim significantly more ?	

Japan

× JPEG Example 1A

Appendix B Chap. 1-3 [Case 2-2]

A storing method of an article distributed via a network, comprising the steps of:

receiving the article distributed via the network;

displaying the article being received;

checking whether an **intended keyword** exists in texts of the article **by users**, and if it exists, giving “save” command to an article storing execution means; and

storing the article given the “save” command on an article storage means.

○ JPEG Example 1B

A storing method of an article distributed via a network, comprising the steps of:

receiving the article distributed via the network;

displaying the article being received;

checking whether an **intended keyword** exists in texts of the article **by article determination means**, and if it exists, giving “save” command **from the article**

determination means to an article storing means; and

storing the article on an article storage means, if the “save” command is given to the article storing means.

× JPEG Example 2A

A service method for offering service points depending on an amount of commodity purchased at a shop on the Internet, comprising the steps of:

notifying via the Internet an amount of **service points** offered and a name of a person to whom the service points are offered;

adding the **service points** to an accumulated points of the person stored in the customer list storage means;

acquiring the e-mail address of the person from a customer list storage means based on the name of the person; and

notifying to **the person** that the service points have been given **via e-mail** using the e-mail address of the person.

○ JPEG Example 2B

A service method for offering service points depending on an amount of commodity purchased at a shop on the Internet, comprising the steps of:

notifying **a server of** an amount of service points offered and a name of the person to whom the service points are offered via the Internet;

acquiring **by said server**, the e-mail address of the person from a customer list storage means based on the name of the person;

adding **by said server**, the service points to an accumulated points of the person stored in the customer list storage means; and

notifying **by said server**, to the person that the service points have been given, by e-mail using the e-mail address of the person.

× JPEG Example 3A

A calculation apparatus to **calculate the formula:**

$$S = \{(m+n)^2 - (m-n)^2\} / 4$$

comprising:

means for **inputting** natural numbers n and m,
arithmetic means for calculating S, and
means for **outputting** the S.

○ JPEG Example 3B

A calculation apparatus to **calculate the formula**:

$$S = \{(m+n)^2 - (m-n)^2\} / 4$$

comprising:

means for inputting natural numbers n and m ;

a table storing (k^2) at the k -th position,

arithmetic means comprising of an adder-subtractor and a bit shifter,

means for outputting a result S by said arithmetic means,

wherein the formula is calculated, without using a multiplier-divider, but using square values read by the said arithmetic means from the said square values table.

Analysis of Examples in Japan

Claim relatively easily become eligible, by reciting what a computer does utilizing **tables**, **databases**, or **temporary data** stored in a storage or memory in Japan.



The inventive step is considered **as a whole**.

US

○: *DDR Holdings LLC* (Fed. Cir. 2014)

A system ... comprising:

- (a) a computer store containing data, for each of a plurality of first web pages, defining a plurality of visually perceptible elements, ...;
 - (i) wherein each of the first web pages belongs to one of a plurality of web page owners;
 - (ii) wherein each of the first web pages displays at least one active link associated with a commerce object associated with a buying opportunity of a selected one of a plurality of merchants; and ...
- (b) a computer server at the outsource provider, which ... is ... programmed to:
 - (i) receive from the web browser of a computer user a signal indicating activation of one of the links displayed by one of the first web pages;
 - (ii) automatically identify as the source page the one of the first web pages on which the link has been activated;
 - (iii) in response to identification of the source page, automatically retrieve the stored data corresponding to the source page; and
 - (iv) using the data retrieved, automatically generate and transmit to the web browser a second web page that displays: (A) information associated with the commerce object associated with the link that has been activated, and (B) the plurality of visually perceptible elements visually corresponding to the source page.”

○: *Enfish v. Microsoft* (Fed. Cir. 2016)

A data storage and retrieval system for a computer memory, comprising:

