| Decided on | September 30, 2008 | Court | Intellectual Property High Court, Third Division |
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| Case number | 2008 (Ne) 10031 | | |

- A case in which the copyrightability of land inventories was recognized
- A case in which the State was found to be a joint tortfeasor and liable for damages commensurate with the royalties arising from the tortious acts as its acts of providing the land inventories concerned with the claim in the action at the Legal Affairs Bureaus to loan them to users and of installing coin-operated photocopiers in the Legal Affairs Bureaus to enable users make unauthorized reproductions constituted an act of aiding an indefinite number of third parties, which refer to those who made unauthorized reproductions of the land inventories using coin-operated photocopies at the Legal Affairs Bureaus, to breach the right of reproduction of the land inventories
- A case in which a claim for returning unjust enrichment during the period when the right to demand compensation for damages in tort was extinguished by the operation of prescription was rejected by reason that it was not recognized that the State benefited as stipulated in Article 703 of the Civil Code by aiding the act of breaching the right of reproduction of the land inventories
- A case in which an appropriate amount of damages was determined under Article 114-5 of the Patent Act

References: Article 703, Article 709 and Article 719 of the Civil Code and Article 2; Article 10, paragraph (1), item (vi); Article 114, paragraph (3) and Article 114-5 of the Copyright Act

I. Outline of the Case

In this case, the respondents, who were the plaintiffs in first instance (hereinafter referred to as “the Plaintiffs”) sought payment of a total amount of 145,999,646 yen as damages and part of the unjust enrichment as well as payment of delay damages. Insisting that they took over the copyright on 120 land inventories concerned with the claim (hereinafter referred to as “the Land Inventories”) from the parties who created them, the Plaintiffs claimed, on the basis of the copyright it owns for the Land Inventories, that the act by the appellant, namely the State, which was the defendant in first instance (hereinafter referred to as “the Defendant”), of loaning the Land Inventories to an indefinite number of third parties including those engaged in businesses relating to real estate and the act by the Defendant of offering spaces for placing photocopiers to Minji Homu Kyokai (Civil Legal Affairs Association) constitute either an act by the Defendant itself of breaching the right of reproduction

or at least an act of inducing or aiding the indefinite number of third parties to commit an act of breaching the right of reproduction of the Land Inventories and that the non-payment of the amount equivalent to the copyright royalties for the Land Inventories fell under unjust enrichment.

A land inventory is a publication produced by an individual or a publishing firm by compiling the maps of demarcated plots attached to the former land registers (recorded maps) available at Legal Affairs Bureaus, and edited after adding information on land category, area and other aspects from the former land registers. It consists of a complete map serving as an index and several sectional maps for the area covered by the inventory. For part of the Kanto, Chubu, Kansai, Kyushu and Tohoku regions, land inventories are published on a municipality-by-municipality basis. Publication of land inventories began early in the Meiji period and still continues. They have been issued by a large number of publishers. There exists a publication that lists 41 confirmed authors of land inventories from the early Meiji period until the present. According to the court judgment in the first instance cited by this court judgment, the original maps used in land inventories are roughly classified into three groups. The first group is for cadastral maps built in the projects undertaking during and after the early Meiji period for land certificate issue, land tax reform, survey of the surroundings of land and the development of land registers. The second one is for cadastral maps created in the course of the land register survey project following the introduction of the National Land Survey Act in 1951. And the third group is for recorded maps newly drawn in the projects for city development, land readjustment and arable land readjustment and in other projects

II. Major Issues

While there are a wide range of issues involved in this case, major issues are as listed below.

1. Whether or not the Land Inventories are copyrightable
2. Whether or not the acts of the Defendant, specifically the acts of loaning the Land Inventories and of offering spaces for photocopiers to Minji Homu Kyokai, constitute illegal acts in breach of the copyright on the Land Inventories
3. Whether or not the claim for unjust enrichment holds
4. The amount of damages

III. Gist of the Holdings of the Intellectual Property High Court (Third Division)

1. Copyrightability of the Land Inventories (Issue 1)

According to the court judgment in first instance cited by this court judgment, it is observed that the Land Inventories select and combine a plurality of recorded maps according to the regional characteristics, enhance their at-a-glance visibility as maps of large zones, make necessary corrections to inaccuracies in recorded maps during the combination process, selectively provide information on recorded maps, provide plain indications of roads, waterways, railways and other features that are simply displayed as subdivided land on record maps, additionally show location information of public facilities and information on area, land category and other aspects included in real estate registers and introduce inventive methods of displaying such information in order to fulfill its purpose of serving the property surveys for real estate transactions in the private sector. It is therefore possible to affirm their copyrightability.

2. Illegal acts (Issue 2)

In overall consideration of different circumstances, including those under which third parties borrowed the Land Inventories from the Legal Affairs Bureaus for the purpose of reproducing part of them, it is viewed that, to prevent illegal reproductions by third parties, the Defendant, or the Legal Affairs Bureaus, should have taken appropriate actions such as acquisition of a comprehensive license from the copyright holder in advance and establishment of a easy and convenient method by which third parties could obtain a license from the copyright holder. Even if it failed to obtain a comprehensive license or to develop a useful method as mentioned above, it had at least an obligation to take some action to deter illegal reproductions prior to loaning the Land Inventories to third parties. For example, it should have checked if they intended to make any reproduction and, if so, checked if the part to be reproduced was subject to copyright protection and, if it was, warned them not to make any reproduction. It is understood that the duty of care would have not been violated and there would have been no negligence if it had taken any such tangible action.

However, in this case, the Defendant aimlessly continued to loan the Land Inventories and to enable an indefinite number of persons to make reproductions. It is confirmed to have committed at least negligence in aiding those third parties who borrowed the Land Inventories to make unauthorized reproductions of the works. It cannot escape its liability for the joint tortious act prescribed in Article 719, paragraph (2) of the Civil Code. The Defendant is liable to pay damages commensurate with the royalties to the Plaintiffs.

3. Unjust enrichment (Issue 3)

It is Minji Homu Kyokai that installed the coin-operated photocopiers. It is an indefinite number of third parties who made reproductions of the Land Inventories. The Defendant itself committed neither of these acts. The Defendant did earn photocopier installation fees from Minji Homu Kyokai. The fees stand as a price for occupation of part of the building as a state-owned asset. They were not generated in connection with the photocopying charges earned by Minji Homu Kyokai, which was permitted to occupy the spaces for photocopiers, in compensation for letting an indefinite number of third parties reproduce the Land Inventories. In light of these facts, there is no room to understand that the Defendant benefited as prescribed in Article 703 of the Civil Code from the act of making reproductions of the Land Inventories.

