

Copyright	Date	October 27, 2021	Court	Intellectual Property High Court, First Division
	Case number	2021 (Ne) 10048		
- A case in which the court determined whether the copyright (right of reproduction and adaptation right) of a work related to a workbook explaining methods of organizing a meeting was infringed or not.				

Case type: Injunction, etc. against an act of copyright infringement

Result: Appeal dismissed

References: Article 2, paragraph (1), item (i) and item (xv), Article 21, Article 27, and Article 112, paragraph (1) and paragraph (2) of the Copyright Act

Judgment in prior instance: Tokyo District Court, 2019 (Wa) 4521, rendered on March 26, 2021

### Summary of the Judgment

1. This is a case where the Appellant Company alleged that the acts of the Appellees to provide workshops and consultations on meetings using the Defendant's Resumes fall under infringement of the copyright (right of reproduction and adaptation right) of a work related to the Plaintiff's Workbook held by the Appellant Company and the Appellant Company sought an injunction against the reproduction and distribution of the Defendant's Resumes and destruction of the Defendant's Resumes based on Article 112, paragraph (1) and paragraph (2) of the Copyright Act.

The court of prior instance dismissed the claim of the Appellant Company because there are no grounds for the claim. Dissatisfied with this, the Appellants filed appeals with the court.

2. In this judgment, the court held as outlined below, determined that the judgment in prior instance was appropriate, and dismissed the appeals.

(1) The Copyright Act defines that a work means a creatively produced expression of thoughts or sentiments that falls within a literary, academic, artistic, or musical domain (Article 2, paragraph (1), item (i) of the Copyright Act) and that reproduction means the physical replication of a work through printing, photography, or copying, through the recording of sound or visuals, or in any other way (item (xv) of said paragraph). Therefore, reproduction of a work (Article 21 of the same Act) is construed to mean an act of physical replication of the creatively produced expression depending on the work.

In addition, adaptation of a work (Article 27 of the same Act) is construed to be an act depending on an existing work with the following aims: to maintain the identity of a creatively produced expression that is an essential feature of the expression, to add

corrections, increases and decreases, changes, etc. to a specific expression, and to express new thoughts or sentiments creatively, and thereby to create another work so that a person who comes into contact with it can directly feel the creatively produced expression of an existing work.

According to the above understanding, in order to say that the Defendant's Resumes fall under a reproduction or adaptation of a work related to the Plaintiff's Workbook, it is reasonable to construe that there are common expressions between the Plaintiff's Workbook and the Defendant's Resumes and the expressions are creatively produced expressions, in other words, there must be common creative expressions. At the same time, in cases where only ideas or other parts that are not expressions are common to the Plaintiff's Workbook and the Defendant's Resumes and where the common expressions are ordinary expressions, it is construed that the Defendant's Resumes do not fall under a reproduction or adaptation of the Plaintiff's Workbook.

## (2) Plaintiff's Statement Part 6 and Defendant's Statement Part 6

The part of the Plaintiff's Workbook in question and the part of the Defendant's Resumes in question share the point that they are statements describing that the participants in a meeting "share problems" "as a team," create "roles," and acquire "a plan" and have the "passion" "to satisfy" the participants.

However, the aforementioned common parts are the results to be acquired as a goal to be achieved through the meeting and absolutely represent ideas related to the means of acquiring the results, as a whole, but are not expressions by themselves.

In addition, Plaintiff's Statement Part 6 states in the first sentence that "these members will share problems, establish a common goal, and share roles and create commitments as a high-performance management team" as a means of acquiring the results, and then it states in the second sentence that "thereby, achieve the goal, and acquire a plan and passion to satisfy stakeholders and these members" as the results to be acquired. It is only a combination of plain terms that can recognize relationship, such as "as a team," "share problems," "common," "roles," "to satisfy," "passion," etc. in general order and they are commonplace. The structures of the first and second sentences are normally used and commonplace, such as connecting means to the results, etc., and it cannot be said that they are creative. Then, concerning the expression parts in Plaintiff's Statement Part 6, "share problems, establish a common goal, share roles and create commitments," and "achieve the goal, and acquire a plan and passion to satisfy," and the expression parts in Defendant's Statement Part 6, "share a problem, create a common will, and create a role, assignment, and action plan to achieve the will," "to acquire a structure and plan to continue growing and to generate a union and

passion in order to satisfy," it cannot be said that they share creatively produced expressions.

Based on the above, the common parts of Defendant's Statement Part 6 and Plaintiff's Statement Part 6 cannot be said to be expressions or creatively produced expressions. Therefore, it cannot be found that Defendant's Statement Part 6 falls under a reproduction or adaptation of Plaintiff's Statement Part 6.

(3) Structure of the Plaintiff's Workbook as a whole and structure of the Defendant's Resumes as a whole

The structure of the Plaintiff's Workbook as a whole and the structure of the Defendant's Resumes as a whole share the point that the following items: [i] confirmation of meeting rules and objectives; [ii] confirmation of the results to be acquired; [iii] confirmation of what has been achieved by today; [iv] identification of problems and concerns; [v] creation of strategic focuses (establishment of goals); [vi] clarification of roles (ways to achieve the goals, clarification of persons in charge and responsibilities); [vii] establishment of an action plan (commitment); and [viii] problem resolution, are selected and are arranged almost in the same order.

However, the aforementioned common parts absolutely represent ideas about the items and order of implementation in a meeting, but are not found to be expressions.

Based on the above, it cannot be found that the structure of the Defendant's Resumes as a whole falls under a reproduction or adaptation of the structure of the Plaintiff's Workbook as a whole.

Judgment rendered on October 27, 2021

2021(Ne)10048, Case of appeal for injunction against copyright infringement

(Court of prior instance: Tokyo District Court, 2019(Wa)4521)

Date of conclusion of oral argument: September 13, 2021

#### Judgment

Appellant: SUGOIKAI LLC

(hereinafter referred to as "Appellant Company")

Appellant X

(hereinafter referred to as "Appellant X")

Appellee: Vanguard Management Co., Ltd.

