Patent Right	Date	May 26, 2023	Court	Intellectual Property High Court, Special Division
	Case number	2022 (Ne) 10046		
- A case in which, concerning an invention of a system equipped with multiple terminal devices connected to a server via a network, the court held that the act of newly creating a system, which consists of a server existing outside Japan and user terminals existing in Japan, is an act of working the above invention and falls under "production" as prescribed in Article 2, paragraph (3), item (i) of the Patent Act.				

Case type: Injunction, etc.

Result: Partial modification of the prior instance judgment, Partial appeal dismissed

References: Article 2, paragraph (3), item (i) of the Patent Act

Related rights, etc.: Patent No. 6526304

Summary of the Judgment

1. Background

The present case is one in which Appellant, who has the patent right (Patent Right) for the patent registered as Patent No. 6526304 with the title for the invention, "Comment Delivery System" (Patent), argued that the systems (Defendant's Systems) for online video delivery services with commentary (Defendant's Services), which are operated by Appellee Y1, a US corporation, belong to the technical scope of the invention claimed in the Patent, and that the act by Appellee Y1 of distributing, from the servers (Defendant's Servers) existing in the US for use for Defendant's Services, the files (Defendant's Files) pertaining to Defendant's Services to the user terminals existing in Japan, falls under "production" (Article 2, paragraph (3), item (i) of the Patent Act) of Defendant's Systems and infringes on Patent Right, and also argued that Appellee Y2 substantively engages in the above act jointly with Appellee Y1, thereby demanding against Appellee, et al., pursuant to Article 100, paragraphs (1) and (2) of the Patent Act, for an injunction against the distribution of Defendant's Files to the user terminals existing in Japan, and for deletion of the programs for Defendant's Servers, and for removal of Defendant's Servers, as well as for joint payment of a sum of 10,000,000 yen along with delay charges as part of compensation on the ground of joint tort of patent infringement.

In the prior instance, the court dismissed Appellant's claims entirely by determining as follows: Defendant's Systems satisfy all constituent features of the invention claimed by the Patent, and belong to the technical scope thereof; however, from the perspective of territorial principle, the court's interpretation is that in order for the "production" according to Article 2, paragraph (3), item (i) of the Patent Act to

be applicable, a product which satisfies all constituent features of the patented invention must be newly created in Japan; meanwhile, Defendant's Servers, which are constituent features of Defendant's Systems, all exist in the United States, and it is impossible for only the user terminals existing in Japan to satisfy all constituent features of the invention claimed by the Patent; as such, it cannot be acknowledged that Appellee, et al. "produced" Defendant's Systems in Japan; in addition, it cannot be acknowledged that Appellee Y2 was engaging in work related to Defendant's Services; accordingly, the court cannot acknowledge that infringement of Patent Right by Appellee, et al. took place.

Appellant, who was dissatisfied with the judgment of the prior instance, filed the Appeal, in which Appellant enlarged its claims this time by changing the part that concerns compensation and seeking a sum of 1,000,000,000 yen along with delay charges.

The main point of dispute in the present case is whether or not it can be said that the act performed by Appellee Y1 when Defendant's Systems were newly created falls under "production" (Article 2, paragraph (3), item (i) of the Patent Act) as an act of working the inventions of Claims 1 and 2 (Inventions) in the scope of claims for the Patent and infringes on the Patent Right.

In the present case, in connection with the point of dispute above, opinions of third parties were solicited for the first time as a process that was newly adopted after the revision of the Patent Act in 2021 to gather evidence (Article 105-2-11 of the Patent Act) concerning the "production" as an act of working an invention of a system whose server exists outside Japan, and many opinions were submitted as evidence.

2. Outline of Judgment

(1) In the judgment of the present case (Judgment), [1] concerning the claim made against Appellee Y1, the court acknowledged that there was infringement of Patent Right by Appellee Y1, and ordered an injunction against the distribution, in Defendant's Service 1, from Appellee Y1's server to the user terminals existing in Japan (hereinafter referred to as "Domestic User Terminals"), of video files and commentary files in a way that enables the comments, which appear in a video on a display device of a user terminal to be displayed in a certain manner, and also partially approved the claim within the extent of ordering for payment of a sum of 11,015,517 yen along with delay charges in compensation on the ground of tort, and dismissed the rest of the claim, and [2] concerning the claim made against Appellee Y2, the court dismissed it entirely.

(2) In the Judgment, the court ruled that the act by Appellee Y1 in Defendant's

Services falls under "production" (Article 2, paragraph (3), item (i) of the Patent Act) as an act of working the Inventions and thus the above act infringes on the Patent Right.

Of the above, the determination as to whether or not the act by Appellee Y1 in the FLASH version of Defendant's Service 1 falls under "production" as an act of working the Invention 1 is summarized below.

In the Judgment, the court ruled likewise for the "production" of systems in other Defendant's Services pertaining to Invention 1, and also for the "production" of systems in Defendant's Services pertaining to Invention 2.

A. Meaning of "production" in network-type system

Invention 1 is an invention of a comment delivery system which is equipped with multiple terminal devices connected to a server via network, and the invention type is a product invention. The court's interpretation is that "production" of a product as an act of working the invention (Article 2, paragraph (3), item (i) of the Patent Act) refers to an act of newly creating a product which belongs to the technical scope of an invention.

The court's interpretation is that "production" in an invention of a system (network-type system) which connects a server and terminals via the Internet or some other network, as in the case of Invention 1, and which performs a unified function as a whole, refers to an act wherein multiple elements, which singularly do not satisfy all of the constituent features of the invention, are organically related to one another via network connection to possess a function that satisfies all of the constituent features of said invention as a whole, thereby newly creating said system.

B. "Act of newly creating" the system (Defendant's System 1) pertaining to Defendant's Service 1

In the FLASH version of Defendant's Service 1, when a user specifies a webpage in Defendant's Service 1 in order to display a desired video on the browser of a user terminal in Japan, the web server of Appellee Y1 sends the HTML file and SWF file of the above webpage to the user terminal, and the files received by the user terminal are stored in the cache of the browser, and later, when the user presses a play button in said video on a webpage displayed on the browser on the user terminal, the browser sends a request to the video delivery server and comment delivery server of Appellee Y1 pursuant to the order stored in the above SWF file, and each of the above servers, by following said request, respectively sends a video file and comment file to the user terminal, and the user terminal which receives the above files will be able to overlay comments on the video on the browser. In this manner, at the point in time when a

user terminal receives the above files, Appellee Y1's above servers and the user terminal are connected via network using the Internet, so that it becomes possible to overlay comments on the video on the browser of the user terminal. As such, it can be said that Defendant's System 1, which is equipped with a function which satisfies all of constituent features of Invention 1, is newly created as of the point in time when the user terminal receives the above files (the above act of newly creating Defendant's System 1 is hereinafter referred to as "Production 1-1").

C. Applicability of "act of newly creating" Defendant's System 1 (Production 1-1) to "production" as prescribed in Article 2, paragraph (3), item (i) of the Patent Act

(A) The territorial principle in relation to patent rights means that the patent right of each country is prescribed by the law of such country in regard to the establishment, transfer, and effect, etc. of the patent right, and that the patent right is protected only in the territory of the country concerned. The court's interpretation is that the above principle also applies to the Patent Act of Japan.

In regard to Production 1-1, the files are sent from a server existing in the United States to user terminals in Japan, so that the receipt of the files by user terminals takes place across the United States and Japan. Also, Defendant's System 1, which is newly created, exists across the United States and Japan. As such, whether or not Production 1-1 falls under "production" according to Article 2, paragraph (3), item (i) of the Patent Act of Japan from the perspective of territorial principle is at issue.

(B) Today, in a network-type system, it is often commonly performed that the server is installed in a location overseas (outside Japan). The location of the server does not cause obstruction to the use of a network-type system. As such, even if a server constituting a network-type system, which is the allegedly infringing property, exists outside Japan, if the terminals constituting said system exist domestically (in Japan), it is possible to use the terminal to work the invention in Japan, and such use would affect the economic interests which can be obtained by a patent holder from working the invention in Japan.

In that case, the interpretation concerning an invention of a network-type system to the effect that the invention of a network-type system uniformly does not fall under "working" according to Article 2, paragraph (3) of the Patent Act in Japan, in strict compliance with the territorial principle and based on the reason that the server, which is a part of the elements constituting said system, exists outside Japan, allows for a situation wherein patent workaround becomes easily possible merely by installing a server outside Japan, thereby causing the protection to be given over the patent right pertaining to the invention of said system to be insufficient.