4. Evaluation of damages (Issue 4)

In consideration of how useful the Land Inventories are, how they have been revised, how often the acts of making unlawful reproductions took place and the fact that parts reproduced are unknown, the damages commensurate with the royalty per edition of the Land Inventories during the period during which the confirmed tortuous acts occurred are estimated at 10,000 yen. The total damages incurred by the Plaintiffs are 1.32 million yen, calculated by adding the amount equivalent to royalties of 1.2 million yen and the attorney's fee of 120,000 yen.

○ The court of second instance set up a criterion for judgment by stating that the Defendant, specifically the Legal Affairs Bureaus, would not have violated its duty of care if it had taken some tangible action although it had an obligation to take action for deterring illegal reproductions, such as checking if a third party intended to make any reproduction before loaning the Land Inventories to it, and, if so, to warn them not to make any reproduction. And by this standard, the Defendant was found to have been negligent.

○ The court of second instance confirmed the amount of total damages at 1.32 million yen. It is smaller than the amount confirmed by the court of first instance (Tokyo District Court Case No. 2005 (Wa) 16218 on January 31, 2008), which was 5.76 million yen as a total of the damages and the amount of unjust enrichment. It is because, first, the court of second instance dismissed the claim for returning unjust enrichment and, second, it reduced the amount of damages arising from the tortious acts.

Judgment rendered on September 30, 2008
2008 (Ne) 10031, Appeal case seeking damages
(Judgment in prior instance: Tokyo District Court 2005 (Wa) 16218)
Date of conclusion of oral argument: May 29, 2008

Judgment

Appellant: The Government of Japan
The Minister of Justice, representing the Government of Japan:
Eisuke Mori
Designated representatives: AOKI Yuko
TORIZAWA Mitsuru
SUZUKI Akira
NISHIOKA Nobuyuki
HAYAKAWA Osamu
OTAKI Kazunari
SAKAMAKI Haruo
KITADA Seiichi
SUZUKI Eiji
OBA Tetsuya

Appellee: FUJI Real Estate Appraisal Co., Ltd.
Appellee: Y1
Appellee: Y2
Counsel attorney for the above three appellees: ARAI Toshiyuki

Main text

1. The judgment in prior instance shall be modified as follows.
2. The appellant shall pay 1,061,500 yen to the appellee FUJI Real Estate Appraisal Co., Ltd., 198,000 yen to the appellee Y1, and 60,500 yen to the appellee Y2, plus the delay damages accrued thereon at the rate of five percent per annum for the period from August 24, 2005 to the date of completion of the payment.
3. The appellees' claim shall be dismissed in all respects other than as

mentioned above.

4. The aggregate court costs for the first instance and the second instance shall be equally divided into twenty portions, of which one portion shall be borne by the appellant, and the remaining portion by the appellees.

Facts and Reasons

No. 1 Gist of the appeal

1. Among the judgment in prior instance, the portion in which the appellant lost the case shall be revoked.
2. The appellees' claim shall be dismissed in all respects.
3. The court costs for the first instance and the second instance shall be borne by the appellees.

No. 2 Background

1. Summary of the case

The appellees (the plaintiffs in the first instance, hereinafter collectively referred to as the "Plaintiffs"; and each of the three appellees, FUJI Real Estate Appraisal Co., Ltd., Y1 and Y2, shall be hereinafter referred to as "Plaintiff FUJI," "Plaintiff Y1" and "Plaintiff Y2," respectively) are the assignees of the copyright in each volume of "Tochi Hoten" (meaning a land inventory) specified in Nos. 1 to 120 of the list of copyrights attached to the judgment in prior instance (hereinafter referred to as the "List"; and the series of these Tochi Hoten volumes shall be hereinafter collectively referred to as "Tochi Hoten"). The Plaintiffs instituted the action seeking compensation of a part of damages and restitution of a part of unjust enrichment from the appellant (the defendant in the first instance; hereinafter referred to as the "Defendant") in the total amount of 145,999,646 yen (117,408,049 yen for Plaintiff FUJI, 21,899,947 yen for Plaintiff Y1, and 6,691,650 yen for Plaintiff Y2), plus the delay damages accrued thereon at the rate of five percent per annum for the period from August 24, 2005 (the date immediately after the date of service of the complaint) to the date of completion of the payment. According to the Plaintiffs, since 1980 at the latest, unspecified third parties including real property service providers, with the purpose for use in the course of their business, have accessed Tochi Hoten stored at the legal affairs bureaus specified in the List (including their respective branch offices and sub-branch offices; the same shall apply hereinafter) and repeatedly made unauthorized reproductions thereof by the use of the

pay copiers located therein. The Plaintiffs allege that, as such reproduction was made possible by the Defendant by way of storing and making Tochi Hoten available for third parties at the legal affairs bureaus and providing pay copiers enabling third parties to make unauthorized reproductions thereof, the Defendant infringed the right of reproduction by itself, or at least induced or aided unspecified third parties in committing infringement of the right of reproduction of Tochi Hoten. The Plaintiffs also allege that the Defendant obtained an unjust benefit by not paying the amount of the copyright royalties for Tochi Hoten.

In the judgment in prior instance, the court of prior instance found as follows. [i] Tochi Hoten is a subject-matter of copyright. [ii] The copyright in Tochi Hoten has been transferred to the Plaintiffs. [iii] The Defendant, and Minji Houmu Kyokai (an incorporated foundation which is not the party to this court action; hereinafter referred to as "Minji Houmu Kyokai"), which is the operator of the pay copiers located in the legal affairs bureaus, are jointly held liable as infringing parties in relation to the reproduction of Tochi Hoten by unspecified general public. Further, [iv] with regard to the period from August 8, 2002 to February 8, 2005 (the last day of the infringement pertaining to the Plaintiffs' claim in this action), the court of the prior instance held that the Plaintiffs suffered the damages in tort equivalent to the amount of the copyright royalties, and [v] with regard to the period prior to that (i.e. the period up to August 7, 2002, the day three years prior to the date of institution of this action), the court of the prior instance held that the Plaintiffs suffered the loss of the amount of the copyright royalties on the grounds of the theory of unjust enrichment, although the claim for damages in tort for the same period had been extinguished by the operation of the extinctive prescription. In conclusion, the court of the prior instance upheld the Plaintiffs' claim to the extent of a total of 4,800,000 yen as the amount equivalent to the copyright royalties for Tochi Hoten, as well as 960,000 yen as the attorney's fees (4,632,000 yen in total for Plaintiff FUJI, 864,000 yen in total for Plaintiff Y1, and 264,000 yen in total for Plaintiff Y2), plus the delay damages.