(hereinafter referred to as "Appellee Vanguard")

Appellee Y

(hereinafter referred to as "Appellee Y")

Appellee: Samurai Vision, Inc..

(hereinafter referred to as "Appellee Samurai Vision")

#### Main text

1. All of the appeals shall be dismissed.
2. The Appellants shall bear the cost of the appeals.

#### Facts and reasons

##### No. 1 Object of the appeals

##### 1. Appellant Company

(1) The judgment in prior instance shall be rescinded.

(2) A. The Appellees shall not reproduce and distribute the documents indicated in 1 through 8 of Attachment 1 "List of the Defendant's Resumes" of the judgment in prior instance that contain the statements that are indicated in the "Defendant's Statement Part" column of Attachment 2 "Resume Comparison Table" of the judgment in prior

instance.

B. The Appellees shall destroy the documents indicated in 1 through 8 of Attachment 1 "List of the Defendant's Resumes" of the judgment in prior instance that contain the statements that are indicated in the "Defendant's Statement Part" column of Attachment 2 "Resume Comparison Table" of the judgment in prior instance.

C. Appellee Vanguard and Appellee Samurai Vision shall not use the expression "When meetings change, the company changes without fail!"

D. The Appellees shall not use or disclose the know-hows stated in the "Know-Hows" column of Attachment 3 "Comparison Table of Know-Hows" of the judgment in prior instance.

E. Appellee Vanguard and Appellee Samurai Vision shall delete the videos indicated in 1 and 2 of Attachment 4 "List of Posted Videos" of the judgment in prior instance.

F. The Appellees shall jointly and severally pay to the Appellant Company 11,000 yen and an amount accrued thereon at 5% per annum for the period from August 28, 2018 until the completion of the payment.

G. The Appellees shall jointly and severally pay to the Appellant Company 10,560,000 yen and an amount accrued thereon at 5% per annum for the period from August 28, 2018 until the completion of the payment.

## 2. Appellant X

(1) The judgment in prior instance shall be rescinded.

(2) A. The Appellees shall not reproduce and distribute the documents indicated in 1 through 8 of Attachment 1 "List of the Defendant's Resumes" of the judgment in prior instance that contain the statements that are indicated in the "Defendant's Statement Part" column of Attachment 2 "Resume Comparison Table" of the judgment in prior instance.

B. The Appellees shall destroy the documents indicated in 1 through 8 of Attachment 1 "List of the Defendant's Resumes" of the judgment in prior instance that contain the statements that are indicated in the "Defendant's Statement Part" column of Attachment 2 "Resume Comparison Table" of the judgment in prior instance.

C. The Appellees shall jointly and severally pay to Appellant X 660,000 yen and an amount accrued thereon at 5% per annum for the period from August 28, 2018 until the completion of the payment.

No. 2 Outline of the case (Unless particularly noted, the same abbreviations used in the judgment in prior instance shall be used herein.)

### 1. Summary of the case

In this case, (1) the Appellant Company [i] alleged that the act of the Appellees to

provide workshops and consultations on meetings called "Samurai Meetings" (hereinafter referred to as "Samurai Meetings") using the documents indicated in 1 through 8 of Attachment 1 "List of Defendant's Resumes" of the judgment in prior instance (hereinafter collectively referred to as the "Defendant's Resumes") falls under infringement of the copyright (right of reproduction and adaptation right) of a work related to a workbook titled "2011 Nendo Sugoi Keikaku Sakusei Kit Peach Party Matador Version (FY2011 Super Plan Creation Kit Peach Party Matador Version)" held by the Appellant Company (hereinafter referred to as the "Plaintiff's Workbook") and demanded an injunction against the Appellees based on Article 112, paragraph (1) and paragraph (2) of the Copyright Act against the reproduction and distribution of the Defendant's Resumes that contain the statements indicated in the "Defendant Statement Part" column of Attachment 2 "Resume Comparison Table" of the judgment in prior instance (hereinafter the statements corresponding to the numbers stated in the "Number" column in the Comparison Table are referred to as "Defendant Statement Part 1," etc.) and for destruction of the Defendant's Resumes; [ii] alleged that the act of Appellee Vanguard and Appellee Samurai Vision (hereinafter collectively referred to as "Appellee Companies" in some cases) to have created a video stated in 1 of Attachment 4 "List of Posted Videos" of the judgment in prior instance (hereinafter referred to as "Posted Video 1") in which a copy of "When meetings change, the company changes without fail!" (hereinafter referred to as the "Defendant's Copy") is displayed falls under infringement of the copyright (adaptation right) of a work related to a copy of "Meetings change. Company changes." that is held by the Appellant Company (hereinafter referred to as the "Plaintiff's Copy") and based on paragraph (1) of said Article, demanded injunction against the Appellee Companies against the use of the Defendant's Copy; [iii] alleged that the act of the Appellees to provide consultation services by using information related to the know-hows stated in the "Know-Hows" column of Attachment 3 "Comparison Table of Know-Hows" of the judgment in prior instance as stated in the Plaintiff's Workbook (hereinafter the know-hows corresponding to the numbers in the "Number" column in the Comparison Table are referred to as "Know-How 1," etc. and Know-How 1 through Know-How 24 are collectively referred to as "Know-Hows"), the act of Appellee Vanguard to post on the website Posted Video 1 that was created by using Know-How 3 and the video indicated in 2 of Attachment 4 "List of Posted Videos" of the judgment in prior instance (hereinafter referred to as "Posted Video 2" and it is collectively referred along with Posted Video 1 as the "Posted Videos"), and the act of Appellee Samurai Vision to post Posted Video 1 on the website fall under acts of unfair competition, such as unauthorized use and improper disclosure

