

Date	January 19, 2016	Court	Intellectual Property High Court, Third Division
Case number	2014 (Ne) 10038		
<p>– A case in which the court ordered against the defendant company in the first instance an injunction of the reproduction and distribution, etc. of a database for search and itinerary preparation operations that is included in the system for travel agents and manufactured and sold by the defendant company in the first instance (the "Defendant's CDDB") and destruction, etc. of the recording medium in which the Defendant's CDDB is stored, while ordering the defendants in the first instance to jointly and severally pay damages to the plaintiff in the first instance by holding that the Defendant's CDDB is equivalent to the reproduction or adaptation of the common part found in the same type of database for which the plaintiff in the first instance holds a copyright (the "Plaintiff's CDDB") and, thus, joint tort based on infringement of copyright can be found in the defendant company in the first instance, the representative thereof as well as the other defendants in the first instance that participated in the development and sales of the Defendant's CDDB as an employee of the defendant company.</p>			

References: Article 2, paragraph (1), items (x)-3 and (xv), Article 12-2, Article 21, Article 27, Article 112 and Article 114, paragraph (1) of the Copyright Act and Article 709 of the Civil Code

Summary of the Judgment

1. In this case, the plaintiff in the first instance alleged against the defendants in the first instance (the defendant company in the first instance, the representative thereof and present or former employees of the company) that the act of manufacturing and selling the system for travel agents, which includes a database for search and itinerary preparation operations (the "Defendant's CDDB"; there are four types of this database: "original version," "2006 version," "current version" and "new version") by the defendants in the first instance constitutes infringement of the copyrights (right of reproduction, right of adaptation, right of transfer, right to rent out and right to transmit to the public) held by the plaintiff in the first instance with respect to the database for search and itinerary preparation operations included in the same type of system for travel agents (the "Plaintiff's CDDB"). The plaintiff thereby claimed an injunction of the reproduction and adaptation, etc. of the Defendant's CDDB under Article 112, paragraph (1) of the Copyright Act and destruction, etc. of the recording medium in which the Defendant's CDDB is stored under paragraph (2) of said Article as well as the joint and several payment of 910,370,978 yen and delay damages accrued thereon

as compensation for damages based on tort of infringement of copyrights or general tort.

In the judgment in prior instance, the court upheld the claims made by the plaintiff in the first instance for an injunction and destruction, etc. to the extent of claiming an injunction of the reproduction, distribution and transmission to the public of the original version, 2006 version and current version of the Defendant's CDDB as well as the destruction, etc. of the recording medium in which they are stored. The court further upheld the claims of the plaintiff in the first instance regarding damages to the extent of claiming against the defendants in the first instance joint and several payment of 112,151,000 yen (however, for some of the defendants, the amount according to the period of time during which they were employed by the defendant company in the first instance) and delay damages accrued thereon as compensation for damages based on tort of infringement of copyrights. The court dismissed the other claims made by the plaintiff in the first instance against the defendant in the first instance.

The plaintiff in the first instance, who was dissatisfied with the entire part of the judgment in prior instance for which he/she lost the case, filed an appeal, while the defendants in the first instance, who were dissatisfied only with the part of the judgment in prior instance concerning damages for which they lost the case, filed an appeal.

2. In this judgment, the court modified the judgment in prior instance based on the appeal filed by the plaintiff in the first instance and dismissed all of the appeals filed by the defendants in the first instance by finding as follows: among the claims made by the plaintiff in the first instance, the claims for an injunction and destruction, etc. are well-grounded to the extent of claiming an injunction of the reproduction, distribution and transmission to the public of the new version of the Defendant's CDDB in addition to the original version, 2006 version and current version as well as the destruction, etc. of the recording medium in which they are stored; and the claims for damages are well-grounded to the extent of claiming against the defendants in the first instance joint and several payment of 214,733,000 yen (however, for some of the defendants, the amount according to the period of time during which they were employed by the defendant company in the first instance) and delay damages accrued thereon.

In this judgment, the court held as follows with respect to the issue of whether or not the Defendant's CDDB is a reproduction or adaptation of the Plaintiff's CDDB.

(1) Regarding the reproduction or adaptation of a database

In determining the creativity of the systematic structure of a relational database, it should be taken into consideration that the systematic structure of a database is a

logical structure that enables users to efficiently search for specific information from an aggregate of information and that, in a relational database, such systematic structure is created by the contents of the tables (types and numbers), contents of the field items that exist in each table (types and numbers), the mode of association (relation) between multiple tables, i.e., the act of choosing tables to establish a relation between them as well as a field item to be used for establishing such relation. Moreover, in a relational database, in light of the fact that normalization is implemented by establishing a dependency relation between field items and creating a new table to increase search efficiency or isolating a highly relevant data group to another table in order to prevent any inconsistency among data when the data stored in the table is to be updated and the fact that there are various degrees of normalization, the significance of such normalization as well as the degree thereof must also be taken into consideration.