The Defendant instituted this appeal against the judgment in prior instance to the extent in which the Defendant lost the case.

2. The facts on which the court decision is premised and the issues in dispute

The facts on which the court decision is premised, as well as the issues in disputes, are as described in No. 2, Paragraphs 1. and 2. of the "Facts and Reasons" of the judgment in prior instance (including the List; Page 3, Line 8 to Page 7, Line 19, and Pages 54 and 55 of the judgment in prior instance). Therefore, the court cites these statements in the judgment in prior instance. The abbreviation of the terms used in the

judgment in prior instance (including the abbreviations as referred to in 1. above) shall also apply to the judgment of this instance.

3. The parties' allegations with respect to the issues in dispute

The parties' allegations with respect to the issues in dispute are as described in No. 2, Paragraph 3. of the "Facts and Reasons" of the judgment in prior instance (Page 7, Line 20 to Page 35, Line 6 of the judgment in prior instance). Therefore, the court cites these statements in the judgment in prior instance, except as amended or added as follows:

(1) Correction of the judgment in prior instance

The statement of the judgment in prior instance which reads "each assignment contract (each of Article 2 of Exhibit Ko No. 7-1 to 7-10)" (Page 18, Lines 17 and 18) shall be replaced with "Article 2 of each assignment contract (Exhibit Ko No. 7-1 to No. 7-10)." Errors in Chinese character "Ho" in "Tochi Hoten" (Page 7, Line 5 and Page 19, Line 4) shall be all corrected; each term "the plaintiff" (Page 18, Line 15 and Page 26, Line 10) shall be replaced with "the Plaintiffs"; and the term "the date of filing the conciliation" (Page 25, Line 3) shall be replaced with "prior to the date of filing the conciliation (on or around February 16, 2005)."

(2) The Defendant's additional allegations raised in this instance

A. Issue 2 (whether the ownership in copyright in Tochi Hoten vests in the Plaintiffs)

None of the contracts and deeds of assignment of the copyright in Tochi Hoten contains a provision expressly setting forth the timing of the transfer of the ownership in the copyright in question, nor is it considered to "expressly provide that the transfer of the copyright in Tochi Hoten takes effect upon the execution thereof." Parties to a bilateral contract mutually have a defense of simultaneous performance for their respective obligations (Article 533 of the Civil Code), and the timing of transfer of real rights is determined by the principle that a transfer of real rights takes effect solely by the manifestations of intention of the parties involved (Article 176 of the Civil Code). However, the idea that real rights are transferred merely by the execution of a contract is unacceptable in light of the common understanding of the general public when seeking justice. Therefore, it would be consistent with a reasonable intent of contracting parties to understand that they had reached an agreement to transfer the copyright to the Plaintiffs upon the payment of the purchase price. This understanding is considered appropriate also from the standpoint of fairness. As for this case,

it can be inferred that the Plaintiffs have not paid the purchase price, taking into consideration that [i] no evidence has been submitted which establishes the payment of the purchase price, and that [ii] the Plaintiffs, in the court of prior instance, reduced the amount of the claim based on the rights to seek reimbursement including the right to seek damages, although these rights were transferred to the Plaintiffs without the need of payment of any compensation under the above-mentioned assignment contracts. (Although there has been no dispute over the payment of the purchase price between the Plaintiffs and Party I, the fact of absence of any dispute does not contradict with the non-payment, given that Party I believed that the transfer of the copyright and other rights did not take effect as it did not receive the purchase price, or that Tochi Hoten was not a subject-matter of copyright).

B. Issue 5 (whether Party I can be considered to have granted a comprehensive license for reproduction to parties accessing Tochi Hoten at the service counters of the legal affairs bureaus)

As the price of Tochi Hoten is quite expensive (30,000 yen per volume), it is unlikely that purchasers thereof would have donated such books to the legal affairs bureaus. In addition, the number of the volumes of Tochi Hoten disputed in this court case is as many as 120. Considering these circumstances, it is reasonable to presume that the volumes of Tochi Hoten were donated from Party I to the legal affairs bureaus (it is violates the rule of thumb to assume that these volumes were donated to the legal affairs bureaus by individual purchasers throughout Japan, respectively). As it was only after 1982 that the pay copiers were installed in the legal affairs bureaus (Exhibit Otsu No. 21), Party I is regarded to have implicitly granted a comprehensive license for reproduction, because it continued donating the books even after noticing the fact of third parties' reproduction (Exhibit Ko No. 22). (It is understood that Tochi Hoten was "not-for-sale" books only available for specified persons. Therefore, it was unnecessary for Party I to be concerned about the possible decrease of purchasers of Tochi Hoten by giving a comprehensive license for unrestricted copying by third parties accessing the books at the legal affairs bureau service counters, who can satisfy their needs without purchasing the books. In addition, even supposing that Party I intended to sell the books to unspecified persons, this would also lead to the conclusion that Party I donated the books to the legal

affairs bureaus notwithstanding easily expectable possibility of the consequence of decrease in purchasers, and therefore further strengthens the case for its granting of an implied and comprehensive license. Further, the notice in Tochi Hoten which reads "No unauthorized reproduction is permitted" is the imprint from the initial publication, not the notice added upon the donation. This imprint only prohibits unauthorized reproduction, and does not mean that no one is permitted to make reproductions thereof irrespective of any reason whatsoever. Considering these situations, the granting of an implied and comprehensive license cannot be negated on the ground of this imprint.)

C. Issue 10 (existence of an unjust enrichment)

The Defendant has no obligation to the Plaintiffs to return any unjust enrichment, because, as discussed below, [i] the Defendant cannot be considered as the infringing party of the copyright in Tochi Hoten, and [ii] the Defendant has not obtained any enrichment.

(A) The Defendant itself cannot be considered as the infringing party of the copyright in Tochi Hoten.

The act which constitutes the infringement of the copyright in Tochi Hoten is the reproduction thereof. Therefore, it is persons who actually made reproductions thereof who are initially held liable to pay the copyright royalties.