of Know-Hows that are trade secrets of the Appellant Company (Article 2, paragraph (1), item (vii) and item (viii) of the Unfair Competition Prevention Act) and demanded injunction against the Appellees based on Article 3, paragraph (1) of the same Act against the use of Know-Hows and against the Appellee Companies based on paragraph (2) of said Article for the deletion of the Posted Videos; [iv] demanded that the Appellees jointly and severally pay 11,000 yen as compensation for damages due to the joint tort of copyright infringement and an amount accrued thereon at 5% per annum as specified by the Civil Code before amendment by Act No. 44 of 2017 (hereinafter referred to as "specified by the Civil Code before the amendment") for the period from August 28, 2018 (after the tort) until the completion of the payment as delay damages; and [v] demanded that the Appellees jointly and severally pay 10,560,000 yen as compensation for damages based on Article 4 of the Unfair Competition Prevention Act and the amount accrued thereon at 5% per annum as specified by the Civil Code before the amendment for the period from said date (after the tort) until the completion of the payment as delay damages; and (2) Appellant X alleged that the act of the Appellees to use the Defendant's Resumes by modifying them for each customer without displaying the name of Appellant X falls under an infringement of the moral rights of the author (right of attribution and right to integrity) of the work related to the Plaintiff's Workbook held by Appellant X and demanded injunction against the Appellees based on Article 112, paragraph (1) and paragraph (2) of the Copyright Act against the reproduction and distribution of the Defendant's Resumes that contain the statements of Defendant Statement Parts 1 through 24 and for destruction of the Defendant's Resumes, and Appellant X demanded that the Appellees jointly and severally pay 660,000 yen of solatium, etc. as compensation for damages due to the joint tort of the infringement of the moral rights of the author and the amount accrued thereon at 5% per annum as specified by the Civil Code before the amendment for the period from said date (after the tort) until the completion of the payment as delay damages.

With regard to the claims of the Appellant Company, the court of prior instance determined that the Defendant's Resumes are not found to be a reproduction or adaptation of the Plaintiff's Workbook, the Plaintiff's Copy does not fall under the category of a work, and the Know-Hows do not fall under trade secrets, and dismissed all of the claims because they are groundless, without examining the remaining matters. With regard to the claims of Appellant X, the court of prior instance also determined that the Defendant's Resumes are not found to be a reproduction or adaptation of the Plaintiff's Workbook, and therefore that infringement of the moral rights of the author cannot be found, and dismissed all of the claims because they are groundless, without

examining the remaining matters.

The Appellants were dissatisfied with the judgment in prior instance and filed these appeals.

## 2. Basic facts

Corrections are made as indicated below and the rest are as indicated in No. 2, 2. in the "Facts and reasons" section of the judgment in prior instance and therefore they are cited.

(1) The phrase "(hereinafter referred to as "Samurai Meetings")" on page 6, line 23 in the judgment in prior instance is amended to "(Samurai Meetings)."

(2) The term "upgrade" on page 8, line 20 in the judgment in prior instance is amended to "upgrade February 2006."

## 3. Issues

Corrections are made as indicated below and the rest are as indicated in No. 2, 3. in the "Facts and reasons" section of the judgment in prior instance and therefore they are cited.

(1) Each term for "existence" on page 12, line 4 and line 9 in the judgment in prior instance is amended to "establishment."

(2) The expression "copyright infringement" on page 12, line 6 in the judgment in prior instance is amended to "infringement of the copyright (right of reproduction and adaptation right)" and the expression "author's moral right infringement" in line 7 of said page is amended to "infringement of the moral rights of the author (right of attribution and right to integrity)."

(omitted)

## No. 3 Judgment of this Court

1. Issue 1 (Establishment of the infringement of the copyright and the moral rights of the author related to the Plaintiff's Workbook)

(1) Issue 1-1 (Establishment of the infringement of the copyright (right of reproduction and adaptation right) related to the Plaintiff's Workbook)

A. The Copyright Act has the definitions that a work means a creatively produced expression of thoughts or sentiments that falls within a literary, academic, artistic, or musical domain (Article 2, paragraph (1), item (i) of the Copyright Act) and that reproduction means the physical replication of a work through printing, photography, or copying, through the recording of sound or visuals, or in any other way (item (xv) of said paragraph). Therefore, reproduction of a work (Article 21 of the same Act) is



construed to mean an act of physical replication of the creatively produced expression depending on the work.

In addition, adaptation of a work (Article 27 of the same Act) is construed to be an act depending on an existing work with the following aims: to maintain the identity of a creatively produced expression that is an essential feature of the expression, to add corrections, increases and decreases, changes, etc. to a specific expression, and to express new thoughts or sentiments creatively, and thereby to create another work so that a person who comes into contact with it can directly feel the creatively produced expression of an existing work.

According to the above understanding, in order to say that the Defendant's Resumes fall under a reproduction or adaptation of a work related to the Plaintiff's Workbook, it is reasonable to construe that there are common expressions between the Plaintiff's Workbook and the Defendant's Resumes and the expressions are creatively produced expressions, in other words, there must be common creative expressions. At the same time, in cases where only ideas or other parts that are not expressions are common to the Plaintiff's Workbook and the Defendant's Resumes and where the common expressions are ordinary expressions, it is construed that the Defendant's Resumes do not fall under a reproduction or adaptation of the Plaintiff's Workbook.

B. The Appellant Company alleged that the Plaintiff's Workbook and the Defendant's Resumes substantially share the same overall structure and, as stated in the "Plaintiffs' allegation" column in Attachment 2 "Resume Comparison Table" of the judgment in prior instance and in Attachment 5 "Comparison Table of Allegations Concerning the Plaintiff's Workbook" of the judgment in prior instance, the Appellant Company also alleged that the expressions that are identical in specific statement parts are creatively produced expressions and therefore the Defendant's Resumes fall under a reproduction or adaptation of the Plaintiff's Workbook. Therefore, the court makes a determination as follows.