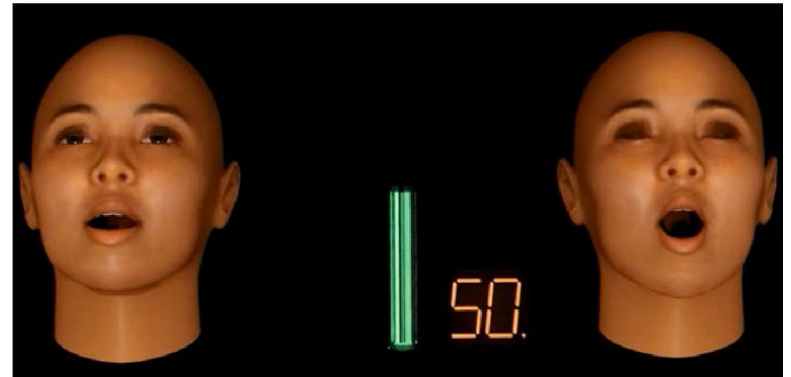
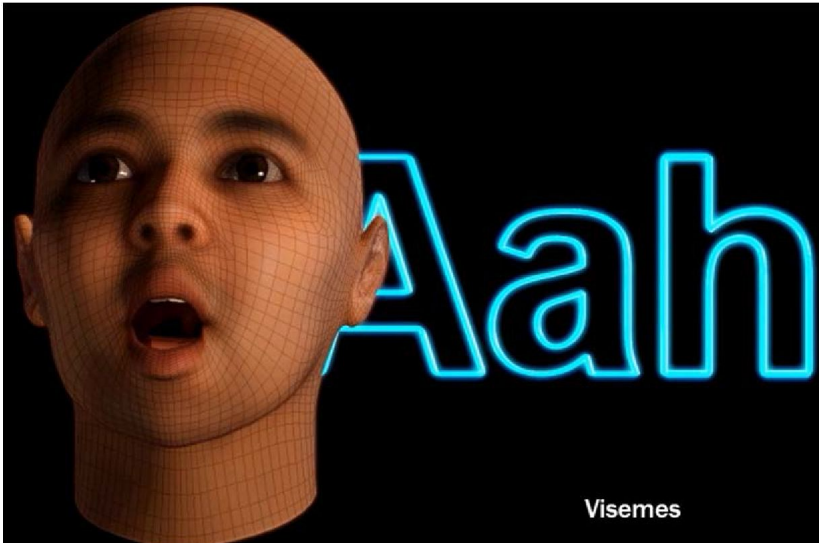
means for configuring said memory according to a logical table, said logical table including:

a plurality of logical rows, each said logical row including an object identification number (OID) to identify each said logical row, each said logical row corresponding to a record of information;

a plurality of logical columns intersecting said plurality of logical rows to define a plurality of logical cells, each said logical column including an OID to identify each said logical column; and

means for indexing data stored in said table.

○: *McRO v. Bandai Namco* (Fed. Cir. 2016)



○: *McRO v. Bandai* (Fed. Cir., 2016)

USP 6,307,576

- A method for automatically animating lip synchronization and facial expression of three-dimensional characters comprising:
- obtaining a first set of rules that define output morph weight set stream as a function of phoneme sequence and time of said phoneme sequence;
- obtaining a timed data file of phonemes having a plurality of sub-sequences;
- generating an intermediate stream of output morph weight sets and a plurality of transition parameters between two adjacent morph weight sets by evaluating said plurality of sub-sequences against said first set of rules;
- generating a final stream of output morph weight sets at a desired frame rate from said intermediate stream of output morph weight sets and said plurality of transition parameters; and
- applying said final stream of output morph weight sets to a sequence of animated characters to produce lip synchronization and facial expression control of said animated characters.

○: *Amdocs v. Openet* (Fed. Cir. 2016)

A computer program product embodied on a computer readable storage medium for processing network accounting information comprising:

- computer code for receiving from a first source a first network accounting record;
- computer code for correlating the first network accounting record with accounting information available from a second source; and
- computer code for using the accounting information with which the first network accounting record is correlated to enhance the first network accounting record.

○: *Bascom v. AT&T* (Fed Cir. 2016)

USP 5,987,606

A content filtering system for filtering content retrieved from an Internet computer network by individual controlled access network accounts, said filtering system comprising:

- a local client computer generating network access requests for said individual controlled access network accounts;
- at least one filtering scheme;
- a plurality of sets of logical filtering elements; and
- a remote ISP server coupled to said client computer and said Internet computer network, said ISP server associating each said network account to at least one filtering scheme and at least one set of filtering elements, said ISP server further receiving said network access requests from said client computer and executing said associated filtering scheme utilizing said associated set of logical filtering elements.