In addition, the following facts indicate that the Defendant was not actively involved in reproduction of Tochi Hoten. [i] At the service counters of the legal affairs bureaus, users of Tochi Hoten only apply for the access to the books, not the permission for reproduction thereof. [ii] The reason for prohibition of taking Tochi Hoten outside of the legal affairs bureaus is to prevent the books from being lost, not from being tampered with. [iii] Pay copiers are located in spaces in the legal affairs bureaus convenient for the monitoring by the officials who granted access to Tochi Hoten; however, the reason for such location is to prevent official maps, which are official documents, from being tampered with. Such officials may sometimes monitor reproduction of official maps for which they granted access to users, but not necessarily reproduction of other documents including Tochi Hoten. [iv] Although the Defendant receives rent for spaces for pay copiers from Minji Houmu Kyokai, the amount of such rent is fixed without

regard to copy charges earned (Exhibit Otsu No. 20), and is not connected to increase or decrease in copy charges. [v] The legal affairs bureau officials are responsible for managing reproduction of official maps, which are official documents, to prevent them from being tampered with; however, such officials are not responsible for, or actually involved in, the use of pay copiers for reproduction of other documents including Tochi Hoten. (In reality, the purpose of use of pay copiers located in the legal affairs bureaus may have been virtually limited to reproduction of drawings that cannot be carried outside the legal affairs bureaus, as a consequence of the copy charge set slightly higher than the market price. However, at least, the Defendant has not restricted the use of pay copiers only to reproduction of such drawings.)

In order for a party not directly engaged in infringement (i.e. the reproduction as mentioned above) to be considered as an infringing party, such party needs to be regarded to substantially have used a copyrightable work by itself, by the reasons of exercising the management and control power (i.e. power for the management and control of the use of the work) and obtaining profits (i.e. being vested with the profits generated from the use of the work) (judgment of the Third Petty Bench of the Supreme Court of March 15, 1988; See *Minshu* Vol. 42, No. 3, at 199). In this case, as mentioned above, the Defendant only permitted access to Tochi Hoten and provided spaces for pay copiers, while not actively involved in the reproduction. Therefore, even granting that such Defendant's acts may constitute an aiding of reproduction, the Defendant cannot be considered as an infringing party, as these acts are not substantially considered as use of the work.

In addition, the Defendant has no authority to give specific instructions on the execution of the business of Minji Houmu Kyokai. Further, the Defendant and Minji Houmu Kyokai do not share any human resources or equipment. Therefore, Minji Houmu Kyokai is an entity independent of the Defendant in terms of both legal and actual status. The Defendant and Minji Houmu Kyokai also do not share the same intentions. Therefore, the Defendant cannot be regarded as the joint infringing party for reproduction of Tochi Hoten by equating the

Defendant with Minji Houmu Kyokai.

(B) The Defendant has not obtained any enrichment.

The theory of tort aims for compensation of damages suffered by victims; whereas the theory of unjust enrichment aims for restitution of unjust benefit obtained by a benefiting party from the standpoint of fairness. Therefore, the issue of whether any enrichment (benefit) exists, which is the postulate for an obligation to return unjust enrichment, should be determined on a case-by-case basis. And, any enrichment (benefit) on the part of one of the joint infringing parties does not always mean the enrichment (benefit) on the part of the other. As for this case, considering the following facts, the Defendant cannot be regarded to have obtained any enrichment (benefit) in relation to reproduction of Tochi Hoten. [i] The Defendant has not charged any fees for access to Tochi Hoten. [ii] Although the Defendant receives rent for spaces for pay copiers from Minji Houmu Kyokai, the amount of such rent is fixed without regard to copy charges earned (Exhibit Otsu No. 20), and is not connected to increase or decrease in copy charges.

D. Issue 4 (the amounts of damages and losses)

(A) The average 10,000 yen per annum as the amount of the damages equivalent to the copyright royalties for each volume of Tochi Hoten is too high.

The concrete basis of the conclusion that the amount of the damages equivalent to the copyright royalties suffered by the Plaintiffs, as a result of reproduction of Tochi Hoten, shall be 10,000 yen per annum per volume on average (i.e. about 833 yen per month) is not clear. However, considering that ZENRIN Co., Ltd. charges 200 yen as the license fee for reproduction of one copy of its residential map (Exhibit Otsu No. 34), it can be said that this amount is based on the presumption that each volume of Tochi Hoten had been reproduced about four to five times a month.

However, considering that [i] Tochi Hoten have already become obsolete as map information (the latest version was issued on 1992) and [ii] Tochi Hoten covers small local cities and their surrounding areas not active in real property transactions, it is hardly likely that Tochi Hoten had been reproduced four to five occasions a month on

average on or after 2002.

Therefore, the average 10,000 yen per annum as the amount of damages equivalent to the copyright royalties for each volume of Tochi Hoten should be considered extremely high.

(B) The calculation of the amount of unjust enrichment pursuant to Article 114-5 of the Copyright Act should not be allowed.

Article 114-5 of the Copyright Act should be applied only for the purpose of calculation of the amount of damages in tort of infringement of copyright, not for calculation of an unjust enrichment (judgment of the Nagoya High Court of March 4, 2004 (See *Hanrei Jiho* No. 1870, at 123); and judgment of the Nagoya District Court of February 7, 2003 (See *Hanrei Jiho* No. 1840, at 126)). Thus, the Plaintiffs at least have a burden of proof regarding the amount of unjust enrichment; however, they have not established such amount so far.

(3) Plaintiffs' counterarguments in this instance

A. Issue 2 (whether the ownership in copyright in Tochi Hoten vests in the Plaintiffs)

From the duly formed assignment contracts and deeds of the copyright in Tochi Hoten, it is clear that the purchase price had been paid, and the copyright had been transferred to the Plaintiffs, upon the execution of the assignment contracts. The Defendant's allegation is merely a subjective opinion based on presumptions.

B. Issue 5 (whether Party I can be considered to have granted a comprehensive license for reproduction to parties accessing Tochi Hoten at the service counters of the legal affairs bureaus)

The Defendant's allegation is merely a subjective opinion, which is not evidence-based and is contrary to the rule of thumb. Even supposing that Party I donated Tochi Hoten to the Defendant (the legal affairs bureaus), such donation cannot be equated with the granting of an implied and comprehensive license for the reproduction of Tochi Hoten.

