

Decided on	February 7, 2008	Court	Intellectual Property High Court, First Division
Case number	2006 (Gyo-Ke) 10369		
<p>- A case, with respect to an action seeking cancellation of a trial decision to invalidate a patent for an invention relating to a system of preparing evidence of a traffic violation due to insufficient following distance, in which the trial decision was cancelled for reason of an error in its determination that the persons engaged in software prototyping and other processes that were central to development of the invention were not the inventors</p>			

References: Article 123, paragraph (1), items (ii) and (vi) and Article 38 of the Patent Act

In this case, X filed a request with the Japan Patent Office (JPO) against Y for a trial to invalidate Y's patent for an invention titled "a system of preparing evidence of a traffic violation due to insufficient following distance and a method of measuring the following distance." The JPO issued a trial decision to dismiss the request. Subsequently, X filed a legal action seeking cancellation of the trial decision. The court issued the following ruling to cancel the trial decision.

"Article 2 of the Patent Act stipulates that 'invention' in this Act means the highly advanced creation of technical ideas utilizing the laws of nature. According to Article 36, paragraph (4), item (i) of the same Act, the statement of the detailed explanation of the invention shall, in accordance with Ordinance of the Ministry of Economy, Trade and Industry, be clear and sufficient as to enable any person ordinarily skilled in the art to which the invention pertains to work the invention. In order to be recognized as constituting the creation of technical ideas as stipulated in Article 2 of the Act, the invention in question must be able to be worked by a person ordinarily skilled in the art. It is understood that it must, in principle, not be a mere idea but be developed into a real art as a result of repeated prototyping and testing to overcome problems. As an exception, however, it is possible that an idea may be regarded as constituting the creation of technical ideas if its development into a tangible product is self-explanatory to a person ordinarily skilled in the art. For example, this applies in a case in which the idea is a combination of publicly known arts although, needless to say, it is limited to a case where it has the inventive step expected from an invention."

"According to Patented Invention 1, the system for preparing evidence of a traffic violation (S) consists of a distance measurement device (1), a GPS longitude and

latitude measurement device (2), a clock (3), a speedometer (4), a number entry device (5), a computer (6) and a printer (7). However, it is software that enables the system constructed using the structure mentioned above to perform the functions of measuring the speed of a following vehicle (B) in a triangulation method with the help of a preceding vehicle (C) from a patrol car (A), measuring the position of the patrol car (A) using the GPS longitude and latitude measurement device (2), identifying the time when the measurement is performed, measuring the positional, speed and time data of the following vehicle (B) thus obtained and printing out a violation ticket with the vehicle registration number data using the printer. An accumulation of prototyping and testing is requisite to development of the software. It cannot be said that the development into a tangible product is evident to a person ordinarily skilled in the art.”

“The Patented Invention is considered, after assessing the statement in its specification, to be a technical idea discovered as a result of repeated prototyping and testing. (...) The specification is recognized as having been prepared on the basis of the results attained with a prototype for a competition basically finished around September 4, 1998.”

“The prototype for a competition was produced on the basis of an idea devised by A and in cooperation with B, who is a representative of X, and with C, who is a representative of Y. It consisted of a conventional distance measuring device, a GPS system, a data binding system, a mobile computer, a printer and other elements. Development of software for controlling the hardware relating to connection between the different devices and controlling the overall functionality was at the heart of the development efforts. On September 4, 1998, a theoretical model had already been created as mentioned in the material submitted as the plaintiff’s Exhibit No. 3. The prototype for a competition had basically been built, excluding the component for incorporating the GPS system. Moreover, an order for the component had already been placed. It is recognized that the prototype reached final completion around September 27. It should then be confirmed that the prototyping concerning Patented Invention 1 was fundamentally complete around September 4, 1998.”

“As discussed above, to be recognized as a creation of technical ideas, the Patented Invention must not be a mere idea but must be developed into a real art after repeated prototyping and testing to overcome problems. As it was observed that B, C and A collaboratively produced a prototype, continuously improved and tested it during a period of about three months from June to September to attain fundamental completion of the prototype by September 4, earlier than the date of patent

application, these three persons are confirmed to have been involved in the creation of Patented Invention 1.”