Accordingly, such interpretation is not justified.

On the other hand, the interpretation that the "working" according to Article 2, paragraph (3) of the Patent Act is uniformly applicable based on the reason that the terminal, which is a part of the elements constituting said system, exists in Japan, is to provide excessive protection over the patent right and may create a situation which obstructs economic activities, so that such interpretation is not justified, either.

When the above circumstances are taken into consideration, it is reasonable to interpret, concerning whether or not the act of newly creating a network-type system falls under "production" as prescribed in Article 2, paragraph (3), item (i) of the Patent Act from the perspective of appropriately protecting the patent right pertaining to the invention of a network-type system, that even in the case wherein the server, which is a part of the elements constituting said system, exists outside Japan, if said act can be considered as having been performed in the territory of Japan, then said act falls under "production" as prescribed in Article 2, paragraph (3), item (i) of the Patent Act, by comprehensively taking into consideration factors such as the specific manner of said act, the function and role played by the elements, which exist in Japan, from among the elements constituting said system, and the place where the effect of said invention can be obtained from the use of said system, and the effect of such use to the economic interests of the patent holder of the invention.

When the above is considered with regard to Production 1-1, the specific manner in which Production 1-1 takes place is such that the files are sent by a server existing in the United States to the user terminals in Japan, and the user terminals in Japan receive said files. As such, the transmission and receipt are performed as a package, and considering that Defendant's System 1 is completed when the user terminals in Japan receive the files, it can lead to the conception that the above transmission and receipt are performed in Japan.

Next, Defendant's System 1 consists of Appellee Y1's server existing in the United States and the user terminals existing in Japan, and the above user terminals existing in Japan perform the main functions of Invention 1, which are Constituent Feature 1F, or the function of a judgment part required for displaying the comments in a manner that does not overlap with each other, and Constituent Feature 1G, or the function of a display position control part.

Furthermore, Defendant's System 1 can be accessed from Japan via the above user terminal, so that the effect of Invention 1, which is to use commentary in communication to make the invention more entertaining, is manifested in Japan, and the use in Japan may affect the economic interests which can be obtained by

Appellant by using the system, which pertains to Invention 1, in Japan.

When the above circumstances are comprehensively taken into consideration, Production 1-1 can be regarded as taking place in the territory of Japan, so that it is acknowledged that, in relation to Invention 1, Production 1-1 falls under "production" as prescribed in Article 2, paragraph (3), item (i) of the Patent Act.

(C) In response, Appellee, et al. state as follows: [1] Given that a "patent shall be protected only in the territory of the country concerned" according to the territorial principal, it is a natural consequence that an act of creation outside Japan does not fall under "production" according to Article 2, paragraph (3), item (i) of the Patent Act, and given that, according to the all-elements rule, working of a patented invention means working all of the elements constituting the patented invention; if even a part of the patented invention is created outside Japan, then it should be said that such act does not fall under "production" as stipulated in Article 2, paragraph (3), item (i) of the Patent Act; [2] There is a leap of logic in thinking that, in light of the risk of patent workaround, "production" should be applicable if even a part of a product which satisfies constituent features is created in Japan, and rather, what is more problematic is the interpretation that if a part of a product which satisfies constituent features is created in Japan, then such product shall immediately be protected by the Patent Act of Japan; [3] In Japan, precedents such as a Supreme Court judgment on "Card Reader Case" (Supreme Court Judgment 2000 (Ju) No. 580 rendered by First Petty Bench on September 26, 2002 / Minshu Vol. 56, No. 7, page 1551) have strictly conformed to the territorial principle, and making an exception would clearly cause adverse effect, and even if a case of exception to the territorial principle were to be made, such exception should be made by a legislative process.

However, in regard to the argument of [1], concerning the invention of a network-type system, whether or not the act of newly creating a system, which is an allegedly infringing property, falls under "production" according to Article 2, paragraph (3), item (i) of the Patent Act should be interpreted as falling under "production" according to the same provision if said act can be regarded as having been performed in the territory of Japan, by comprehensively taking into consideration the circumstances explained above (B), even if the server, which is a part of the elements constituting said system, exists outside Japan. As such, the argument of [1] cannot be accepted.

In regard to the argument of [2], the aforementioned determination as to the applicability of "production" according to Article 2, paragraph (3), item (i) of the Patent Act does not mean that if a part of a product which satisfies the constituent

features is created in Japan, then such product shall immediately be protected by the Patent Act of Japan. As such, the argument of [2] is lacking in its premise.

In regard to the argument of [3], the territorial principle for a patent right means that the patent right of each country is prescribed by the law of such country concerning the establishment, transfer, and effect, etc. of the patent right, and that the patent right is protected only in the territory of the country concerned. In light of the foregoing, the interpretation to the effect that said act falls under "production" according to Article 2, paragraph (3), item (i) of the Patent Act when the act is regarded as having been done only in the territory of Japan as described above is not against the territorial principle. In addition, the court's interpretation of the Supreme Court judgment on the Card Reader Case, as mentioned by Appellee, et al., is that, in order to fall under "production" as a natural consequence of the territorial rule, the Supreme Court's ruling does not require the act of newly creating a product which satisfies all constituent features of the patented invention to have been completed in the territory of Japan. Furthermore, according to the treaties concluded by Japan, and the Patent Act and other laws and regulations, the territorial principle does not require that the act of newly creating a product which satisfies all constituent features of a patented invention be completed in the territory of Japan in order to fall under "production". In light of the foregoing, the argument of [3] cannot be accepted.

Accordingly, the above claims by Appellee, et al. have no grounds.

D. Agent of "production" of Defendant's System 1

Defendant's System 1 was newly created after going through the process of the above B. Appellee Y1 installs and manages the web server, video delivery server, and comment delivery server pertaining to Defendant's System 1, and these servers send HTML files, SWF files, video files, and comment files to user terminals, and the receipt of these files by user terminals requires no separate operation by the user side but is performed automatically pursuant to the description of the program uploaded by Appellee Y1 on the server. In light of these circumstances, it should be said that the agent of "production" of Defendant's System 1 is Appellee Y1.

E. Conclusion

Based on the above, the court acknowledges that Appellee Y1, by Production 1-1, infringed on Patent Right by "producing" (Article 2, paragraph (3), item (i) of the Patent Act) Defendant's System 1.

Judgment rendered on May 26, 2023
2022 (Ne) 10046, Appeal Case of Seeking Injunction and the like against Patent Infringement
(Court of prior instance: Tokyo District Court 2019 (Wa) 25152)
Date of Conclusion of Oral Argument: March 29, 2023

Judgment

Appellant DWANGO Co., Ltd.

Attorneys Seiji Ohno
Hirofumi Tada
Patent Attorney Tomohiro Matsuno

Appellee FC2, Inc.
(Hereinafter, referred to as the "Appellee FC2".)

Attorneys Jun Takahashi
Toshimitsu Dan
Toshiaki Miyagawa

Appellee Homepage System, Inc.
(Hereinafter, referred to as the "Appellee HPS".)

Attorney Yoshiyuki Hamada

Main Text

1 In the judgment in prior instance, the part related to the Appellee FC2 shall be changed as follows.

(1) In "FC2 Video" (https://video.fc2.com/), the Appellee FC2 shall not deliver a video file and a comment file from a server of the Appellee FC2 to user terminals existing in Japan in such a manner that comments overlaid and displayed on a video in a display device of a user terminal move in a horizontal direction and are displayed so as not to overlap each other.

(2) The Appellee FC2 shall pay, to the Appellant, 11,015,517 yen and the money according to each of rates described in the "delay damages rate (per annum)" column to each of the moneys described in the "approved amount" column in Attachment 4-1, the list of approved amounts from each of the days described in the "date to start counting delay damages" column until completion of the payment.

(3) All the remaining claims by the Appellant against the Appellee FC2 shall be dismissed.

2 The appeal by the Appellant against the Appellee HPS shall be dismissed.

3 The expanded claim by the Appellant against the Appellee HPS in this court shall be dismissed.

4 Between the Appellant and the Appellee FC2, the court costs shall be divided into ten parts through the first and second courts, in which the Appellant shall bear seven parts thereof and the Appellee FC2 shall bear the remainder, and between the Appellant and the Appellee HPS, the Appellant shall bear all the court costs in this court.