C. Issue 10 (existence of unjust enrichment)

(A) Counterargument to the allegation that the Defendant cannot be regarded as the infringing party of the copyright in Tochi Hoten

As explained below, the Defendant should be regarded as the

infringing party of the copyright in Tochi Hoten.

a. The issue of whether the Defendant's act constitutes the infringement of the copyright in Tochi Hoten should be determined by an evaluation from the standpoint of the norms of the copyright laws, after overall consideration of various factors including the details and nature of the act, the extent of the Defendant's management and control over the direct infringement, and the profits of the Defendant. (According to the judgment of the Third Petty Bench of the Supreme Court of March 15, 1988 referred to by the Defendant, whether any entity can be considered as an infringing party should be determined by an evaluation from the standpoint of the norms of the copyright laws, after taking into account such factors as management and control power and the profits.) An entity having a strong management and control over the state of infringement can be regarded as an infringing party, even where such entity did not obtain any direct benefits. (For example, according to the judgment of the Tokyo High Court dated March 31, 2005, it is still possible to regard an entity as an infringing party on the ground of a mere fact indicating potential economic benefits, subject to an overall observation combining various other factors based on an evaluation from the standpoint of the norms of the copyright laws). In this case, although the Defendant's only benefit is the rent for spaces of pay copiers, this benefit is sufficient as the economic factor to be considered in an evaluation from the standpoint of the norms of the copyright laws, considering the Defendant's strong management and control over the occurrence of infringement of the copyright in Tochi Hoten.

b. In this respect, the Defendant alleges that no fact is found which indicates that [i] any user of Tochi Hoten sought a permission for copying it at a service counter of the relevant legal affairs bureau, and that [ii] the Defendant restricts the use of pay copiers to reproduction of drawings permitted access by the legal affairs bureaus.

   However, as shown by the statement by K, one of the users of Tochi Hoten, stating "As necessary, I make an application with an officer of the relevant legal affairs bureau for the viewing and

copying of the necessary pages of Tochi Hoten" (Exhibit Ko No. 30), some users have asked the permission for copying at the service counters, and it is a well-known fact that Tochi Hoten are available for reproduction at the legal affairs bureaus. So, it is hardly possible that officials of the Defendant (each legal affairs bureau) were unaware of the possibility of reproduction of Tochi Hoten upon permitting access to it. In addition, in the document viewing rooms of the legal affairs bureaus, users are only permitted to bring in their writing tools and are prohibited from bringing in other belongings such as bags (Exhibit Ko No. 30). Consequently, documents to be copied in that room are obviously limited to drawings, etc. given access by, or specifically permitted to be brought in, by the legal affairs bureau. The Defendant (each legal affairs bureau) should still be considered to have management and control over the use of pay copiers, and it at least admits that drawings, etc. given access by the legal affairs bureaus, including Tochi Hoten, can be reproduced only with the pay copiers. Therefore, it is impossible to deny the fact that reproduction of Tochi Hoten was implemented by means of the pay copiers managed directly by the legal affairs bureaus.

Although the Defendant raises various allegations other than the above, none of such allegations would have any impact on the conclusion.

(B) Counterargument to the allegation that the Defendant has not obtained any enrichment

As mentioned below, the amount of the copyright royalties shall be regarded as the amount of unjust enrichment, without regard to the profits actually obtained by the Defendant as a result of reproduction of Tochi Hoten.

First, based on the approach that the Defendant obtained a negative enrichment by not having made the payment necessary to ensure the legitimacy of its act, the amount of the copyright royalties can be understood as the unjust enrichment for the unpaid royalties owed by the Defendant.

In addition, according to the approach to understand an unjust enrichment as a property transferred from the right holder to the

infringing party against the statutory order of property ownership, an entity which infringes the exclusive control over the use of the work allocated to a copyright holder under the Copyright Act (i.e. the allocation order under Copyright Act) (hereinafter such entity shall be referred to as an "Infringing Party") can be understood to have deprived the copyright holder of the control over the use of the work. According to this approach, it is understood that said value of the copyright has been transferred to the infringing party in violation of the allocation order under the Copyright Act. As for this court case, the enrichment transferred without a legal cause is the objective value of the copyright in Tochi Hoten, and such value is independent of the amount of the consideration or profits actually obtained by the Defendant.

D. Issue 4 (the amounts of damages and losses)

(A) Counterargument to the allegation that the average amount of 10,000 yen per annum as the amount of the damages equivalent to the copyright royalties for each volume of Tochi Hoten is too high

The Defendant refers to the example of a company charging 200 yen for permission to reproduce one copy of residential map, and alleges that the amount of 10,000 yen per annum as the amount of the copyright royalties for each volume of Tochi Hoten is too high.

However, Tochi Hoten has the distinctive feature that information such as locations and boundaries of lands appearing on official maps is shown in a list for easy inspection, and has been used for the purpose of replacing, or supplementing, inconvenient official maps. Considering these situations, it is not appropriate to refer to the example of a residential map. Rather, the application fee for inspection of an official map (500 yen per copy) should be referenced. In addition, one of the users of Tochi Hoten has stated that he/she had produced copies thereof at the legal affairs bureaus in the course of business on a regular basis (Exhibit Ko No. 30). Considering all these circumstances, the average amount of 10,000 yen per annum as the copyright royalties is found reasonable.

(B) Counterargument to the allegation that the calculation of the amount of unjust enrichment pursuant to Article 114-5 of the Copyright Act should not be allowed

For the application of Article 114-5 of the Copyright Act, unlike Article 114 of the same Act, existence of an intentional conduct or negligence of an infringing party is not required. In addition, Article 114-5 only has an effect to enable the court to "determine an appropriate amount of damages on the basis of the entire import of oral proceedings and the results of the court's examination of the evidence," and no ground exists which prevents this provision from being applied to a calculation of the amount of unjust enrichment based on the interpretation by analogy.