(A) Reproduction or adaptation related to Plaintiff's Statement Parts 1 through 24 and Defendant's Statement Parts 1 through 24

a. Plaintiff's Statement Parts 1 through 5 and Defendant's Statement Parts 1 through 5

(a) As stated in Numbers 1 through 5 of Attachment 2 "Resume Comparison Table" of the judgment in prior instance, the part of the Plaintiff's Workbook in question and the part of the Defendant's Resumes in question share the statements with the following meanings, as rules in meetings: "try to do" as it is stated in the procedures (No. 1); turn off your "cellphone" (No. 2); if you find a "problem," do not "point out the problem," but "present a solution" (No. 3); do not reply "I don't know" (No. 4); and make your

"statement" using "short," "simple," and "straightforward" expressions (No. 5).

However, Plaintiff's Statement Part 1 states "Try to do as stated in the procedures in this book first."; however, Defendant's Statement Part 1 states "Leave everything to this book and try to do as it says." Plaintiff's Statement Part 3 states "If you find a problem, do not point it out, but present a solution to a person who can resolve it (the person may be you)."; however, Defendant's Statement Part 3 states "If you find a problem, present a solution. Don't just point out the problem." Plaintiff's Statement Part 4 states "Don't reply 'I don't know' to questions asked by this workbook."; however, Defendant's Statement Part 4 states "Try not to reply 'I don't know' or 'Nothing' during a Samurai Meeting." Plaintiff's Statement Part 5 states "Make statements by following the 3S rules (3S: Short, Simple, and Straightforward expressions)."; however, Defendant's Statement Part 5 states "Make a statement using short, simple, and straightforward expressions." Expressions in specific statements are different and no commonality is found.

Then, Defendant's Statement Parts 1 through 5 and Plaintiff's Statement Parts 1 through 5 share the point that they are statements explaining rules in meetings; however, the commonality lies in ideas about how to determine rules in meetings, not in expressions themselves.

(b) Concerning Plaintiff's Statement Parts 1 through 5 and Defendant's Statement Parts 1 through 5, the Appellant Company alleged that [i] they share commonality regarding the point that they adopt, from among several options for expressing rules in meetings, the form of describing even what seems to be quite ordinary in a precautionary manner, but these common parts are creative expressions; and [ii] there are many rules in meetings and there is a wide variety of options for selecting, combining, and expressing rules; therefore, it does not fall under a case where there is only one way to express an idea or where the ways of expression are limited to a considerable extent, if not limited to only one; accordingly, the common parts between Plaintiff's Statement Parts 1 through 5 and Defendant's Statement Parts 1 through 5 do not represent ideas.

However, determining rules at the beginning of meetings and purposefully describing ordinary matters in a workbook or resume is just an idea. Therefore, even if individuality is found to be expressed in such an idea, it cannot immediately be said that the creative expression parts are common based only on this fact. In addition, whether it falls under a case where there is only one way to express an idea or where the ways of expression are limited to a considerable extent, if not limited to only one, may be an element to be taken into account when considering whether a certain expression is creative or not based on its specific expression; however, it does not have

an impact on determining whether the common parts between Plaintiff's Statement Parts 1 through 5 and Defendant's Statement Parts 1 through 5 that were found in (a) above fall under expressions or ideas.

Consequently, the aforementioned allegation of the Appellant Company cannot be adopted.

(c) In addition, the Appellant Company alleged that [i] five rules in Plaintiff's Statement Parts 1 through 5 and Defendant's Statement Parts 1 through 5 are identical; each rule is stated in a short sentence, but since rules make a sense as a whole, Plaintiff's Statement Parts 1 through 5 and Defendant's Statement Parts 1 through 5 both constitute a text of a considerable length if seen as a unit and they are not short expressions; and [ii] there are no other books and websites that indicate all of these five rules; the originality and ingenuity of a creator are expressed in the layout and character string of these five rules, such as is observed in the selection of the expression of "Try to do" as stated in the procedures for the first rule, etc., and they cannot be said to be commonplace expressions, and therefore Plaintiff's Statement Parts 1 through 5 and Defendant's Statement Parts 1 through 5 share those creative expressions.

However, as found in (a) above, commonality in the expressions of the specific statements cannot be found in Plaintiff's Statement Parts 1 through 5 and Defendant's Statement Parts 1 through 5.

In addition, concerning the expression "Try to do as stated ... first" in Plaintiff's Statement Part 1, there are the expression "do obediently as stated" on the website (Exhibit Otsu 16) and the expressions "rules" and "Try to do ... first" in the book (Exhibit Otsu 20) respectively; and concerning the expression "Make statements by following the 3S rules (3S: Short, Simple, and Straightforward expressions)" as related to "statements" during a meeting, there is the statement "Let's make statements in meetings by following the "3S" rules (Short, Simple, and Straightforward)" on the website (Exhibit Otsu 15). In light of these, they are ordinary expressions and it cannot be said that they are creative.

Consequently, the aforementioned allegation of the Appellant cannot be adopted.

(d) Based on the above, the common parts of Defendant's Statement Parts 1 through 5 and Plaintiff's Statement Parts 1 through 5 are not considered as expressions. Therefore, it cannot be found that Defendant's Statement Parts 1 through 5 fall under a reproduction or adaptation of Plaintiff's Statement Parts 1 through 5.

b. Plaintiff's Statement Part 6 and Defendant's Statement Part 6

(a) As stated in Number 6 of Attachment 2 "Resume Comparison Table" of the judgment in prior instance, the part of the Plaintiff's Workbook in question and the part of the

Defendant's Resumes in question share the point that they are statements describing that the participants in a meeting "share problems" "as a team," create "roles," and acquire "a plan" and have the "passion" "to satisfy" the participants.