5 No. 1 (1) and (2) of this judgment can be provisionally executed.

6 For the Appellee FC2, an additional period for filing a final appeal and a petition for acceptance of final appeal shall be 30 days.

Facts and Reasons

No. 1 Object of the Appeal

1 The judgment in prior instance shall be rescinded.

2 The Appellees shall not deliver each of the files described in the list of the Defendant's files in Attachment 1 to user terminals existing in Japan.

3 The Appellees shall erase each of the programs described in the list of the programs for the Defendant's Server in Attachment 2.

4 The Appellees shall remove each of the servers described in the list of Defendant's Servers in Attachment 3.

5 (1) Principal claim

The Appellees shall pay, to the Appellant, jointly and severally 1,000,000,000 yen and the money at the rate of 5% per annum thereto from June 1, 2019 until completion of the payment.

(2) Alternative claim

The Appellees shall pay jointly and severally 1,000,000,000 yen and the money according to each of rates described in the "delay damages rate (per annum)" column to each of the moneys described in the "claimed amount" column in the list of alternative claimed amounts from each of the days described in the "date to start counting delay damages" column in the Attachment 5 until completion of the payment.

No. 2 Outline of the Case (abbreviations as in the judgment in prior instance unless otherwise prescribed)

1 Summary of the case

This case is one in which the Appellant, who has the patent right for the patent registered as Patent No. 6526304 with the title of the invention "Comment Delivery System" (hereinafter, referred to as the "Patent", and the patent right related to the Patent as the "Patent Right"), asserted that each of the systems (hereinafter, collectively referred to as "each of the Defendant's Systems", and each of them as "Defendant's System 1" or the like according to the number of each of the Defendant's Services) according to "FC2 Video", which is a video delivery service with comments on the Internet (https://video.fc2.com/, hereinafter, referred to as the "Defendant's Service 1"), "FC2 SayMove!" (http://say-move.org/, hereinafter, referred to as the Defendant's Service 2"), and "FC2 HIMAWARI Video" (http://himado.in/, hereinafter, referred to as the Defendant's Service 3", and the Defendant's Services 1 to 3 are collectively called "Each of the Defendant's Services") operated by the Appellee FC2, a US corporation, belong to the technical scope of the invention according to the Patent, and that the act by the Appellee FC2 of distributing each of the files described in the list of the Defendant's files (hereinafter, referred to as "each of the Defendant's Files") in Attachment 1 from each of the servers described in the list of the Defendant's Servers existing in the U.S. in Attachment 3 (hereinafter, referred to as "each of the Defendant's Servers) to user terminals existing in Japan falls under "production" (Article 2, paragraph (3), item (i) of the Patent Act) of each of the Defendant's Systems and infringes the Patent Right, and also asserted that the Appellee HPS substantively engages in the above act jointly with the Appellee FC2, thereby demanding against the Appellees, pursuant to Article 100, paragraphs (1) and (2) of the Patent Act, for an injunction against the distribution of each of the Defendant's Files to the user terminals existing in Japan, for erasing of each of the programs described in the list of the programs for the Defendant's Servers in Attachment 2 (hereinafter, referred to as the "program for the Defendant's Servers"), and for removal of each of the Defendant's Servers as well as for joint payment of 10,000,000 yen as a part of the damages on the ground of the joint tort of the patent infringement and the delay damages at the rate of 5% per annum prescribed in the Civil Code before amendment by the 2017 Law No. 44 (hereinafter, referred to as the "Civil Code before amendment") on the ground of joint tort of patent right infringement from the day following the date of delivery of the complaint thereto until completion of the payment.

The court of prior instance determined that [i] each of the Defendant's Systems satisfies all the constituent features of the invention according to the Patent and

belongs to the technical scope thereof, [ii] however, in the light of the principle of territoriality, which means that the effects of the patent right are approved only in a territory of the country concerned, in order for the "production" according to Article 2, paragraph (3), item (i) of the Patent Act to be applicable, it should be interpreted that a product which satisfies all the constituent features of the patent invention needs to be newly created in Japan; however, each of the Defendant's Servers, which is a constituent element of each of the Defendant's Systems, exists in the United States, and it is impossible for only the user terminals existing in Japan to satisfy all the constituent features of the invention according to the Patent and thus, it cannot be found that the Appellees "produced" each of the Defendant's Systems in Japan and moreover, it cannot be found that the Appellee HPS was engaging in the work related to each of the Defendant's Services during the period in which the Appellant asserted the infringement. Thus, the court of prior instance determined that the facts of the infringement of the Patent Right by the Appellees cannot be approved, and dismissed all the claims by the Appellant.

Thus, the Appellant instituted this lawsuit against the judgment in prior instance.

Moreover, the Appellant principally claimed for 1,000,000,000 yen, which is a part of the amount of damages pertaining to Article 102, paragraph (2) of the Patent Act and the delay damages for the part of May in 2019 (part from the 17th to the 31st of the same month) in this court for the part related to the claim for damages and alternatively changed the litigation to the claim for the damages pertaining to the same paragraph for the part from the 17th of the same month to August 31 of 2022 or the claim for 1,000,000,000 yen, which is a part of the amount of damages pertaining to paragraph (3) of the same Article and the delay damages, and expanded the claim.

2 Basic Facts (facts without indication of evidence are indisputable facts or facts approved by entire import of argument.)

(1) Parties

A. The Appellant is a stock company with businesses of planning, development, manufacture, sales, rental, and the like of network systems using a computer.

B. The Appellee FC2 is a US corporation with businesses of operation and the like of blogs and video delivery sites on the Internet.

C. The Appellee HPS is a stock company with businesses of various information providing services and the like using the Internet.

(2) The Patent

A. History of the application

Since it is as described in No. 2, 2(2) in "Facts and Reasons" in the judgment in prior instance, the description shall be cited.

B. Scope of claims

The scope of claims of the Patent is configured by claims 1 to 13, and the description in claims 1 and 2 is as follows (hereinafter, the invention according to claim 1 shall be referred to as "Invention 1", the invention according to claim 2 as "Invention 2", and they shall be collectively referred to as "each of the Inventions").

[Claim 1]

A comment delivery system including a server and a plurality of terminal devices connected to the server via a network, in which

the server:

receives a first comment and a second comment to a video given by a user who is viewing the video transmitted from the server; and

transmits the video and comment information to the terminal device;

the comment information includes:

the first comment and the second comment; and

a comment given time, which is a video play time indicating an elapsed time of the video with a beginning of the video as a reference, corresponding to a point of time when each of the first comment and the second comment is given, comprising:

means for displaying the video and the first comment and the second comment at least partially overlapping the video and moving in a horizontal direction on a display device of the terminal device in a video play time corresponding to the comment given time on the basis of the video and the comment information;

a determining portion which determines whether or not a display position of the second comment when displayed on the video overlaps a display position of the first comment; and

a display-position control portion for adjustment such that the first comment and the second comment are displayed at positions not overlapping each other, when they are determined to overlap, wherein

by means of transmission of the video and the comment information by the server to the terminal device, the display device of the terminal device displays:

the video; and

at the video play time corresponding to the comment given time, the first comment and the second comment at least partially overlapping the video and moving in the horizontal direction in a manner that the first comment and the second comment do not overlap each other.

[Claim 2]

A comment delivery system including a video delivery server and a comment delivery server, and a plurality of terminal devices connected to them via a network, in which

the comment delivery server:

receives a first comment and a second comment to the video given by a user who is viewing the video transmitted from the video delivery server;

transmits comment information to the terminal device;

the video delivery server transmits the video to the terminal device;

the comment information includes:

the first comment and the second comment; and

a comment given time, which is a video play time indicating an elapsed time of the video with a beginning of the video as a reference, corresponding to a point of time when the first comment and the second comment are given, respectively, comprising:

means for displaying the video and the first comment and the second comment at least partially overlapping the video and moving in a horizontal direction on a display device of the terminal device in a video play time corresponding to the comment given time on the basis of the video and the comment information;

a determining portion which determines whether or not a display position of the second comment when displayed on the video overlaps a display position of the first comment; and

a display-position control portion for adjustment such that the first comment and the second comment are displayed at positions not overlapping each other, when they are determined to overlap, wherein

by means of transmission of the comment information by the comment delivery server and of the video by the video delivery server to the terminal device, respectively, the display device of the terminal device displays:

the video; and

at the video play time corresponding to the comment given time, the first comment and the second comment at least partially overlapping the video and moving in the horizontal direction in a manner that the first comment and the second comment do not overlap each other.