No. 3 Court's decision

The court determines as follows. [i] The Defendant is considered as a joint tortfeasor (Article 719, Paragraph (2) of the Civil Code), as it aided unspecified third parties (i.e. parties which made unauthorized reproductions of Tochi Hoten by the use of pay copiers located in the legal affairs bureaus) in infringing the right of reproduction of Tochi Hoten. Therefore, the Defendant is liable to compensate the Plaintiffs for the damages in tort equivalent to the copyright royalties, as well as the attorney's fees (1,320,000 yen in total: 1,061,500 yen to Plaintiff FUJI, 198,000 yen to Plaintiff Y1, and 60,500 yen to Plaintiff Y2). [ii] However, the Defendant is not considered to have obtained any benefit under Article 703 of the Civil Code by aiding the infringement of the right of reproduction of Tochi Hoten. The reasons for these determinations are as described in No. 2, Paragraphs 1. to 10. of the "Facts and Reasons" of the judgment in prior instance (Page 35, Line 8 to Page 53, Line 8 of the judgment in prior instance), and the court cites these statements by adding the following contents.

1. Correction of the judgment in prior instance (including the determination as to the Defendant's additional allegations in this instance)

   (1) The sentences of the judgment in prior instance which read "Further, ….. It is presumed from the fact that…" (Page 42, Lines 10 to 22) shall be replaced with the following:

   "Further, taking into consideration the following circumstances, it should be understood that the copyright in Tochi Hoten had been transferred upon the execution of the assignment contracts. [i] Each assignment contract (Exhibit Ko No. 7-1 to No. 7-10) expressly provides that Party I shall 'sell' to the Plaintiffs, and the Plaintiffs shall 'purchase' the copyright in Tochi Hoten (Article 1), and 'the right to seek reimbursement to which Party I is entitled, including the right to seek damages relating to unauthorized copies, shall be transferred to the Plaintiffs without the need of payment of any consideration on and after the date

hereof' (i.e. on and after the date specified as the "assignment date" in the List) (Article 5); however, there is no provision setting forth that the transfer of the copyright in Tochi Hoten takes effect upon the payment of the purchase price. [ii] Each assignment deed (Exhibit Ko No. 47-1 to No. 47-10) expressly provides that, as of the date specified in the respective deeds (i.e. on and after the date specified as the "assignment dates" in the List), Party I 'assigned for consideration' to the Plaintiffs, and the Plaintiffs 'purchased' the copyright in Tochi Hoten (Article 1).

The above-mentioned assignment contracts expressly provide that the purchase price of the copyright in Tochi Hoten shall be paid in lump-sum upon the execution thereof (Article 2). Accordingly, Party I was entitled to cancel the contract on the grounds of the Plaintiffs' default in payment of the purchase price. However, in this court case, the Defendant has not alleged that Party I manifested its intention to the Plaintiffs for the cancellation of the contract due to the non-payment of the purchase price. In addition, even considering the entire evidence submitted before the court, the fact of such manifestation of the intention has not been established.

(2) An error in Chinese character "Ho" in "Tochi Hoten"(Page 42, Line 24 of the judgment in prior instance) shall be corrected.

(3) In the end of Page 42, Line 26 of the judgment in prior instance, the following sentences shall be added by starting a new line.

"Article 719, paragraph (1) of the Civil Code provides that if more than one person has inflicted damages on others by their joint tortious acts, each of them shall be jointly and severally liable to compensate for those damages, and paragraph (2) of said Article provides that any person who incited or was an accessory to the perpetrator shall be liable in the same manner as the joint tortfeasors by deeming him/her to be one of the joint tortfeasors.

Thus, for determining whether the Defendant is held liable to compensate damages in tort, the determination of whether the Defendant incited or aided the tortfeasor is sufficient, instead of determining whether the Defendant itself is the tortfeasor. Therefore, in the following section, the court discusses whether the Defendant is held liable for damages in tort, from the standpoint of the issue of the Defendant's accessoryship to the tortfeasors."

(4) The phrase in the judgment in prior instance which reads "preventing it from being tampered with" (Page 43, Lines 6 and 7, and Line 14) shall be replaced with "preventing it from being lost or tampered with."

(5) The sentence, "The amount of rent for the spaces for pay copiers payable from Minji Houmu Kyokai to the Defendant is fixed, without regard to increase or decrease in copy charges earned. (Exhibit Otsu No. 20)", shall be added after Page 44, Line 6 of the judgment in prior instance.

(6) The sentences of Page 44, Line 16 to Page 45, Line 4 of the judgment in prior instance shall be replaced with the following:

"Meanwhile, considering the circumstances where [i] it is easily foreseeable that the users given access to Tochi Hoten would copy it, in light of the nature of Tochi Hoten that it can be used as an attachment to public filings or as a property investigation document, and [ii] pay copiers are located in the spaces under direct management and supervision of the legal affairs bureaus so as to prevent documents for viewing or copying from being lost or tampered with, the legal affairs bureaus must have been fully aware of the possibility of reproduction of Tochi Hoten that was made available to third parties. In addition, although it was Minji Houmu Kyokai that installed pay copiers, Minji Houmu Kyokai is an incorporated foundation under the jurisdiction of the Ministry of Justice and has obtained the permission from the Defendant to use the spaces for pay copiers in the legal affairs bureaus. Further, as mentioned above, in reality, the spaces for pay copiers are under the management and supervision of the legal affairs bureaus.

Thus, as determined above, considering the totality of various circumstances, including the motives for development of Tochi Hoten, the background history of development of Tochi Hoten using various documents including official maps, the background history of Tochi Hoten being stored at the legal affairs bureaus, the fact that some public filings require copies of Tochi Hoten as attachments, and the fact that users seek permission for access to Tochi Hoten from the legal affairs bureaus with a purpose to copy it, the Defendant (legal affairs bureaus) should have taken appropriate measures in advance to prevent Tochi Hoten from being reproduced by third parties without authorization, including acquiring a comprehensive license from the copyright holder or developing a simplified and convenient mechanism enabling users to obtain permission from the copyright holder. Even where the Defendant failed to acquire such comprehensive license or develop such simplified mechanism, the Defendant at least had an obligation to take some action to prevent unauthorized reproduction, such as checking whether the user intends to make copies of Tochi Hoten before permitting him/her access, and if so, confirming whether the part to be copied is protected

by copyright, and if so, reminding the user not to copy it. It is understood that there would have been no breach of duty of care or negligence of the Defendant as long as it had taken the concrete measures as mentioned above.

Next, from the standpoint discussed above, the court discusses the issue of whether the Defendant had breached its duty of care.