However, the aforementioned common parts are the results to be acquired as a goal to be achieved through the meeting and absolutely represent ideas related to the means of acquiring the results, as a whole, but are not expressions by themselves.

In addition, Plaintiff's Statement Part 6 states in the first sentence that "these members will share problems, establish a common goal, and share roles and create commitments as a high-performance management team" as a means of acquiring the results, and then it states in the second sentence that "thereby, achieve the goal, and acquire a plan and passion to satisfy stakeholders and these members" as the results to be acquired. It is only a combination of plain terms that can recognize relationship, such as "as a team," "share problems," "common," "roles," "to satisfy," "passion," etc. in general order and they are commonplace (for example, in the case of the book (Exhibit Otsu 22), as procedures for making a decision by "a team," there is the statement: to "share" an issue, to establish a synthesizing "goal," and to adopt a proposal with a maximum degree of "satisfaction," etc., and combinations of the aforementioned terms are commonplace). The structures of the first and second sentences are normally used and commonplace, such as connecting means to the results, etc., and it cannot be said that they are creative. Then, concerning the expression parts in Plaintiff's Statement Part 6, "share problems, establish a common goal, and share roles and create commitments," and "achieve the goal, and acquire a plan and passion to satisfy," and the expression parts in Defendant's Statement Part 6, "share a problem, create a common will, and create a role, assignment, and action plan to achieve the will," "to acquire a structure and plan to continue growing and to generate a union and passion in order to satisfy," it cannot be said that they share creative expressions.

(b) The Appellant Company alleged that [i] Plaintiff's Statement Part 6 and Defendant's Statement Part 6 share the point that they are expressions compiling thoughts and ideas in a simple form concerning what to do and what to acquire in meetings, and individuality is displayed and creativity is found in that point; and [ii] even if the terms used in the identical parts are simple terms where the relationship can be easily found, there are no other books and websites that use the structures of the first sentence and the second sentence by combining terms similar to Plaintiff's Statement Part 6 and Defendant's Statement Part 6; easy-to-understand and unique expressions are used as a way of expressing meeting objectives and creativity is found; and therefore, Plaintiff's Statement Part 6 and Defendant's Statement Part 6 share creative expressions.

However, even if the aforementioned parts are statements created by compiling thoughts and ideas related to meetings in a simple form, the way of compiling itself merely remains an idea. Even if said statements are found to be expressions, their structure is commonplace as a way to compile objectives and a means of achieving them in meetings, and there are no features, as examined in (a) above, and they remain within the realm of commonplace expressions.

Consequently, the aforementioned allegation of the Appellant Company cannot be adopted.

(c) Based on the above, the common parts of Defendant's Statement Part 6 and Plaintiff's Statement Part 6 cannot be said to be expressions or creatively produced expressions. Therefore, it cannot be found that Defendant's Statement Part 6 falls under a reproduction or adaptation of Plaintiff's Statement Part 6.

c. Plaintiff's Statement Parts 7 and 23 and Defendant's Statement Parts 7 and 23

(a) As stated in Numbers 7 and 23 of Attachment 2 "Resume Comparison Table" of the judgment in prior instance, the part of the Plaintiff's Workbook in question and the part of the Defendant's Resumes in question share the point that they are statements with the details of asking at the beginning of a meeting from the perspective of the end of the meeting "what results" are "most valuable" "to you" when they are acquired in the meeting.

However, the aforementioned common parts are explanations of what question should be given to participants by a person who leads a meeting and what awareness that person should have participants possess in the meeting, as one of the methods of organizing a meeting and they absolutely represent ideas.

Next, the expression "What results are the most valuable to you when they are shown?" in Plaintiff's Statement Part 7 ("What results are most valuable to you when they are shown at the end of today's meeting?") and the expression "What results are the most valuable to you when they are acquired?" in Defendant's Statement Part 7 ("If you spend the same amount of time, what results are most valuable to you when they are acquired during the Samurai Meeting?") have a great deal in common.

In addition, the expression "What results are most valuable to you from among the results you acquired?" in Plaintiff's Statement Part 23 ("What results are most valuable to you from among the results you acquired when today's session is over?") and the expression "What results are most valuable to you from among the results you acquired?" in Defendant's Statement Part 23 ("What results are most valuable to you from among the results you acquired during today's Samurai Meeting?") have a great deal in common.

However, it can be said that Plaintiff's Statement Parts 7 and 23 are short expressions consisting of one sentence. The expressions "What results are most valuable to you when they are shown?" or "What results are most valuable to you from among the results you acquired?" in the aforementioned statements are commonplace expressions that are usually used when asking about the most helpful results acquired from a meeting. Therefore, it cannot be said that these common expressions are creative.

(b) The Appellant Company alleged, based on the assumption that Plaintiff's Statement Parts 7 and 23 and Defendant's Statement Parts 7 and 23 are identical in their expressions, that the identical parts leave room for the selection of expressions when expressing know-hows and that as there are no other materials, etc. using similar expressions, they cannot be said to be commonplace expressions and therefore they are creative.

However, as mentioned in (a) above, the common parts of Defendant's Statement Parts 7 and 23 and Plaintiff's Statement Parts 7 and 23 cannot be said to be expressions or creatively produced expressions. Therefore, the aforementioned allegation of the Appellant Company cannot be adopted.