○: *Trading Tech. v. CQG* (Fed. Cir. 2017)

USP 6,766,304

SYCOM FGBL DEC99						[-][X]	
E/W	10:48:44		BidQ	AskQ	Prc	LtQ	
	L	3		104	99		
	R	5		24	98		
	720			33	97		
	×	10		115	96		
	0			32	95		
	10	1H		27	94		
	50	3H		63	93	10	}1101
S 10 W 14	1K	5H		43	92		
	CLR			125	91		
	×	10		97	90		
	17	▼		18	89		
B 0 W 15	CXL			97	88		
B 0 W 13	+	-		30	87		
	NET 0			43	86		
B 0 W 17	NET REAL			110	85		
				23	84		
				31	83		
				125	82		
				21	81		

○: *Trading Tech. v. CQG* (Fed. Cir. 2017)

USP 6,766,304

1. A method for displaying market information relating to and facilitating trading ... comprising:

dynamically **displaying** a first indicator in one of a plurality of locations in a bid display region, each **location** in the bid display region **corresponding to a price** level along a common static price axis, the **first** indicator representing **quantity** associated with at least one order **to buy** the commodity at the highest bid price currently available in the market;

dynamically **displaying** a second indicator in one of a plurality of locations in an ask display region, each **location** in the ask display region **corresponding to a price** level along the common static price axis, the **second** indicator representing **quantity** associated with at least one order **to sell** the commodity at the lowest ask price currently available in the market;

...

displaying an **order entry region** comprising a plurality of locations for receiving commands to send trade orders, each **location** **corresponding to a price** level along the common static price axis; and

in response to a **selection of a** particular **location** of the order entry region by a single action of a user input device, **setting** a plurality of **parameters for** a trade **order** relating to the commodity and sending the trade order to the electronic exchange.

○: *Thales Visionix v. US* (Fed. Cir. 2017)

A method comprising determining an orientation of an object relative to a moving reference frame

based on signals from two inertial sensors mounted respectively on the object and on the moving reference frame.

○: *Visual Memory v. NVIDIA* (Fed. Cir. 2017)

USP 5,953,740

A computer **memory system** connectable to a processor and **having** one or more **programmable operational characteristics**, said characteristics being defined through configuration by said computer based on the type of said processor, wherein said system is connectable to said processor by a bus, said system **comprising**:

- a **main memory** connected to said bus; and
- a **cache** connected to said bus;
- wherein a **programmable operational characteristic** of said system **determines a type of data stored by said cache.**

○: *Finjan V. Blue Coat* (Fed. Cir. 2018)

A method comprising:

receiving by an inspector a Downloadable;

generating by the inspector a first Downloadable security profile that identifies suspicious code in the received Downloadable; and

linking by the inspector the first Downloadable security profile to the Downloadable before a web server makes the Downloadable available to web clients.

○: *Core Wireless* (Fed. Cir. 2018)

USP 8,713,476

A computing device comprising a display screen, the computing device being configured to display on the screen a menu listing one or more applications, and additionally being configured to display on the screen an application summary that can be reached directly from the menu,

wherein the application summary displays a limited list of data offered within the one or more applications,

each of the data in the list being selectable to launch the respective application and enable the selected data to be seen within the respective application, and wherein

the application summary is displayed while the one or more applications are in an un-launched state.