C Separate description of constituent features

Each of the Inventions is separately described as constituent features as follows.

(A) Invention 1

1I. A comment delivery system,

1A. which is a comment delivery system including a server and a plurality of terminal devices connected to the server via a network, in which

1B. the server

receives a first comment and a second comment to a video given by a user who is viewing the video transmitted from the server; and

1C. transmits the video and comment information to the terminal device;

1D. the comment information includes:

the first comment and the second comment; and

a comment given time, which is a video play time indicating an elapsed time of the video with a beginning of the video as a reference, corresponding to a point of time when each of the first comment and the second comment is given, comprising:

1E. means for displaying the video and the first comment and the second comment at least partially overlapping the video and moving in a horizontal direction on a display device of the terminal device in a video play time corresponding to the comment given time on the basis of the video and the comment information;

1F. a determining portion which determines whether or not a display position of the second comment when displayed on the video overlaps a display position of the first comment; and

1G. a display-position control portion for adjustment such that the first comment and the second comment are displayed at positions not overlapping each other, when they are determined to overlap, wherein

1H. by means of transmission of the video and the comment information by the server to the terminal device, the display device of the terminal device displays:

the video; and

at the video play time corresponding to the comment given time, the first comment and the second comment at least partially overlapping the video and moving in the horizontal direction in a manner that the first comment and the second comment do not overlap each other.

(B) Invention 2

2I. A comment delivery system

2A. which is a comment delivery system including a video delivery server and a comment delivery server, and a plurality of terminal devices connected to them via a network, in which

2B. the comment delivery server:

receives a first comment and a second comment to the video given by a user

who is viewing the video transmitted from the video delivery server;

2C1. transmits comment information to the terminal device;

2C2. the video delivery server transmits the video to the terminal device;

2D. the comment information includes:

the first comment and the second comment;

a comment given time, which is a video play time indicating an elapsed time of the video with a beginning of the video as a reference, corresponding to a point of time when the first comment and the second comment are given, respectively, comprising:

2E. means for displaying the video and the first comment and the second comment at least partially overlapping the video and moving in a horizontal direction on a display device of the terminal device in a video play time corresponding to the comment given time on the basis of the video and the comment information;

2F. a determining portion which determines whether or not a display position when the second comment is displayed on the video overlaps a display position of the first comment; and

2G. a display-position control portion for adjustment such that the first comment and the second comment are displayed at positions not overlapping each other, when they are determined to overlap, wherein

2H. by means of transmission of the comment information by the comment delivery server and of the video by the video delivery server to the terminal device, respectively, the display device of the terminal device displays:

the video; and

at the video play time corresponding to the comment given time, the first comment and the second comment at least partially overlapping the video and moving in the horizontal direction in a manner that the first comment and the second comment do not overlap each other.

(3) Operation of each of the Defendant's Services

Besides deletion of the phrase from "it is to be noted that" on page 17, line 11 to the end of line 13 in the judgment in prior instance, it is as described in No. 2, 2 (5) in "Facts and Reasons" in the judgment in prior instance, which shall be cited.

(4) Configuration of each of the Defendant's Systems

A. Defendant's System 1

Defendant's System 1 is a comment delivery system including a "video delivery server" and a "comment delivery server" and a plurality of terminal devices connected to them via a network and satisfies the constituent features 1A, 1G, and 1I

of Invention 1 and the constituent features 2A, 2G, and 2I of Invention 2.

B Defendant's Systems 2 and 3

Defendant's Systems 2 and 3 are the comment delivery system including the "comment delivery server" and a plurality of terminal devices connected to this via a network, respectively, and satisfy the constituent features 1G and 1I of Invention 1 and the constituent features 2G and 2I of Invention 2.

3 Jurisdiction of international court

Besides alteration of the term an "office" on page 18, line 10 in the judgment in prior instance to a "sales office" and "Article 3-2 of the Code of Civil Procedure" from the same line to line 11 to "Article 3-2, paragraph (3) of the Code of Civil Procedure", it is as described in No. 2, 2(7) in "Facts and Reasons" in the judgment in prior instance and thus, it shall be cited.

4 Issues

(1) Governing law (Issue 1)

(2) Whether or not each of the Defendant's Systems belongs to the technical scope of Invention 1 (Issue 2)

(3) Whether or not each of the Defendant's Systems belongs to the technical scope of Invention 2 (Issue 3)

(4) Presence/absence of "production" of each of the Defendant's Systems by the Appellees (Issue 4)

(5) Establishment of the defense of invalidity (Issue 5)

A Lack of inventive step (Invalidation Reason 1) with Unexamined Patent Application Publication No. 2004-193979 (Exhibit Otsu 17, hereinafter referred to as "Exhibit Otsu 17 publication" in some cases) as a primary cited reference (Issue 5-1)

B Lack of inventive step (Invalidation Reason 2) with Unexamined Patent Application Publication No. 2004-297245 (Exhibit Otsu 18, hereinafter referred to as "Exhibit Otsu 18 publication" in some cases) as a primary cited reference (Issue 5-2)

C Lack of inventive step (Invalidation Reason 3) with Unexamined Patent Application Publication No. 2004-15750 (Exhibit Otsu 19, hereinafter referred to as "Exhibit Otsu 19 publication" in some cases) as a primary cited reference (Issue 5-3)

D Lack of inventive step (Invalidation Reason 4) with "Annotation to Online Video Contents and Application by Viewers", Daisuke Yamamoto, Takashi Nagao, Transactions of the Japanese Society for Artificial Intelligence, Vol. 20 (issued in November 2005) (Exhibit Otsu 20, hereinafter referred to as "Exhibit Otsu 20 document" in some cases) as a primary cited reference (Issue 5-4)

E Lack of inventive step (Invalidation Reason 5) with Unexamined Patent

Application Publication No. 2003-111054 (Exhibit Otsu 21, hereinafter referred to as "Exhibit Otsu 21 publication" in some cases) as a primary cited reference (Issue 5-5)

F Lack of inventive step (Invalidation Reason 6) with International Publication No. WO00/64150 (Exhibit Otsu 24, hereinafter referred to as "Exhibit Otsu 24 publication" in some cases) as a primary cited reference (Issue 5-6)

G Lack of inventive step (Invalidation Reason 7) with U.S. Patent Publication No. 2004/0098754 (Exhibit Otsu 25, hereinafter referred to as "Exhibit Otsu 25 document" in some cases) as a primary cited reference (Issue 5-7)

H Violation of clarity requirement (Invalidation Reason 8) (Issue 5-8)

I Violation of support requirement (Invalidation Reason 9) (Issue 5-9)

J Violation of enablement requirement (Invalidation Reason 10) (Issue 5-10)

K Violation of prior application requirement (Invalidation Reason 11) (Issue 5-11)

L Lack of novelty and lack of inventive step due to violation of division requirement (Invalidation Reason 12) (Issue 5-12)

M Lack of inventive step and the like due to violation of requirement of priority (Invalidation Reason 13) (Issue 5-13)

N Violation of public order and morality (Invalidation Reason 14) (Issue 5-14)

(6) Establishment of abuse of right (Issue 6)

(7) Necessity of injunction and removal or the like (Issue 7)

(8) Amount of damage of the Appellant (Issue 8)

No. 3 Assertion by Parties related to Issues

1 Issue 1 (governing law)

It is as described in No. 3, 1 of "Facts and Reasons" in the judgment in prior instance, which shall be cited.

2 Issue 2 (Whether or not each of the Defendant's Systems belongs to the technical scope of Invention 1)

Besides the alteration of the term "Defendant's system" to "each of the Defendant's Systems", the term "Defendant's service" to "Defendant's Services", and the "Invention" to "each of the Inventions", it is as described in No. 3, 2 in "Facts and Reasons" in the judgment in prior instance, which shall be cited.

3 Issue 3 (Whether or not each of the Defendant's Systems belongs to the technical scope of Invention 2)

Besides the alteration of the term "Defendant's System" to "each of the Defendant's Systems", and the term "Defendant's service" to "Defendant's Services", it

is as described in No. 3, 3 in "Facts and Reasons" in the judgment in prior instance, which shall be cited.

4 Issue 4 (Presence/absence of "production" of each of the Defendant's Systems by the Appellees)

The term "Defendant's System" shall be altered to "each of the Defendant's Systems", the "Invention" to "each of the Inventions", the "Defendant' System" to "each of the Defendant's Systems", and the supplemental assertions by the parties in this court shall be added as follows, and it is as described in No. 3, 4 in "Facts and Reasons" in the judgment in prior instance, which shall be cited.

