

Ex parte Nintendo, European Patent Office (Appeals Court), 6 February 2009

Kluwer Patent Blog
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The Board reversed a refusal of the patent application for lack of technical contribution. The underlying decision had expressed the view that the idea of making chance encounters depend on time was a game rule, which is itself excluded from patentability and had been implemented in straightforward manner. In its classical sense game rules form the abstract formal structure of a game, describing the interplay between player actions and the choices offered within the game. According to the Board the claimed solution is not so much concerned with this rule per se, as with the particular manner in which it is realized. Also, the way in which the time dependent chance encounters are generated do not derive from a game rule in some wider sense. That is, as a condition or regulation that governs the internal as well as the external, explicit workings of the game. The Board is unable to identify such a game rule pertaining, say, to the inner logic of the game that might underlie the claimed time dependency of the appearance probability. The full summary of this case has been posted on [Kluwer IP Law](#).