EPO

EPO Presentation of Information

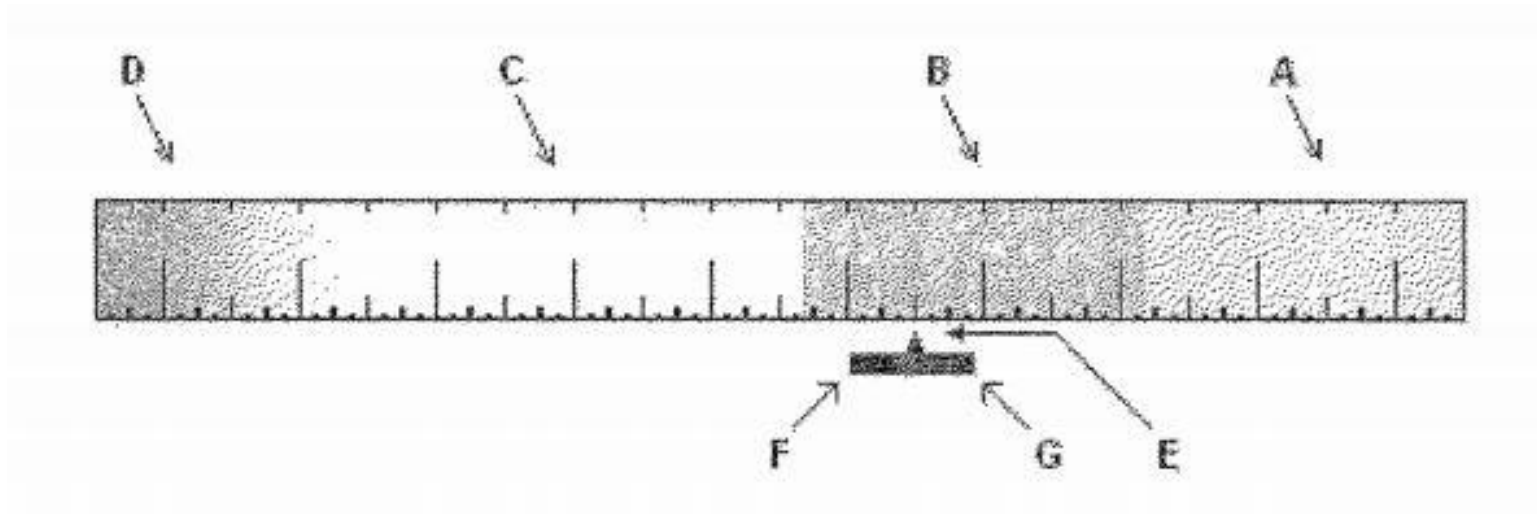
- × Mere presentation such as books/manuals
 - Same as Japan (JPEG App. B EPC Art. 52(2)(d))
- Presentation method/means having technical character
 - Same as Japan (JPEG App. B EPGE G3.7)
 - TV Test chart having technical character (JPEG App. B)

Rules are same, but application of rule is stricter in EPO.

<Examples will be reviewed later>

EPO is strict for presentation of Information

×: EP1874193: Method for showing ruler in microscope



EPO is strict for presentation of Information

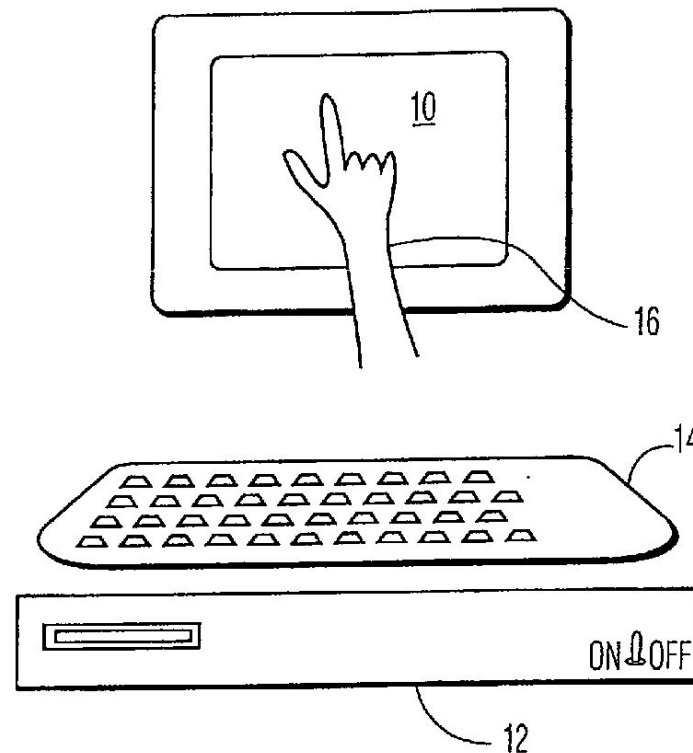
×: EP1874193 (Auxiliary request to the Board of Appeals)

A process operatively coupled to a microscope device, the device configured to calculate values for variables wherein the variables comprise ... median and/or mean and standard deviation for corneal cellular density; ... comprising:

- generating using the device a statistical-analytic ruler graphic for a variable wherein the ruler graphic comprises areas A, B, C and D wherein area A indicates values of the variable above that expected for age of a corneal cell sample, area B indicates ...;
- generating an arrow graphic E that indicates mean of the variable for the corneal cell sample;
- generating a segment graphic F-G wherein an F end of the segment indicates an inferior limit of a reliability interval for the variable, wherein a G end of the segment indicates a superior limit of the reliability interval for the variable, and wherein the segment length from F to G represents a reliability interval calculated according to a mean plus and minus a relative error calculated for the corneal cell sample; and
- generating a report graphic that comprises at least the ruler graphic for the variable.