(1) Supplemental assertion by Appellant in this court

A. Relationship between "production" and the principle of territoriality

(A) "Production" (Article 2, paragraph (3), item (i) of the Patent Act) is an act of newly creating a product belonging to the technical scope of an invention.

The principle of territoriality only means that "the effect of the patent right is approved only in the territory of a country", and it is a leap of logic immediately from there to such interpretation that, in order to launch the "production", a product which satisfies all the constituent features of the patent invention needs to be newly created in Japan as in the judgment in prior instance.

If it is interpreted that even all the constituent features are required to be satisfied in the country for the principle of territoriality to exert effects of the patent right, infringement of the patent related to the network can be evaded extremely easily only by disposing the "server" outside the country, which causes the unreasonable situation that the effect of the patent right related to the network in our country is remarkably weakened. Particularly, since it is now extremely easy to provide a service in the country by using a server outside the country, if such interpretation was adopted, it would be difficult to question responsibility for infringement of the patent right in important technical fields, which would incur unreasonable results.

Moreover, even in the Criminal Code subject to the legality principle (Article 31 of the Constitution), establishment of domestic crimes is affirmed by realization of some of the constituent features in Japan, and it is interpreted that the principle of territoriality is satisfied (see Supreme Court Judgment 2013(A)510 rendered by Third Petty Bench Decision / Keishu Vol. 68, No. 9, p. 1053 on November 25, 2014), and regarding the principle of territoriality in the Patent Act, too, it should be interpreted that, even if a part of a product which satisfies the constituent features is created outside the country, if the other parts are created in the country, it falls under "production".

Furthermore, the principle of territoriality is clearly stipulated in laws in the U.S., Germany, the U.K., and the like, but even if some of the constituent features are satisfied outside the country, courts rendered determinations to approve the patent right infringement as interpretation theory (Exhibits Ko 308, 312, 315, 317, and the like) and have made substantial determination on the principle of territoriality on the basis of the current situation that the Internet spreads across borders.

(B) As described above, in the relationship with the principle of territoriality, if even a part of a product satisfying the constituent features of the patent invention is created in Japan, it should be interpreted to fall under "production". The determination in the judgment in prior instance different from the above is erroneous.

B Applicability to "production" (Article 2, paragraph (3), item (i) of the Patent Act)

(A) Each of the Defendant's Systems is configured by a server existing in the U.S. and a large number of user terminals existing in Japan. Representing each of the Defendant's Systems, an HTML 5 version of the Defendant's System 1 will be explained by using the drawings in Attachment 8-1 (in the drawing, only one user terminal is described by representing all user terminals), and operations thereof are as follows.

[i] A user specifies a desired video page to a user terminal. As a result, without any further operation by the user, [ii] to [ix] described below are operated.

[ii] The user terminal transmits to a server requests for webpage data and a JS file corresponding to the specified video page.

[iii] The server receives the requests for webpage data and the JS file in response to (ii).

[iv] The server transmits the requested webpage data and JS file to the user terminal in response to [iii].

[v] The user terminal receives the webpage data and JS file in response to [iv].

[vi] The user terminal transmits requests for a video file and a comment file to the server in accordance with the received JS file in response to [v].

[vii] The server receives the requests for the video file and the comment file in response to (vi).

[viii] The server transmits the requested video file and comment file to the user terminal in response to [vii].

[ix] The user terminal receives the video file and the comment file transmitted from the server in response to [viii].

[x] The user clicks a play button.

[xi] The user terminal plays and displays the comment moving on the video in response to [x].

(B) Regarding the relationship between the operation of the Defendant's System 1 in the aforementioned (A) and the "production", as described below, [iv] is start of the production and [ix] is completion of the production.

The aforementioned (A) [i] to [iii] are an act of ordering the production of Defendant's System 1 and the server accepting it on the basis of the operation by the user, which is not included in "production" but is performed before the start thereof.

By the aforementioned (A) [iv] to [ix], the comment moving on the video on the user terminal is brought into a state capable of playing and displaying, and Defendant's System 1 belonging to the technical scope of each of the Inventions is newly created.

Thus, the aforementioned (A) [iv] (transmission of the webpage data and the JS file by the server) is start of the "production" and the aforementioned (A) [ix] (reception of the video file and the comment file by the user terminal) is completion of the "production".

(C) As described above, the "production" of the Defendant's System 1 is configured by:

[a] Transmission of the webpage data, the JS file, the video file, and the comment file by the server existing in the U.S. (the aforementioned (A) [iv] and [viii]), and

[b] Reception of the webpage data, the JS file, the video file, and the comment file described above by the user terminal existing in Japan (the aforementioned (A) [v] and [ix]).

The transmission in [a], which is a part of the "production", is performed in the United States, while the reception in [b], which is another part, is performed in Japan.

(D) In this regard, even if the server transmits the webpage data, the JS file, the video file, and the comment file, unless they are received by the user terminal, the comment moving on the video cannot be played and displayed on the user terminal and thus, Defendant's System 1 is not considered to be completed until the user terminal receives each of the aforementioned files. Only after the reception by the user terminal, the comment moving on the video on the user terminal can be played and displayed, which is a state where the Defendant's System 1 included in the technical scope of each of the Inventions is newly created and thus, the reception of the video file and the like by the user terminal performed in Japan (the

aforementioned (C) [b]) is also a part of the "production".

Moreover, regarding the "production" act, it cannot be determined in what place the "production" act was performed while ignoring where the newly created "product" is generated.

Most of the Defendant's System 1 (parts configured in the large number of user terminals existing Japan) is newly created in Japan, and at least most of the "production" act can be conceived to be conducted in Japan and thus, the Defendant's System 1 can be considered to be "produced" in Japan (Article 2, paragraph (3), item (i) of the Patent Act).

C Subject of "Production"

(A) The act of working asserted by the Appellant in this case is the file delivery act and the like by the Appellees from each of the Defendant's Servers toward the user terminals existing in Japan, and the act toward the user terminals existing outside the country is not asserted as the act of working.

(B) Since the aforementioned B (C) [a] is the transmission by the server, it is obvious that the subject is the Appellees. Moreover, since [b] is performed by the transmission of the webpage data, the JS file, the video file, and the comment file from the server without intervention of the user's operation in accordance with [a], the subject of [b] is also the Appellees.

The "production" of the Defendant's System 1 is creation by the transmission of the webpage data, the JS file, the video file, and the comment file from the server existing in the United States by using a large number of user terminals existing in Japan as a so-called material and thus, it is performed only by the Appellees, and the users' acts are not included.

The aforementioned B (A) [x] and [xi] are an act by the user to use the Defendant's System 1 and is not included in the "production" but is performed after the completion thereof.

According to the above, the subject of the production of the Defendant's System 1 is the Appellees.

(2) Supplemental assertion by the Appellees in this court

A. With respect to the assertion on the relationship between the "production" and the principle of territoriality

(A) There is no dispute on that the "production" in Article 2, paragraph (3), item(i) of the Patent Act is an act of newly creating a product belonging to the technical scope of the Patent invention.

According to the principle of territoriality, "the effect of the patent is

approved only in the territory of the country concerned" and thus, from the viewpoint that it is natural consequence that the act of creation outside the country does not fall under "production" in Article 2, paragraph (3), item (i) of the Patent Act and that, according to the all-elements Rule, the working of the patent invention is to work all the elements configuring the patent invention, if even a part of a product is produced outside the country, it should not fall under "production" in Article 2, paragraph (3), item (i) of the Patent Act.

Therefore, the determination in the judgment in prior instance that, in order to fall under "production" in Article 2, paragraph (3), item (i) of the Patent Act, a product satisfying all the constituent features of the patent invention needs to be newly created in Japan is justifiable.

(B) The Appellant cites the following points as grounds for the applicability to "production" in Article 2, paragraph (3), item (i) of the Patent Act, that if even a part of a product satisfying the constituent features of the patent invention is created in Japan, which is groundless.

a. A point that, in the Criminal Code, even if some of the constituent features are in Japan, crimes committed inside the country is established

According to judicial precedents, regarding embezzlement of a product of performance for illegal reasons, establishment of the embezzlement is approved (Supreme Court Judgement on October 10, 1961), and establishment of theft is also approved for thefts of prohibited items (Supreme Court Judgment on February 15, 1949). Each requirement in criminal punishment is interpreted independently of presence/absence of the civil right to claim.