Furthermore, in a relational database, part of the database may be used by being divided, and even if a table or a field in each table is added or a table or a field is deleted, the existing search function of the database would obviously not be lost, and the systematic structure to be used for such search may be valued as being maintained in whole or in part.

Based on the abovementioned findings, the determination on whether or not the Defendant's CDDB can be found to be a reproduction or adaptation of the Plaintiff's CDDB should be made in the following steps: [i] first, it should be determined whether the Defendant's CDDB has any parts in common with the tables, fields in respective tables and specific information stored in the Plaintiff's CDDB; [ii] next, it should be determined, regarding such common part, whether or not the Plaintiff's CDDB has any creativity by means of the selection of information or systematic structure; and [iii] if such creativity is found, it would be determined whether or not the essential feature of the selection of information or systematic structure used in the parts of the Plaintiff's CDDB with which the Defendant's CDDB has commonality can be recognized from the Defendant's CDDB. If such recognition is possible, it can be said that the essential feature can be directly perceived, and then the Defendant's CDDB can be found to be a reproduction or adaptation of the common parts in the Plaintiff's CDDB.

(2) Regarding the original version, 2006 version and current version of the Defendant's CDDB

The abovementioned versions of the Defendant's CDDB were all created based on the Plaintiff's CDDB and enabled people to directly perceive the essential feature of the systematic structure and selection of information used in the parts of the Plaintiff's CDDB from the common parts in the Defendant's CDDB. Thus, it is appropriate to

find that they are reproductions of the parts of the Plaintiff's CDDDB with which the Defendant's CDDDB has commonality.

(3) Regarding the new version of the Defendant's CDDDB

A. Commonality of the systematic structure

In the new version of the Defendant's CDDDB, with respect to the tables, fields, and the relation between the tables that correspond to those in the Plaintiff's CDDDB, as with the case in the current version of the Defendant's CDDDB, the systematic structure of the Plaintiff's CDDDB remains to be maintained. Such systematic structure is an outcome of the creative activities made by the creator of the Plaintiff's CDDDB with respect to the Plaintiff's CDDDB, which was structured based on a design concept that had never been used in any previous databases. Thus, such part alone can still be found to be a large scale information classification system that is capable of functioning as a database, and is an expression of the individual characteristics of the creator of the database.

Accordingly, as mentioned above, the parts of the Plaintiff's CDDDB with which the new version of the Defendant's CDDDB has commonality can be found to have creativity in terms of the systematic structure of the database.

On the other hand, the following facts are found: [i] part of the systematic structure has been changed; [ii] there are newly added tables; [iii] fields or relations have been added in connection with the addition of tables; and [iv] there are newly established fields in the tables that share commonality with the Plaintiff's CDDDB and the relations have changed in connection therewith. In light of these facts and the contents and functions, etc. of the fields contained in these tables, the new version of the Defendant's CDDDB can be found to have produced a new systematic structure for search, etc.

However, even if creativity could be found in the part of the systematic structure that was produced by the existence of the tables, fields and relations that were newly added in the new version of the Defendant's CDDDB, the essential feature of the systematic structure of the Plaintiff's CDDDB can be recognized from the new version of the Defendant's CDDDB, i.e., such essential feature can be directly perceived.

B. Commonality of selection of information

The sorting and selection of the representative road spot, etc., which is a common part between the Plaintiff's CDDDB and the Defendant's CDDDB, show the outcome of the creative activities made by the creator of the Plaintiff's CDDDB as well as the individual characteristics thereof. Accordingly, it is appropriate to find that the parts of the Plaintiff's CDDDB mentioned above with which the new version of the Defendant's

CDDB has commonality have creativity in terms of the selection of information of the database.

Moreover, since more than half of the records that exist in the "point master" used in the new version of the Defendant's CDDB correspond to the records and road points that exist in the "point name table" used in the Plaintiff's CDDB, it should be found that the essential feature of the selection of information used in the parts of the Plaintiff's CDDB with which the Defendant's CDDB has commonality can be directly perceived from the common parts in the new version of the Defendant's CDDB.

On the other hand, with respect to the selection of information for the database used in the new version of the Defendant's CDDB (except for the common parts mentioned above), it can be easily found that a new creative expression was added by the defendants in the first instance. Thus, it is appropriate to find that the new version of the Defendant's CDDB is an adaptation of the Plaintiff's CDDB in terms of the selection of the information of the database.

C. Conclusion

According to the abovementioned examination, the new version of the Defendant's CDDB was created based on the Plaintiff's CDDB. Moreover, the essential feature of the systematic structure and selection of information used in the parts of the Plaintiff's CDDB with which the Defendant's CDDB has commonality can be recognized from such version of the Defendant's CDDB; such essential feature can be directly perceived. Accordingly, it is appropriate to find that the new version of the Defendant's CDDB is a reproduction or adaptation of the parts of the Plaintiff's CDDB with which the Defendant's CDDB has commonality.