(c) Based on the above, it cannot be found that Defendant's Statement Parts 7 and 23 fall under a reproduction or adaptation of Plaintiff's Statement Parts 7 and 23.

d. Plaintiff's Statement Parts 8 through 13 and Defendant's Statement Parts 8 through 13

(a) As stated in Numbers 8 through 13 of Attachment 2 "Resume Comparison Table" of the judgment in prior instance, the part of the Plaintiff's Workbook in question and the part of the Defendant's Resumes in question share the point that they are statements with the following details: to "write" "in your opinion," "three" answers regarding "what has been achieved" (on a level of "overall company," "group," or "individual" etc.) (Number 8); to "write" approximately "two matters that are considered to be the most important" regarding "what problem," etc. "exists" "concerning" matters "that you face" in terms of "management," etc. (Number 9); to "write" "one matter that became a problem due to" "another" "department" or "vendor" (in the form of stating the specific person who caused the problem) regarding "what problem," etc. "exists" "concerning" the matters "you face" in terms of "management," etc. (Number 10); to "write" "one" "problem, etc. that you cannot talk about" regarding "what problem," etc. "exists" "concerning" the matters "that you face" in terms of "management" (Number 11); to "write one reply to" "what problem," etc. "exists" "concerning" the matters "that you face" in terms of "management" and "what is a terrible truth" in your company ("overall company," "department," etc.) (Number 12); and to write "what problem," etc. exists

"concerning" the matters "that you face" in terms of "management" and "what is a terrible truth about yourself" (Number 13).

However, the aforementioned common parts are explanations of methods of organizing a meeting in the form where a person who leads a meeting asks questions and has participants answer them, thereby having participants check what matters have already been achieved before the meeting, examine organizational management problems, etc., recognize who causes those problems, etc., identify what they cannot talk about from among the problems, etc. and serious deficiencies that the organization or the participants themselves have. Based on the above, all the aforementioned common parts represent ideas, but are not found to be expressions.

Next, comparing Plaintiff's Statement Part 8 ("In your opinion, what has been achieved by today (on a level of the overall company / group / team or individual)? Write three or more answers.") with Defendant's Statement Part 8 ("In your opinion, what was achieved by today in your life (on a level of the overall company, group, individual, or on any level)? Write three or more answers"), the expressions share commonality concerning the point that the term "in your opinion" is placed at the beginning of the sentence and the terms "overall company," "group," "individual," "level," and "what has been (was) achieved," "three," and "write" are used. It is possible to say that the impressions received from the overall Plaintiff's Statement Part 8 and overall Defendant's Statement Part 8 also share commonality.

However, on the other hand, the aforementioned expressions are a combination of simple and often-used terms and defining details of questions as well as a way to give answers. The term "In your opinion" is a short expression and the term "In my opinion" is introduced as a helpful term to indicate your opinion on a website (Exhibit Otsu 47). In light of the above, it cannot be said that the expression "In your opinion," in which "my" is replaced with "your," is a unique expression. Therefore, the aforementioned expressions are commonplace and they cannot be said to be creative.

In addition, the following expression parts share commonality, respectively: the expression "write two or three issues that you consider to be the most important" in Plaintiff's Statement Part 9 and the expression "write two issues that you consider to be the most important"; the expression "write one problem that you cannot talk about and one problem that you should not talk about" in Plaintiff's Statement Part 11 and the expression "write one problem that you want to talk about, but you cannot" in Defendant's Statement Part 11; the expression "What is a terrible truth in your company? (...) Write one of them." in Plaintiff's Statement Part 12 and the expression "What is a terrible truth in this organization? (...) Write one of them." in Defendant's

Statement Part 12; and the expression "What is a terrible truth about yourself?" in Plaintiff's Statement Part 13 and the expression "What is a terrible truth about yourself?" in Defendant's Statement Part 13.

However, the terms "problem that you cannot talk about" and "terrible truth" are only a combination of simple modifiers and a noun and it cannot be said that the combination is especially unique. In light of the above, it cannot be said that creatively produced expressions are shared even if the aforementioned common expressions contain the aforementioned terms.

(b) The Appellant Company alleged as follows: [i] the identical parts in Plaintiff's Statement Part 8 and Defendant's Statement Part 8 include a unique expression that is not usually used in meetings, namely "In your opinion," and there are no materials and documents in which the same expression is used and therefore expressive creativity is found in these identical parts; and [ii] the term "problem that you cannot talk about" that is included in the identical part between Plaintiff's Statement Part 11 and Defendant's Statement Part 11 and the term "terrible truth" that is included in Plaintiff's Statement Parts 12 and 13 and Defendant's Statement Parts 12 and 13 are distinguishing and these parts have expressive creativity.

However, as mentioned in (a) above, even if the terms "In your opinion," "problem that you cannot talk about," and "terrible truth" are included, it cannot be said that the expression parts common to Plaintiff's Statement Parts 8, 11 through 13 and Defendant's Statement Parts 8, 11 through 13 have creativity. Therefore, the aforementioned allegation of the Appellant Company cannot be adopted.

(c) Based on the above, the common parts of Defendant's Statement Parts 8 through 13 and Plaintiff's Statement Parts 8 through 13 cannot be said to be expressions or creatively produced expressions. Therefore, it cannot be found that Defendant's Statement Parts 8 through 13 fall under a reproduction or adaptation of Plaintiff's Statement Part 8 through 13.

e. Plaintiff's Statement Parts 14 and 17 and Defendant's Statement Parts 14 and 17

(a) As stated in Number 14 of Attachment 2 "Resume Comparison Table" of the judgment in prior instance, the part in the Plaintiff's Workbook in question and the part of the Defendant's Resumes in question share the point that there is a form to fill out underlined blank fields with figures and terms, such as a deadline "by \_\_\_\_ (year) / \_\_\_\_ (month) / \_\_\_\_ (day)," indexes to be achieved, and final goals in three lines (however, the orders of the three lines are different).

However, having respondents answer questions in a form by filling out blanks with figures and terms or by indicating an answer for each item for each line is an ordinary



way used as an expression for questions and answers. Therefore, the aforementioned common parts are commonplace and cannot be said to be creatively produced expressions.

Next, as stated in Number 17 of Attachment 2 "Resume Comparison Table" of the judgment in prior instance, the part of the Plaintiff's Workbook in question and the part of the Defendant's Resumes in question share the point that there are multiple boxes to enter texts and a figure wherein those multiple boxes are indicated in a manner to surround a center box.