EPO is strict for presentation of Information, but allows with technical PC operation

T0077/14 : Philips GUI for controlling scroll



EPO is strict for presentation of Information, but allows with technical PC operation

8. A method of controlling a scroll-like display ... comprising the steps of:

sensing the duration of finger touch contact time ...;

- sensing the speed and direction of motion of said finger touch contact ...;

- if the sensed duration of finger touch contact time is greater than a first preset minimum time and less than a second preset minimum time and is accompanied by motion along the surface of the display screen, moving said display ..., and

- following separation of said finger touch from said display screen, initiating scrolling motion ... in said sensed direction and at said sensed speed; ...;

- slowing the speed of said scrolling motion ... at a predetermined rate; and

- terminating said scrolling motion upon first occurrence of ... a substantially stationary finger touch having a finite duration... (or) an end-of-scroll signal...,

- ..., if after subsequent moving of said display ... there is ... finger contact ... ,

maintaining said display screen in the position ..., and reverting the system to "waiting" status, (and)

- ... selecting an item touched if the sensed stationary duration of the finger touch contact time is less than said second preset minimum time and if no motion occurs ... wherein upon selection the selected item is highlighted. (*Edited for easier reading)

Practical Differences

Stricter ← **EPO** — US — JPO → Less Strict

Suggestions

Suggestions for being saved

	General Suggestions	RYUKA Suggestions
JP KR	Write cooperative relationships with hardware in claims.	<p>Write problems that exist in technical fields (PC, Internet, other hardware), but not in abstract fields (economics, psychologies, human activities...)</p> <p>Explain:</p> <p>1) how the claimed features help solve them for US eligibility and JP, EP inventive steps, and</p> <p>2) cooperative relationships with hardware for JP, US, EP eligibilities</p>
US	Make clear the practical application realized by additional elements	
EPO CN	Make clear how claimed elements contribute solving technical problems.	

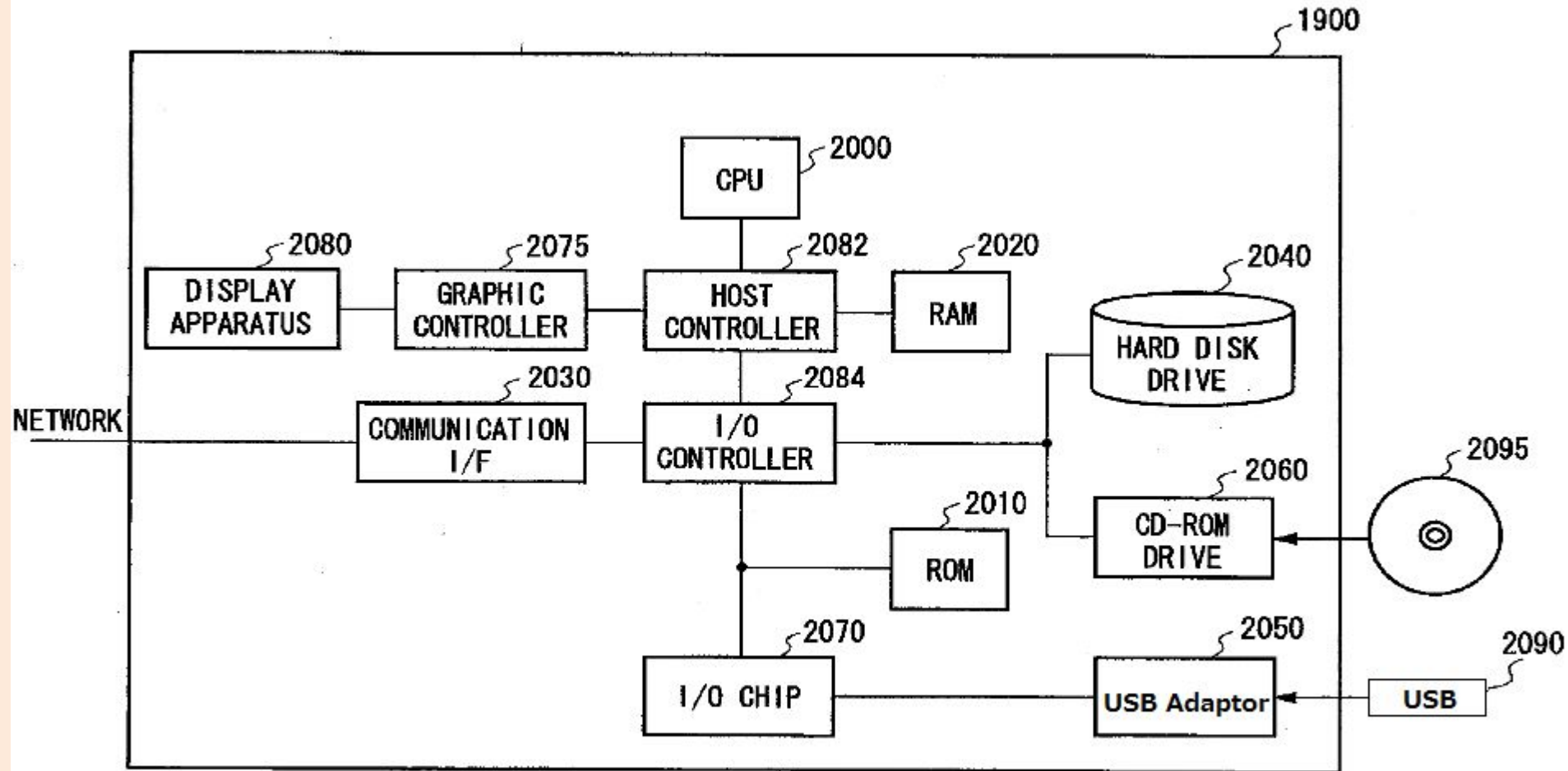
Suggestions:

Drafting priority or PCT applications ready for future amendment

1. Describe hardware such as storages and memories, even if the hardware is a typical PC or cell phone.
2. Describe how software uses tables, databases or temporary data.
3. Describe that the tables, databases, etc. are stored in a storage or memory.

Suggestions:

Add a computer block diagram to priority base and PCT applications



Suggestions:

Describing cooperative relationships with hardware in Priority and PCT applications

A simple description like below still helps amendments in JP and US in some degree. (although not ideal).

[0050] Tables --- and --- , and data/information --- and --- described in the embodiments can be read from hard disk drive 2040 and temporarily stored in RAM 2020 by CPU 2000. CPU 2000 may then read tables ----, and --- and data/information --- and --- from RAM 2020, process them, and store them to RAM 2020 again.

Means + function & Step + function

	JP, KR, EP	US, CN
Scope of Protection	<p>Anything capable of realizing the function.</p> <p>(Although unclear words are construed in reference to the specification and often limited in Japan)</p>	<p>Limited to the embodiments disclosed in the specification and their equivalents only.</p> <p>Williamson v. Citrix Online, LLC, 792 F.3d 1339 (Fed. Cir. 2015)(en banc)</p> <p>35 USC 112(f)</p>
Suggestion	Draft functional claims	Add structural claims that recite structural features.

Multiple Dependencies of the claims

	JP, EP, CA, AU, NZ	CN, KR	US
Multi-dependent claims from other multi-dependent claims	<p>○</p> <ul style="list-style-type: none"> • Wider scope • More possibilities to have dependent claims examined 	<p>△</p> <p>Not allowed, but still examined</p>	×
	Better for future amendments		
Multi-dependent claims from single dependent claims	<p>○</p> <p>Counted as one claim for claim fees</p>		<p>×</p> <p>High claim fee, yet easier to invalidate</p>

Suggestions:

Claim Dependencies in PCT Applications

- To be filed in JP, EP, CN, KR, CA, AU, or NZ
 - Multiple layers of multiple dependencies
- NOT in the above, but in TW
 - Single layer of multiple dependencies
- Easier to reduce than to add dependencies later
- Later adding dependencies may introduce a new matter in EPO and not allowed after OA in CN.
- US claims can be changed at the entry by continuation (bypass) application from the PCT.

Thank you

about us:

Celebrated 20th year in 2018.
42 attorneys, 120 in total

They say:

Rising Star in Japan IP, ILASA
Top 5 Japan Patent Firm, Asia IP
Top 10 Japan Trademark Firm, Asia IP
Top 20 Japan Patent Firm, MIP
Top 20 Japan Trademark Firm, MIP

We commit to proactive communication, which leads to deeper understanding of our clients and creative processes.