The assertion by the Appellant is equal to the argument that, since even if the product of performance for illegal reasons or prohibited items are targets of criminal protection, civil claim for return should be approved.

Moreover, unlike criminal law whose enforcement against a defendant outside Japan is practically impossible, a lawsuit under the civil law can be instituted against a defendant outside Japan, and enforcement is also possible in a case of a country under mutual recognition. Thus, an adverse effect by forcing the interpretation of the Patent Act unique to our country to citizens/corporations in other countries is more significant in civil law.

Therefore, applicability to "production" in Article 2, paragraph (3), item (i) of the Patent Act should be understood from a viewpoint of integrity with treaties and international harmonization as interpretation of the civil right to claim and thus, a does not constitute a ground for the Appellant's assertion.

b. A point that infringement of network-related patents can be avoided only by installing the "server" outside the country

Just because the possibility of patent workaround is a problem, it is a leap of logic to consider that if only a part of a product satisfying the constituent features is created in Japan, it falls under "production". Rather, the interpretation that, if a part of a product satisfying the constituent features is created in Japan, the effects of the Patent Act in our country immediately take effect has more problems. If a claim for injunction or a claim for damages can be made for all the "production" acts by the creation of a part of the product satisfying the constituent features of the patent invention, it could lead to such a consequence that a lawsuit can be instituted on the ground of patent right infringement in Japan if even only one of the Internet users is present in Japan. In this case, the idea of the patent right in Japan is forced on operators in other countries by ignoring patent systems of the other countries having different systems, which goes against the fundamental idea of the principle of territoriality that the patent system in each country should be respected and violates the Paris Treaty and seriously affects international harmonization.

Furthermore, if patent right infringement in a foreign country is approved for operators in Japan with a similar interpretation (patent right infringement in the foreign country is approved if a service with a server existing in Japan can be viewed by a browser from the foreign country, for example.), any services made open to the public on the Internet constitute patent right infringement in any country in the world and enable institution of lawsuits as a result, which would remarkably confuse the order of the Patent Act.

Therefore, if there is an irrational point in the interpretation that the product satisfying all the constituent features of the patent invention needs to be created in Japan in order to fall under "production", it should be dealt with by revisions of the patent systems and treaties of the countries, and it is not appropriate to unnecessarily expand the effects of the patent rights in Japan to the other countries by the interpretation of the Patent Act in Japan and thus, b does not constitute a ground for the assertion by the Appellant.

c. A point in which, in the United States, Germany, the United Kingdom, and the like, it is determined that the patent right infringement is approved, even if some of the constituent features are satisfied outside the country

The examples of the foreign countries cited by the Appellant are only several examples in the three countries, and to conclude that exceptions to the principle of territoriality should be made by the determination in individual courts

with such a few examples has not examined its legitimateness at all, and it should be regarded as a leap of logic. In the court examples in our country, the principle of territoriality has been strictly conformed to by the Supreme Court Judgment of the Card Reader Case (Supreme Court Judgment 2000 (Ju) No. 580 rendered by First Petty Bench on September 26, 2002 / Minshu Vol. 56, No. 7, page 1551) and the like, and an adverse effect caused by making an exception thereto is clearly anticipated as described above and thus, even if an exception to the principle of territoriality is to be made, it should be dealt with by a legislative process.

Therefore, c does not constitute a ground for the assertion by the Appellant.

B With respect to the assertion on the applicability of "production" (Article 2, paragraph (3), item (i) of the Patent Act)

(A) In light of the Patent Act that clearly defines "working" and places a high value on predictability for a third party / legal stability, it is reasonable that the determination on whether the "act" by the Appellees falls under "production" should be made by a "filtering test" by using such a method that firstly confirms the "act" by the Appellees not by comparison with the patent invention but by a natural act and examines whether the "product" which is "newly created" by the act is "included in the technical scope of the invention".

Since the "act" which is the "production" should not be discussed with the "constituent features", it is not allowable to consider an act performed by a third party or only a result of a causal relation as the "act" by the Appellees.

By examining this in relation to this case, the act by the Appellee FC2 related to the "production" of each of the Defendant's Systems is only manufacture of a program corresponding to each of the Defendant's Systems and upload of the program to the server, both of which are completed in the U.S.

After that, an act of use including the upload of the comments and the videos by the users exists until the comment and the video are displayed on the user terminal, but the display device on the user terminal is a general-purpose browser, and the act of use has no relation with the featured part of each of the Inventions. Moreover, since the Internet is open to the world, the act of use is not an act performed only in Japan, and to interpret this as the act of working under the Patent Act in Japan should be considered to be violation of the principle of territoriality.

Furthermore, in Defendant's System 1, the user terminal only passively displays the video and the comment in accordance with the description in the program uploaded by the Appellee FC2 to the server and the contents of the comments uploaded by a third party to the server of the Appellee FC2 and the video uploaded to

the server of the Appellee FC2 (in Defendant's Systems 2 and 3, the video uploaded to a third party's server), and it does not have a featured structure or perform a featured operation. The video and the comment displayed on the user terminal are only a result of use of an already produced device (each of the Defendant's Systems) by a user using the general-purpose browser of the user terminal, and the "act" to "newly" "create" the "product" does not exist there.

The written opinion in Exhibit Otsu 311 points out that "in general, a system related to communication is accompanied by transmission/reception of data and thus, the interpretation including even repetition of production, disposal of the system related to the communication for the first unit, the second unit, the third unit, the n-th unit in the "production" at timing of the data transmission/reception means that the system is re-produced at each timing of the data transmission/reception in the system, which cannot be employed." (the written opinion Exhibit Otsu 327 also points out a similar indication), and according to this indication, it should be considered that the act of the Appellee FC2 does not fall under the "production" of Invention 1.

As described above, the production of each of the Defendant's Systems is completed by installing a server in the U.S., by storing the program, and by bringing them into a providable state via the Internet.

Therefore, the assertion by the Appellant that the start of the production of each of the Defendant's Systems is transmission in the aforementioned (1) B (A) [iv] and the completion thereof is the reception of [ix] is groundless.

(B) a. Even if the reception act in the user terminal is interpreted as an act of working in Japan, as described in the aforementioned A, in order to fall under "production" in Article 2, paragraph (3), item (i) of the Patent Act, the product satisfying all the constituent features of the patent invention needs to be newly created in Japan, but each of the Defendant's Servers, which is a constituent feature of each of the Defendant's Systems, exists in the U.S., and not all the constituent features of the invention according to the Patent are satisfied only by the user terminal existing in Japan and thus, the "production" of each of the Defendant's Systems in Japan is not approved.

b. In this regard, the Appellant asserts that most of Defendant's System 1 (a part configured by a large number of user terminals existing in Japan) is newly created in Japan, and at least most of the "production" act can be conceived in Japan and thus, Defendant's System 1 is "produced" (Article 2, paragraph (3), item (i) of the Patent Act) in Japan.

However, the assertion by the Appellant is to cause foreseeability to be lost

for a third party in a point that applicability of the production act is determined on the basis of an unclear reference such as the "most", which is unreasonable.

Moreover, the assertion by the Appellant argues the "act", which is "production", by the "constituent features", and it is unreasonable also in a point that an "act to newly create" a "product" (each of the Defendant's Systems) belonging to the technical scope of the invention is confused with a state brought about by use of each of the Defendant's Systems, which is the "product" (the comment moving on the video becomes displayable on the user terminal).

Furthermore, even if this reference is adopted, in each of the Defendant's Systems, creation of a program and incorporation thereof in a server are performed outside the country, and it is obvious that "most" of the system is not created in Japan.

Therefore, the aforementioned assertion by the Appellant is groundless.

C With respect to the assertion of the subject of "production"

The Appellant asserts that the "production" of Defendant's System 1 is constituted by [a] transmission of webpage data, a JS file, a video file, and the comment file by a server existing in the U.S. and [b] reception of the webpage data, the JS file, the video file, and the comment file by a user terminal existing in Japan, and since [a] is the transmission by the server, the subject is the Appellees, and since [b] is performed by transmission of the webpage data, the JS file, the video file, and the comment file from the server in response to [a] without intervention of the user's operation, the subject of [b] is also the Appellees.