However, having meeting participants enter their opinions, etc. in boxes whose positions are set in advance can be said to be commonplace as an expression method of organizing opinions, etc. of meeting participants (for example, there are statements in the book (Exhibit Otsu 21) and website (Exhibits Otsu 40 and 42) to enter terms in one box and multiple boxes that are indicated in a manner to surround the relevant one box). Then, the aforementioned common parts cannot be said to be creatively produced expressions.

(b) The Appellant Company alleged, concerning Plaintiff's Statement Part 14 and Defendant's Statement Part 14, based on the assumption that the parts that are found to be identical are expressions, that these parts adopt the three-line fill-in-the-blank method from diversified expression options, and as there are no other examples with similar format, the aforementioned parts are creatively produced expressions.

However, as mentioned in (a) above, the common parts of Defendant's Statement Part 14 and Plaintiff's Statement Part 14 cannot be said to be creatively produced expressions. Therefore, the aforementioned allegation of the Appellant Company cannot be adopted.

(c) Based on the above, it cannot be found that Defendant's Statement Parts 14 and 17 fall under a reproduction or adaptation of Plaintiff's Statement Parts 14 and 17.

f. Plaintiff's Statement Parts 15, 16, and 21 and Defendant's Statement Parts 15, 16, and 21

(a) As stated in Numbers 15, 16, and 21 of Attachment 2 "Resume Comparison Table" of the judgment in prior instance, the part of the Plaintiff's Workbook in question and the part of the Defendant's Resumes in question share the point that they are statements with the details of naming the goal that is determined in a meeting (No. 15), making a commitment concerning the goal determined in the meeting (No. 16), and writing "actions," "due date," and "results" (No. 21).

However, the aforementioned common parts are ideas related to how to proceed with meetings, such as naming a goal that is determined in a meeting, making a

commitment to the goal, and stating "actions," "due date," and "results," etc.

Then, it should be said that commonality between Plaintiff's Statement Parts 15, 16, and 21 and Defendant's Statement Parts 15, 16, and 21 is found only with the parts that are not expressions by themselves.

(b) The Appellant Company alleged that an expression based on an idea is a specific expression if there is only one way to express an idea or if the ways of expression are limited to a considerable extent, if not limited to only one, and then alleged, based on the assumption that Plaintiff's Statement Parts 15, 16, and 21 and Defendant's Statement Parts 15, 16, and 21 are identical in their expressions, that as there are no other examples using these phrases, they are creatively produced expressions.

However, as mentioned in (a) above, the common parts of Defendant's Statement Parts 15, 16, and 21 and Plaintiff's Statement Parts 15, 16, and 21 represent ideas, but are not found to be expressions. Therefore, the aforementioned allegation of the Appellant Company cannot be adopted due to an error in its assumption.

(c) Based on the above, it cannot be found that the Defendant's Statement Parts 15, 16, and 21 fall under a reproduction or adaptation of the Plaintiff's Statement Parts 15, 16, and 21.

g. Plaintiff's Statement Parts 18 through 20 and Defendant's Statement Parts 18 through 20

(a) As stated in Numbers 18 through 20 of Attachment 2 "Resume Comparison Table" of the judgment in prior instance, the part of the Plaintiff's Workbook in question and the part of the Defendant's Resumes in question share the point that they are statements with details such as grouping issues that are presented in a meeting by category (No. 18), having "a person who makes decisions" determine "a person in charge" (No. 19), and having "the person in charge" establish "milestones" (No. 20).

However, all of the aforementioned common parts are explanations of defining roles of each participant towards achieving a goal in a meeting and are ideas related to methods of organizing a meeting. Therefore, it should be said that they are not expressions by themselves.

(b) The Appellant Company alleged that there are many ways to define roles of each participant towards achieving a goal in a meeting and since it does not fall under a case where there is only one way to express an idea or where the ways of expression are limited to a considerable extent, if not limited to only one, the identical parts in Plaintiff's Statement Parts 18 through 20 and Defendant's Statement Parts 18 through 20 do not represent ideas but are specific expressions.

However, whether this is a case where there is only one way to express an idea or a

case where the ways of expression are limited to a considerable extent, if not limited to only one, may be an element to be taken into account when considering whether a certain expression is creative or not based on its specific expression; however, it does not have an impact on determining whether the common parts between Plaintiff's Statement Parts 18 through 20 and Defendant's Statement Parts 18 through 20 that were found in (a) above fall under expressions or ideas.

Consequently, the aforementioned allegation of the Appellant Company cannot be adopted.

(c) Based on the above, it cannot be found that Defendant's Statement Parts 18 through 20 fall under a reproduction or adaptation of Plaintiff's Statement Parts 18 through 20.

h. Plaintiff's Statement Parts 22 and 24 and Defendant's Statement Parts 22 and 24

(a) The expression in Plaintiff's Statement Part 22 ("What did you acquire") and the expression in Defendant's Statement Part 22 ("What did you acquire from this meeting?") as stated in Number 22 of Attachment 2 "Resume Comparison Table" of the judgment in prior instance share commonality; however, Plaintiff's Statement Part 22 consists of only one sentence and is an extremely short statement and it is general and commonplace as an expression to ask what participants "acquired" in a meeting. Therefore, it cannot be said that the aforementioned common expressions have creativity.

In addition, the expression in Plaintiff's Statement Part 24 ("What has been going well") and the expression in Defendant's Statement Part 24 ("What has been going well?") share commonality; however, the Plaintiff's Statement Part 24 consists of only one sentence and is an extremely short statement and it is general and commonplace as an expression to ask what is "going well." Therefore, it cannot be said that the aforementioned common expressions have creativity.