Considering the totality of the evidence submitted before the court, no evidence can be found which indicates that the Defendant exercised its efforts to acquire a comprehensive license from the copyright holder or to develop a simplified mechanism for the use of Tochi Hoten, and, no specific fact can be found which can be considered to indicate the appropriate measures taken by the legal affairs bureaus upon permitting third parties access to Tochi Hoten, such as reminding such third parties not to make unauthorized copies thereof. From the above, the Defendant can be considered to have permitted access to Tochi Hoten without paying due care and continuously let unspecified third parties make reproductions thereof. Thus, as the court cannot find any circumstance which can be considered to indicate the appropriate measures taken by the Defendant, the court at least finds the negligence of Defendant in aiding the third parties who gained access to Tochi Hoten in making unauthorized reproductions thereof.

In conclusion, the Defendant is not released from the liability as the joint tortfeasor under Article 719, paragraph (2) of the Civil Code."

(7) The sentences of Page 45, Lines 5 to Line 25 of the judgment in prior instance shall be deleted.

(8) The sentence "The Defendant alleges that its act cannot be considered as a copyright infringement, as long as the occurrence of the consequence was unforeseeable for the Defendant, and the fact of the occurrence of the actual infringement is not even established" in the judgment in prior instance (Page 46, Lines 1 to 3) shall be replaced with "The Defendant alleges that it is not held liable to compensate the damages, as it was impossible for it to foresee the occurrence of the consequence and therefore there is no intentional conduct or negligent on its part."

(9) In the end of Page 46, Line 8 of the judgment in prior instance, the following sentences shall be added by starting a new line.

"As mentioned above, although it was not the Defendant itself that reproduced Tochi Hoten, [i] the Defendant granted Minji Houmu Kyokai permission to use the spaces for pay copiers in the buildings under its management and supervision, and [ii] the Defendant failed to take any appropriate measures to

prevent the unspecified third parties from making unauthorized reproductions at the time when Minji Houmu Kyokai permitted them the access to Tochi Hoten. These acts and omissions of the Defendant, as explained above, should be considered as acts and omissions based on negligence. Accordingly, the Defendant has an obligation to compensate the Plaintiffs for damages suffered by them as the joint tortfeasor under Article 719, paragraph (2) of the Civil Code, together with the persons who gained access to and reproduced Tochi Hoten and Minji Houmu Kyokai.

In this respect, the Plaintiffs allege that the Defendant itself shall be considered as an infringing party of the copyright; however, as the Defendant is already held liable to compensate the damages pursuant to Article 719 of the Civil Code for the infringement of right of reproduction, no further determination is needed in this regard."

(10) The sentences of Page 46, Line 17 to 26 in the judgment in prior instance shall be replaced with the following:

"In this regard, the Defendant alleges that Party I had given an implied license for reproduction of Tochi Hoten, as it continued donating the books even after noticing the fact of reproduction of books by third parties.

However, as alleged by the Defendant, even supposing that Party I continued donations, the notice in Tochi Hoten which reads "No unauthorized reproduction is permitted" precisely prohibits the unauthorized reproduction thereof, even if it is the default imprint of the initial publication. Therefore, Party I cannot be regarded to have given a comprehensive license on contrary to such express notice of intention."

(11) After the phrase "the court finds the extinctive prescription to have been completed before the institution of this action" in Page 49, Lines 21 and 22 of the judgment in prior instance, the phrase "(the Plaintiffs have not alleged any ground for the suspension of the extinctive prescription other than the institution of this action)" shall be added.

(12) The sentences of Page 50, Lines 14 to 25 in the judgment in prior instance shall be replaced with the following:

"9. Issue 10 (existence of an unjust enrichment)

The Plaintiffs allege that the Defendant has obtained unjust benefits by [i] providing Minji Houmu Kyokai with spaces for pay copiers in the legal affairs bureaus; and [ii] permitting third parties access to Tochi Hoten.

However, as explained below, the Plaintiffs' allegation is groundless.

Article 703 of the Civil Code provides: 'A person who has benefited from the property or labor of others without legal cause and has thereby caused loss to others shall assume an obligation to return that benefit, to the extent the benefit exists.'

However, the Defendant was not engaged in either installation of pay copiers or reproduction of Tochi Hoten, as these were the acts of Minji Houmu Kyokai and unspecified third parties, respectively. Although the Defendant obtained rent for the spaces for pay copiers from Minji Houmu Kyokai, the nature of such rent is the consideration for the permission to possess the national properties (i.e. a part of the building), and is not connected to the copy charges which were earned by Minji Houmu Kyokai through installing pay copiers with the authorization to use the spaces and enabling unspecified third parties to reproduce Tochi Hoten (Exhibit Otsu No. 20).

In addition, the copy charges earned by Minji Houmu Kyokai through enabling unspecified third parties to reproduce Tochi Hoten are the consideration for the use of pay copiers by such third parties. The amount of the earnings depends solely on the number of sheets of paper used for copying, and the issue of whether the users had paid the royalties for the copyright, or whether the copied document was Tochi Hoten, is not relevant. As such, Minji Houmu Kyokai also cannot be considered to have obtained any 'benefit' under Article 703 of the Civil Code in relation to reproduction of Tochi Hoten.

In light of these circumstances, in no way can the Defendant be considered to have obtained any 'benefit' under Article 703 of the Civil Code from reproduction of Tochi Hoten.

In this regard, the Plaintiffs allege that the Defendant was enriched by not having made the payment necessary to ensure the legitimacy of its act; however, such allegation is groundless.

The objective of the system of tort liability is to have a perpetrator make a monetary compensation for damages suffered by a victim; whereas the system of return of unjust enrichment is to ensure the balance between the relevant parties from the standpoint of fairness, in the cases where one party suffers any loss whereas the other obtains benefits in a causal relationship with such loss, in spite of the absence of any legal cause. Thus, the objectives of these systems are different. It goes without saying that

whether there is any unjust enrichment is the question which requires a discussion apart from the standpoint of tort, namely, whether one of the relevant parties obtained any benefit in causal relationship with the other party's loss. It follows from the Plaintiffs' allegation that a perpetrator always has an unjust enrichment where there is a tort; however, such consequence is unreasonable.

Suppose that reproduction of Tochi Hoten by unspecified third parties constitutes a tort and certain benefits are received by the Defendant as the result of such act, such act may in certain circumstances be considered to satisfy the requirements of both tort liability and unjust enrichment. Further, the Defendant's providing spaces for the use of pay copiers and permitting third parties access to Tochi Hoten can in certain circumstances be considered as constituting a tort by way of accessoryship as specified in Article 719, paragraph (2) of the Civil Code. However, even if these hypothetical cases are indeed realized, the Defendant still cannot be considered to have obtained any unjust enrichment, since the Defendant has not obtained any benefit in causal relationship with the Plaintiffs' losses. Therefore, the Plaintiffs' allegation in this respect is unacceptable."