However, the transmission act in [a] is not performed by the Appellee FC2 but is automatically performed in response to a request, since a program was incorporated in the server connected to the Internet, and it is only a consequence of the causal effect.

Subsequently, [b] is performed by specification of a webpage by a user or a click by a user on the play button displayed on the webpage, and since an operation by the user is intervened, its premise itself is erroneous. Moreover, even if the Appellee FC2 performs the transmission act in [a], since the Patent Act clearly distinguishes and prescribes "transfer" and "acceptance", "import" and "export", and "provision" and "reception", it should not be interpreted that the Appellee FC2 performs the act of reception in [b].

Therefore, the aforementioned assertion by the Appellant is groundless.

5 Issue 5 (establishment of defense of invalidity)

Corrections shall be made as follows, and it is as described in the Attachment to the judgment in prior instance "Assertion by the parties on

establishment of defense of invalidity", which shall be cited.

(1) Subsequent to "Exhibit Otsu 17 publication" on page 127, line 8 in the judgment in prior instance, "([0005], [0007], [0008], [0017], [0041], [0045], [0047], [0066], [0122], [0125] to [0127], [0129], [0130], [0135] to [0138], [0192], FIGS. 14, 15, and 18)" shall be added, and the phrase "shall be called." shall be added subsequent to "'note storage memory'" on the same page, line 16.

(2) The phrase "[0137]" on page 128, line 18 in the judgment in prior instance shall be altered to "[0136], [0137]", "overlap the determination portion" on page 129, line 23 to "overlap, the determination portion", "inhere, and thus" on page 130, lines 4 to 5 to "inhere.", "publicly-known art to be changed" on the same page, line 7 to "to change is publicly-known and thus", and "is applied" on the same page, line 8 to ", and a publicly-known art as such is applied", and subsequent to "Exhibits Otsu 26 to 28" on the same page, lines 19 to 20, "([0059] and [0095] in Exhibit Otsu 26, on the upper left column on page 4, lines 2 to 8, 14 to 19 in Exhibit Otsu 27, [0007] and [0011] in Exhibit Otsu 28)" shall be added.

(3) Subsequent to "Exhibits Otsu 48, 61, 62" on page 131, line 1 in the judgment in prior instance, the phrase "(Exhibit Otsu 48 on page 80, Exhibit Otsu 61 on pages 190, 191, 196, and 199, Exhibit Otsu 62 on pages 182 and 188)" shall be added, and the phrase "is the invention and has a technical field in common" on the same page, line 4 shall be altered to "since the technical field is in common in a point that".

(4) Subsequent to "Exhibit Otsu 18 publication" on page 137, line 16 in the judgment in prior instance, "([0001], [0005], [0007], [0009], [0012], [0013], [0019] to [0021], [0028], [0029])" shall be added, and the phrase "overlap the determination portion" on page 139, line 17 shall be altered to "overlap, the determination portion"

(5) Subsequent to "Exhibit Otsu 19 publication" on page 146, line 11 in the judgment in prior instance, "([0004], [0005], [0007], [0014], [0020], [0023], [0032], [0036], [0049], [0050], [0060], [0068], [0069], FIG. 9)" shall be added, and the phrase "shall be called." shall be added subsequent to "'difference time memory'" on the same page, line 21.

(6) Subsequent to "'utterance information'" on page 147, line 3 in the judgment in prior instance, the phrase "shall be called." shall be added, the phrase "or less" on the same page, line 15 shall be deleted, and the phrase "overlap the determination portion" on page 148, line 1 shall be altered to "overlap, the determination portion", and "NTT invention" on page 151, line 18 to "Exhibit Otsu 19 Invention".

(7) Subsequent to "Exhibit Otsu 20 document" on page 152, line 10 in the

judgment in prior instance, "('3.1 System configuration', '4.1 Annotation editing page', '4.2 Text annotation', '5. Annotation reliability')" shall be added, and the phrase "overlap the determination portion" on page 154, line 4 shall be altered to "overlap, the determination portion".

(8) Subsequent to "Exhibit Otsu 21 publication" on page 160, the last line in the judgment in prior instance, "([0003], [0030], [0035], [0037], [0038], [0041], [0043] to [0045], [0050], [0051], [0057], [0060], FIG. 5)" shall be added, the phrase "TBS invention" on page 162, lines 2 to 3 shall be altered to "Exhibit Otsu 21 invention", the phrase "overlap the determination portion" on the same page, line 20 to "overlap, the determination portion".

(9) Subsequent to "Exhibit Otsu 24 publication" on page 170, line 3 in the judgment in prior instance, "(Abstract)" shall be added, the phrase "overlap the determination portion" on page 171, lines 2 to 3 shall be altered to "overlap, the determination portion", and "of Exhibit Otsu 24 publication" on page 178, line 5 shall be deleted.

(10) Subsequent to "Exhibit Otsu 25 publication" on page 179, line 6 in the judgment in prior instance, "([0032], [0034], [0035], [0042], [0045], [0059], FIGS. 1A and 1B)" shall be added, the phrase "overlap the determination portion" on page 181, lines 1 to 2 shall be altered to "overlap, the determination portion", and "of Exhibit Otsu 25 " on page 184, line 11 shall be deleted.

(11) The part from page 187, line 15 to page 196, line 1 in the judgment in prior instance shall be altered as follows.

"8 Issue 5-8 (Violation of clarity requirement (Invalidation Reason 8))

(Assertion by Appellees)

The description that 'to the terminal device, the video and the comment information are transmitted' in constituent feature 1C of Invention 1 is not clear as to at what timing the comment received by the server is transmitted to the terminal.

Therefore, the description in the scope of claims (claim 1) of Invention 1 is unclear and does not conform to the clarity requirement (Article 36, paragraph (6), item (ii) of the Patent Act) and thus, the Patent has an invalidation reason of violation of the clarity requirement (Article 123, paragraph (1), item (iv) of the Patent Act).

(Assertion by the Appellant)

The scope of claims (claim 1) of the Invention 1 does not prescribe the timing of the comment transmission but prescribes the point that the comment information related to the comment given by the user is transmitted to the terminal and thus, extension of the invention is clear, which conforms to the clarity

requirement.

Therefore, Invalidation Reason 8 asserted by the Appellees is groundless.

9 Issue 5-9 (Violation of support requirement (Invalidation Reason 9))

(Assertion by the Appellees)

The description in [0008] in the Description, together with the description in [0004] that 'the prior art ... comments cannot be exchanged on a real-time basis, which is not sufficiently interesting as communication.', should be interpreted to describe that, when the comment delivery server receives a comment, the comment is transmitted to the terminal device 'each time'.

On the other hand, the scope of claims (claims 1 and 2) of Inventions 1 and 2 has no description on at what timing the terminal device receives the comment information, and without the description that, when the comment delivery server receives a comment, it transmits the comment to the terminal device 'each time', it is impossible to perform exchange of the comments on a real-time basis and thus, claims 1 and 2 lacking description on that point exceed the range described in the detailed description of the invention. Thus, it does not conform to the support requirement (Article 36, paragraph (6), item (i) of the Patent Act).

Subsequently, [0011] in the Description has the description that 'according to the present invention, ... and in the comment information input with respect to the video, when a comment erasing request indicating the comment to be erased is input, the comment is caused not to be displayed and thus, whether the comment is not appropriate for the video or not can be displayed considering an intention of the user, which can improve entertainment in communicating using the comment.'

On the other hand, the scope of claims (claims 1 and 2) of Inventions 1 and 2 has description that the terminal device displays the comment but does not have description on not to display and thus, means for solving the problem of the invention described in the detailed description of the invention is not reflected and exceeds the range described in the detailed description of the invention and thus, it does not conform to the support requirement.

Therefore, the Patent has an invalidation reason of violation of the support requirement (Article 123, paragraph (1), item (iv) of the Patent Act).

(Assertion by Appellant)

[0008] in the Description only describes claims of the original application of this case and has no relation with the scope of claims (claims 1 and 2) of Inventions 1 and 2.

Moreover, [0011] in the Description only describes the problem of the

invention corresponding to the claim of the initial application, and the problem is different from the problems in Inventions 1 and 2.

Therefore, Invalidation Reason 9 asserted by the Appellees lacks the premise thereof, which is unreasonable.