(b) Concerning questions to participants at the close of a meeting and questions to participants to check progress in a meeting, based on the facts that there may be a variety of expressions and there is a wide range of options, the Appellant Company alleged that since it does not fall under a case where there is only one way to express an idea or where the ways of expression are limited to a considerable extent, if not limited to only one, Plaintiff's Statement Parts 22 and 24 and Defendant's Statement Parts 22 and 24 do not represent ideas but are parts sharing creatively produced expressions.

However, as found in (a) above, it cannot be said that Plaintiff's Statement Parts 22 and 24 and Defendant's Statement Parts 22 and 24 share creatively produced expressions. Additionally, it cannot be said that an expression is always found to be

creatively produced only based on the fact that it does not fall under a case where there is only one way to express an idea or where the ways of expression are limited to a considerable extent, if not limited to only one. Therefore, the aforementioned allegation of the Appellant Company cannot be adopted.

(c) Based on the above, it cannot be found that Defendant's Statement Parts 22 and 24 fall under a reproduction or adaptation of Plaintiff's Statement Parts 22 and 24.

(B) Structure of the Plaintiff's Workbook as a whole and structure of the Defendant's Resumes as a whole

a. As shown in Attachment 2 "Resume Comparison Table" of the judgment in prior instance, the structure of the Plaintiff's Workbook as a whole and the structure of the Defendant's Resumes as a whole share the point that the following items, [i] confirmation of meeting rules and objectives (No. 1 through No. 6); [ii] confirmation of the results to be acquired (No. 7); [iii] confirmation of what has been achieved by today (No. 8); [iv] identification of problems and concerns (No. 9 through No. 13); [v] creation of strategic focuses (establishment of goals) (No. 14 through No. 16); [vi] clarification of roles (ways to achieve the goals, clarification of persons in charge and responsibilities) (No. 17 through No. 19); [vii] establishment of an action plan (commitment) (No. 20 through No. 22); and [viii] problem resolution (No. 23 and No. 24), are selected and are arranged almost in the same order.

However, it should be said that the aforementioned common parts absolutely represent ideas about the items and order of implementation in a meeting, but are not found to be expressions.

b. The Appellant Company alleged as follows: [i] based on the assumption that the parts of the structure of the Plaintiff's Workbook as a whole and the structure of the Defendant's Resumes as a whole where commonality is found are expressions, much of the originality and ingenuity in terms of expressions are exercised for the parts in question, such as sorting out and aligning a variety of details under a uniform theme and selecting easy-to-understand expressions and impressive expressions, and abstract know-hows are expressed with originality and ingenuity, while there are a variety of options concerning expression methods, so that a person can serve as a leader of a meeting based on the Workbook or Resumes; accordingly, the parts in question have originality and show individuality and therefore are creative; and [ii] the Plaintiff's Workbook has an aspect as a functional work that presents know-hows on how to proceed with a meeting; however, since it is composed as a sort of a reading with a plot rather than as an explanatory manual listing key points and tricks for smoothly proceeding with a meeting, it is not a work that will end up the same no matter who

writes it and individuality is shown at a high level, in the same manner as in a novel; therefore, it has expressive creativity and the Plaintiff's Workbook as a whole and the Defendant's Resumes as a whole share creatively produced expressions.

However, as found in (a) above, the parts where identicalness is found in the Plaintiff's Workbook as a whole and the Defendant's Resumes as a whole absolutely represent ideas about the items and order of implementation in a meeting, but are not found to be expressions.

In addition, as found in (A) above, the common parts of Plaintiff's Statement Parts 1 through 24 and Defendant's Statement Parts 1 through 24 are not expressions or are parts without expressive creativity and it cannot be found that the creatively produced expressions are common even by comparing all the aforementioned statements.

Consequently, the aforementioned allegation of the Appellant Company cannot be adopted.

c. Based on the above, it cannot be found that the structure of the Defendant's Resumes as a whole falls under a reproduction or adaptation of the structure of the Plaintiff's Workbook as a whole.

C. Based on the above, there are no grounds for the aforementioned allegation of the Appellant Company that the Defendant's Resumes fall under a reproduction or adaptation of the structure of the Plaintiff's Workbook.

Therefore, without examining the remaining points, there are no grounds for the Appellant Company's claims for injunction and compensation for damages based on infringement the patent (right of reproduction and adaptation right) related to the Plaintiff's Workbook.

(2) Issue 1-2 (Establishment of the infringement of the moral rights of the author (right of attribution and right to integrity) related to the Plaintiff's Workbook)

Corrections are made as indicated below and the rest are as indicated in No. 3, 1-2. in the "Facts and reasons" section of the judgment in prior instance and therefore they are cited.

A. The term "Defendant's Statement Part" on page 50, line 21 through line 22 in the judgment in prior instance is amended to "Defendant's Statement Parts 1 through 24."

B. The following is added as a new line after the end of page 51, line 1 in the judgment in prior instance.

"Even if the right of attribution or the right to integrity of the Plaintiff's Workbook has been infringed, if the requirements set forth in Article 113, paragraph (1), item (ii) of the Copyright Act are not met, it is construed that an injunction against the reproduction of the Defendant's Resumes cannot be implemented."

2. Issue 2 (Establishment of the infringement of the copyright related to the Plaintiff's Copy)

It is as indicated in No. 3, 2. in the "Facts and reasons" section of the judgment in prior instance and therefore they are cited.

3. Issue 3 (Establishment of unfair competition concerning Know-Hows)

It is as indicated in No. 3, 3. in the "Facts and reasons" section of the judgment in prior instance and therefore they are cited.

4. Conclusion

As mentioned above, there are no grounds for the claims of the Appellants against the Appellees and therefore the judgment in prior instance that dismissed these claims is appropriate.

Consequently, there are no grounds for the appeals and therefore they are dismissed, and the judgment is rendered as indicated in the main text.

Intellectual Property High Court, First Division

Presiding judge: OTAKA Ichiro

Judge: KOBAYASHI Yasuhiko

Judge: OGAWA Takatoshi