

Patent Right	Date	November 30, 2023	Court	Intellectual Property High Court, Fourth Division
	Case number	2022 (Gyo-Ke) 10109		
- A case in which a patent revocation decision that the present patented invention does not comply with the clarity requirement, the support requirement, and the enablement requirement was rescinded.				

Case type: Rescission of Patent Revocation Decision

Result: Granted

References: Article 36, paragraph (6), item (ii), paragraph (4), item (i), and paragraph (6), item (i) of the Patent Act

Related rights, etc.: Patent No. 6745410

Revocation Decision: Opposition No. 2021-700209

### Summary of the Judgment

1 The Opponent filed an opposition to a granted patent with regard to the Plaintiff's patent for an invention titled "ANTI-GLARE FILM" (Patent No. 6745410; Number of claims: 5) on February 26, 2021.

During procedures of the opposition to the granted patent, the Plaintiff filed a request for correction (this correction was intended to delete Claims 2 and 3; Number of claims after the correction: 3). Claims after the correction are as follows.

[Claim 1]

An anti-glare film, comprising an anti-glare layer having a haze value ranging from 50% or more to 99% or less and including a plurality of microparticles of which an average particle diameter is set to a value ranging from 0.5  $\mu\text{m}$  or more to 5.0  $\mu\text{m}$  or less, wherein:

aggregation of the plurality of microparticles is dispersed in the anti-glare layer, in which a distributed structure of asperities is formed on a surface of the anti-glare layer by the aggregation of the plurality of microparticles that are dispersed;

a standard deviation of luminance distribution of an organic EL display is a value ranging from 0 or more to 6 or less when adjusted so as to obtain image data as a gray scale image with an 8-bit gradation display and an average luminance of 170 gradations in a state where the anti-glare film is mounted on a surface of the organic EL display with a pixel density of 441 ppi; and

transmission image clarity at an optical comb width of 0.5 mm is a value ranging from 0% or more to 60% or less.

[Claim 4]

The anti-glare film according to Claim 1, wherein the anti-glare layer comprises a matrix resin and the plurality of microparticles

dispersed in the matrix resin, and

a refractive index difference between the microparticles and the matrix resin is a value ranging from 0 or more to 0.07 or less.

[Claim 5]

The anti-glare film according to Claim 4, wherein a ratio  $G2/G1$  between a weight  $G1$  of the matrix resin in the anti-glare layer and a total weight  $G2$  of the plurality of microparticles included in the anti-glare layer is a value ranging from 0.07 or more to 0.20 or less.

2 The Japan Patent Office allowed the correction and rendered a decision that the patent having Claims 1, 4, and 5 shall be revoked and the opposition to the granted patent with regard to the patent having deleted Claims 2 and 3 shall be dismissed. This decision was based on the following determinations.

(1) The present patented invention specifies an anti-glare layer by the following numerical ranges of parameters: "haze"; "the present standard deviation (standard deviation of luminance distribution of an organic EL display when adjusted so as to obtain image data as a gray scale image with an 8-bit gradation display and average luminance of 170 gradations in a state where the anti-glare film is mounted on a surface of the organic EL display with a pixel density of 441 ppi)"; and "transmission image clarity at an optical comb width of 0.5 mm." However, with regard to the present standard deviation value, it cannot be considered that it is unambiguously determined what value is specifically set particularly for an object distance and F-number among the measurement conditions, even taking into consideration the statement of the present description and common general technical knowledge. The parameter values, including the standard deviation, are also not unambiguously determined. Therefore, the present patented invention is unclear.

(2) It is difficult for a person ordinarily skilled in the art to understand how to produce various anti-glare films: that meet the condition that the anti-glare films comprise an anti-glare layer including a plurality of microparticles of which an average particle diameter ranges from 0.5  $\mu\text{m}$  or more to 5.0  $\mu\text{m}$  or less, in which a distributed structure of asperities is formed on the surface of the anti-glare layer by aggregation of the plurality of microparticles that are dispersed; and that fully fall within the numerical ranges of the three conditions in the present case (conditions encompassing the condition of haze, the condition of standard deviation, and the condition of transmission image clarity). Therefore, the statement of the present description violates the enablement requirement.

(3) A person ordinarily skilled in the art cannot recognize that the problem of the

present patented invention can be solved even by the statement of the present description, etc. Therefore, the present patented invention violates the support requirement.

3 The court held as follows and rendered a judgment to rescind the portion of the present decision in which the patent having Claims 1, 4, and 5 in the present patent shall be revoked.

(1) The only work required in specifying an F-number is to take several pictures while changing the F-number to check a change in contrast and to determine the F-number with the highest contrast, and no particular difficulty can be found in this work. Regarding an object distance, from the specific statement in [0128] of the present description, a person ordinarily skilled in the art can understand that the object distance should be maintained to the extent that a line bright enough to affect the evaluation of sparkle is not reflected, on the premise that the object distance is made short to the extent that resolution sufficient to grasp luminance distribution can be obtained. Therefore, the present decision erred in determining that the statements of Claims 1, 4, and 5 in the scope of claims in the present patent do not comply with the clarity requirement.

(2) The present patented invention improves an anti-glare property while suppressing sparkle of a display not only by reducing asperities of an anti-glare layer but also by increasing inclination of the asperities on the anti-glare layer to thereby make the asperities steeper and also by increasing the number of the asperities. A first embodiment, which is not disputed in terms of its enablement, and a second embodiment have the common principle mentioned above, and differ in that the former forms the asperities on the anti-glare layer by spinodal decomposition, whereas the latter causes moderate aggregation of microparticles to form a distributed structure of the asperities on the anti-glare layer by using a plurality of the microparticles and selecting materials so as to strengthen repulsive interaction of the microparticles with resins and solvents other than the microparticles when the anti-glare layer is formed. Taking into consideration the statement relating to the first embodiment in combination with other statements of the present description, it can be considered that a person ordinarily skilled in the art will understand that anti-glare films with various properties, including anti-glare films stated in the working examples, can be obtained with regard to the second embodiment by appropriately setting and adjusting conditions in each of production steps. Strict trade-off relationship between making a haze value high and maintaining display performance of the display cannot be found, and it cannot be considered that the present patented

invention does not comply with the enablement requirement unless a method for producing a region with high haze and high clarity is specifically stated. Therefore, the present revocation decision erred in determining that the statement of the present description does not comply with the enablement requirement.

(3) The purpose of the present patented invention is to provide an anti-glare film that can suppress sparkle of a display while having a good anti-glare property and that has a high degree of design freedom in terms of transmission image clarity. In this regard, as held with regard to the enablement requirement, it can be considered that a person ordinarily skilled in the art can recognize that the problem of the present patented invention can be solved within the scope stated in the scope of claims, on the basis of the statement of the present description and common general technical knowledge.

Therefore, the present revocation decision erred in determining that the present patented invention does not comply with the support requirement.