(13) The terms "Issue 4 (amount of damages) and the amount of losses" (Page 50, Line 26) of the judgment in prior instance shall be replaced with "Issue 4 (amount of damages)."

(14) The phrase "Minji Houmu Kyokai, as well as the Defendant which is the joint infringing party" (Page 51, Lines 14 and 15) of the judgment in prior instance shall be replaced with "the Defendant which is deemed as the joint tortfeasor."

(15) The sentences of Page 51, Line 21 to Page 52, Line 14 of the judgment in prior instance shall be replaced with the following:

"Considering various circumstances including the following, it is reasonable to determine the amount of damages equivalent to the copyright royalties suffered by the Plaintiffs as a result of unauthorized reproduction of Tochi Hoten during the abovementioned period (i.e. period from August 8, 2002 to February 8, 2005) to be 10,000 yen per volume. [i] The number of volumes of Tochi Hoten, the subject-matter of the copyright infringement, stored at the legal affairs bureaus is 120 in total. [ii] The sales price of Tochi Hoten is 30,000 yen (Exhibit Ko No. 16). [iii] As mentioned above, Tochi Hoten is capable of providing a wide range of easy-to-see information, by selecting and combining two or more official maps into a single sheet, with some correction of inaccurate information

contained in the original official maps. [iv] Tochi Hoten was created by adding various kinds of information, including present status of roads, waterways and railways, location of public facilities, and information entered in real property registries such as land categories and parcel area indication, to the official map information, and was formerly treated as a document capable of being used as attachments to public filings. [v] There had been considerable users demands for reproduction of Tochi Hoten in addition to inspection thereof, as Tochi Hoten was especially convenient for an on-site survey of suburban areas, mountain forests and wilderness areas. [vi] Tochi Hoten was formerly revised every ten years (Exhibit Ko No. 22); however, notwithstanding that the period of the copyright infringement found in this instance (excluding the period during which the extinctive prescription of the right to seek compensation is considered to have been completed) is from August 8, 2002 to February 8, 2005, the oldest issue of the 120 volumes of Tochi Hoten was published on March 28, 1972 and the latest issue on June 24, 1992. On and after 1989, only 17 volumes out of the 120 volumes of Tochi Hoten were published. [vii] The number of occasions and scope of unauthorized reproductions of Tochi Hoten by unspecified persons at the legal office bureaus are unknown, and the extent of the reproduction of the portion of Tochi Hoten reflecting the authors' efforts of selecting information and creating original expressions is also unknown. [viii] The Plaintiffs obtained the copyright in Tochi Hoten, together with the right to seek damages in the past, by paying a total of 7,300,000 yen.

The Plaintiffs alleges that the application fee for inspection of an official map (500 yen per copy) should be referenced. However, the nature of such application fee is consideration for the administrative agency's services, and thus different from that of the copyright royalties for Tochi Hoten. Therefore, such allegation of the Plaintiffs does not have any impact on this determination."

(16) Page 52, Lines 15 to 23 of the judgment in prior instance shall be deleted.

(17) The sentences of Page 52, Line 24 to Page 53, Line 4 of the judgment in prior instance shall be replaced with the following:

"The court finds that the copyright in the volumes of Tochi Hoten specified in Nos. 1 to 68 and Nos. 98 to 102 of the List are owned solely by Plaintiff FUJI, those specified in Nos. 69 to 97 and Nos. 114 to 120 of the List jointly by Plaintiff FUJI and Plaintiff Y1 (in equal portions), and those specified in Nos. 103 to 113 of the List jointly by Plaintiff FUJI and Plaintiff Y2 (in equal portions).

Accordingly, the Plaintiffs' claim has grounds to the extent of seeking the payment of the amount of the copyright royalties for Tochi Hoten (excluding the attorney's fees) for the period from August 8, 2002 to February 8, 2005 (96,5000 yen to Plaintiff FUJI [10,000 yen×73 volumes＋10,000 yen×47 volumes×0.5], 180,000 yen to Plaintiff Y1 [10,000 yen×36 volumes×0.5], and 55,000 yen to Plaintiff Y2 [10,000 yen×11 volumes×0.5]; total 1,200,000 yen), plus the delay damages.

With regard to the above-mentioned period, August 8, 2002 is the day three years prior to the date of institution of this court action (i.e. August 8, 2005). The Plaintiffs alleges that the extinctive prescription is suspended on the ground of the institution of this court action. February 8, 2005 is the last day of the infringement pertaining to the claim in this action.

With regard to the attorney's fees, the court determines, after taking into account all facts of the case, including the difficulty in prosecuting this court action, that the damages where there is an adequate causation should be 120,000 yen (96,500 yen for Plaintiff FUJI, 18,000 yen for Plaintiff Y1, and 5,500 yen for Plaintiff Y2)."

(18) The sentences of Page 53, Lines 5 to 8 of the judgment in prior instance shall be replaced with the following:

"(3) As discussed above, the total amount of damages suffered by the Plaintiffs is 1,320,000 yen. The amount prorated according to the copyright or share of ownership therein is 1,061,500 yen for Plaintiff FUJI, 198,000 yen for Plaintiff Y1, and 60,500 yen for Plaintiff Y2."

2. Conclusion

Based on the above, the Plaintiffs' claim in this court action has grounds to the extent of seeking the payment of 1,200,000 yen as the damages in tort (the amount of the copyright royalties for Tochi Hoten for the period from August 8, 2002 to February 8, 2005), plus 120,000 yen as the attorney's fees (i.e. 1,061,500 yen in total for Plaintiff FUJI, 198,000 yen in total for Plaintiff Y1, and 60,500 yen in total for Plaintiff Y2), as well as the delay damages at the rate of five percent per annum from August 24, 2005 (the date immediately after the date of service of the complaint) to the date of completion of the payment; but not however, in any other respects (a declaration of a provisional execution is not necessary). Therefore, the court amends the judgment in prior instance which differs from these conclusions and renders the judgment as described in the main text.

Intellectual Property High Court, Third Division

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|---|---|
| Presiding Judge: | Toshiaki Iimura |
| Judge: | Norio Saiki |
| Judge: | Kazuhide Shimasue |