Judgments of the Supreme Court, the Second Petty Bench
Date of the Judgment: 1974.6.28
Case Number: 1972(O)No.659

Main Text of the Judgment:
The jokoku appeal shall be dismissed.
The jokoku appellant shall bear the cost of the jokoku appeal.

Reasons:
Concerning the first and the second grounds of the jokoku appeal by jokoku appellant attorneys YAMANE Atsushi, SHIMOIIZAKA Tsuneyo, ARANAGA Iwao, and EBIHARA Motohiko:

Because patent rights are provided to novel and industrial inventions, the part of an invention, publicly known at the time of the invention, is not a novel invention, so, when the scope of the technology of a certain patented invention is determined, novel technological ideas should be clarified by excluding the part publicly known at the time of the invention. (See Judgment of the Supreme Court, the Second Chamber, decided on 1962.12.7, Minshu Vol. 16, NO.12, Page 2321, and Judgment of the Supreme Court, the Third Chamber, 1964.8.4, Minshu Vol.18, No.7, Page 1319). The facts approved by the original instance that the technical ideas had been publicly known prior to the filing of this patent application cannot be persuaded comparing to the evidence approved at the original instance on the issues claimed by the jokoku appellants. Thus, the judgment of the original instance about the argument by jokoku appellant is correct and should be affirmed. There is no illegality in the judgment of the original instance. The jokoku appellants argue in their original view and criticize the approval of evidence and the recognition of facts, which were the privileges of the original instance. Therefore, the their arguments cannot be accepted.

Concerning the Third and the Sixth grounds:

The approved facts, regarding the purpose, structure, and functional efficiency of the patent invention at issue and the jokoku appellee's product, can be persuasive comparing to the evidence raised in the original instance. Under these approved facts, there are differences in the structure and the functional efficiency between the jokoku appellee's product and patent invention at issue. Thus, the original instance will have correctly decided that the jokoku appellee's product is not included in the technological scope of the patent invention at issue. There is no illegality in the original instance, and the jokoku appellant solely argues the original view and criticizes the approval of evidence and the recognition of facts, which is the privilege of the original instance. We cannot accept these arguments.

Therefore, in accordance with Arcitcles 401, 95, 89, and 93 of the Civil Procedure

Law, we unanimously decide as the main text of the judgment.

Presiding Judge, Justice OTSUKA Kiichiro
Justice OKAHARA Masao
Justice OGAWA Nobuo
Justice YOSHIDA Yutaka