10 Issue 5-10 (Violation of enablement requirement (Invalidation Reason 10))

(Assertion by Appellees)

As in the aforementioned 9 (assertion by the Appellees), since the scope of claims (claims 1 and 2) of Inventions 1 and 2 does not have the description on at what timing the terminal device receives the comment information, the exchange of the comments on the real-time basis is not possible, and [0011] in the Description has the description that 'when a comment erasing request indicating the comment information to be erased is input, the comment is caused not to be displayed', but even though the scope of claims (claims 1 and 2) of Inventions 1 and 2 has the description that the terminal device displays the comment, it does not have description on not to display the comment and thus, it falls under the case in which the invention cannot be grasped from one claim.

Then, the description in the detailed description of the invention in the Description is not considered to have clearly and sufficiently described to such a degree that a person ordinarily skilled in the art can work Inventions 1 and 2 and thus, it does not conform to the enablement requirement (Article 36, paragraph (4), item (i) of the Patent Act).

Therefore, the Patent has an invalidation reason of violation of the enablement requirement (Article 123 paragraph (1), item (iv) of the Patent Act).

(Assertion by Appellant)

Due to the reason similar to that described in the aforementioned 9 (Assertion by Appellant), Invalidation Reason 10 asserted by the Appellees lacks the premise thereof, which is unreasonable.

11 Issue 5-11 (Violation of prior application requirement (invalidation reason 11))

(Assertion by Appellees)

Patent No. 4695583 (hereinafter, referred to as 'Another Litigation Patent 2', Exhibit Otsu 44) on which the request was based in the Tokyo District Court 2016 (Wa) 38565 case of seeking injunction and the like of the patent right infringement (hereinafter, referred to 'Another Litigation Case', Exhibit Otsu 15) in which the Appellant instituted against the Appellees as the 'defendants' was filed (Patent Application No. 2006-333851, Date of application: December 11, 2006, Exhibit Otsu

11) before the application of this case.

However, Inventions 1 and 2 are identical to or substantially identical to the inventions according to claims 1 to 3 of Another Litigation Patent 2 and thus, they violate the prior application requirement (Article 39 of the Patent Act) and cannot be granted a patent.

Therefore, the Patent has an invalidation reason of violation of the prior application requirement (Article 123, paragraph (1), item (ii) of the Patent Act).

(Assertion by Appellant)

Inventions 1 and 2 and the invention according to claims 1 to 3 of Another Litigation Patent 2 are different at least in points that [i] the inventions according to claims 1 to 3 of Another Litigation Patent 2 include a requirement that 'each time the comment information is received', while Inventions 1 and 2 do not have such a requirement; [ii] Inventions 1 and 2 include a requirement that the first and the second comments move in a horizontal direction, while the inventions according to claims 1 to 3 of Another Litigation Patent 2 do not have such a requirement.

Therefore, Invalidation Reason 11 asserted by the Appellees is groundless.

12 Issue 5-12 (Lack of novelty and of inventive step due to violation of division requirement (Invalidation Reason 12))

(Assertion by Appellees)

This application is a division of application in which a part of the original application (date of application: March 2, 2007, priority date: December 11, 2006. Exhibit Otsu 9) was sequentially divided (No. 2, 2(2)[i] to [viii] in the cited judgment in prior instance. Hereinafter, each of them shall be called "application of [i]" or the like. The application of [viii] is this application.).

Claim 1 at the filing of the applications of [iv] to [viii] is identical to claim 1 of the application of [iii], and claim 1 after amendment in the applications of [v] to [vii] has identical contents with that of claim 1 of the application of [iv]. Particularly, the applications of [vi] and [vii] are filed with the claim identical to that of the application of [iii] and after that, amendment equal to that of the application of [iv] was made and then, decision of refusal was rendered on the ground that it is identical to the application of [iv].

According to the above, the applications of [iv] to [vii] (particularly, the applications of [vi] and [vii]) should be considered to be abusive division of application used to evade restrictions on the time for amendment (Article 17-2, paragraph (1), item (iii) of the Patent Act), and the effect of division of application that the division of application is regarded to be filed at the time of the original

application (Article 44, paragraph (2) of the Patent Act) is not considered to be produced.

Then, the date of application of this application is October 29, 2018, which is the actual date of application, and thus, Inventions 1 and 2 do not satisfy the requirements of novelty and inventive step (Article 29 of the Patent Act) in relation with the inventions described in the Description and the like of the applications [iv] to [vii].

Therefore, the Patent has invalidation reasons of lack of novelty and lack of inventive step (Article 123, paragraph (1), item (ii) of the Patent Act).

(Assertion by Appellant)

Since this application is a legal division of application prescribed in Article 44, paragraph (1) of the Patent Act, the date of application of this application is retroactive to the time of the original application (date of application: March 2, 2007, priority date: December 11, 2006) under the same Article, paragraph (2).

Therefore, Invalidation Reason 12 asserted by the Appellees lacks the premise thereof, which is unreasonable.

13 Issue 5-13 (Lack of inventive step and the like due to violation of requirement of priority claim (Invalidation Reason 13))

(Assertion by Appellees)

Since the application (Patent Application No. 2006-333850) on the basis of which the priority is claimed of the original application does not satisfy the requirement for amendment, a priority claim based on Article 41, paragraph (1), item (i) of the Patent Act is not allowed for the original application. In view of necessity of reliability and consistent determination on registration information related to patents, the novelty and the inventive step of Inventions 1 and 2 should be determined with the actual date of application of the Application (October 29, 2018) as the standard time.

However, since the Appellant made public the service using the art related to Inventions 1 and 2 with the name 'Niconico Video' on December 12, 2006, NIWANGO, which was an operation company at that time, actively began issuing press releases from January, 2007 after the service was made public, and the art became publicly-known, Another Litigation Patent 2 was published (Exhibit Otsu 11) at the time of the filing at the latest, and Inventions 1 and 2 had been publicly-known and thus, Inventions 1 and 2 do not have novelty.

Therefore, the Patent has an invalidation reason of lack of inventive step (Article 123, paragraph (1), item (ii), Article 29 of the Patent Act).

(Assertion by Appellant)

Whether or not the filing of the Patent Application No. 2006-333850 on the basis of which the domestic priority claim of the original application was made violates the requirement for amendment as asserted by the Appellees does not influence the priority claim of the original application (Article 41, paragraph (1) of the Patent Act). Moreover, illegal amendment was not made in this original application, and this application is a legal division application.

Therefore, Invalidation Reason 13 asserted by the Appellees lacks the premises thereof, which is unreasonable.

14 Issue 5-14 (Violation of public order and morality (Invalidation Reason 14))

(Assertion by Appellees)

The judgment of the first court of another lawsuit rendered on September 19, 2018 (Exhibit Otsu 15) determined that the invention according to Another Litigation Patent 2 does not belong to the technical scopes of Inventions 1 and 2, by stating that the comment information is transmitted to the terminal 'each time' when the comment information is received from the terminal, while the program of the Appellee FC2 does not satisfy this requirement and the like.

Then, the Appellant filed the Application for Inventions 1 and 2 by removing the requirement of the aforementioned 'each time' for the purpose of overcoming the result of another lawsuit and thus, Inventions 1 and 2 fall under the invention, which might disrupt 'public order' as described in Article 32 of the Patent Act.

Therefore, the Patent has an invalidation reason of violation of public order and morality (Article 123, paragraph (1), item (ii) of the Patent Act).

(Assertion by Appellant)

The assertion by Appellees will be contested."

6 Issue 6 (Establishment of abuse of right)

Since it is as described in No. 3, 6 in "Facts and Reasons" in the judgment in prior instance, it shall be cited.

7 Issue 7 (Necessity of injunction and removal or the like)

Besides the alteration of the "Defendant's Server" to "each of the Defendant's Servers", the "Defendant's Service" to "each of the Defendant's Services", the "Defendant's file" to "each of the Defendant's files", and the "Defendant's System" to "each of the Defendant's Systems", it is as described in No. 3, 8 in "Facts and Reasons" in the judgment in prior instance, which shall be cited.

8 Issue 8 (Amount of damage of the Appellant)

(Assertion by Appellant)

(1) Principal claims

A. Amount of damages under Article 102, paragraph (2) of the Patent Act

The Appellees produced each of the Defendant's Systems and provided each of the Defendant's Services from May 17, 2019, when the establishment of the Patent Right was registered, to August 31, 2022, and produced sales of XXXXXXXXXX yen, whereby the Appellees obtained an amount of profits (marginal profits) not less than XXXXXXXXX 0, 000 yen (Exhibit Ko 24). Among them, the sales amount from May 17 to 31, 2019 (amount for May) was XXXXXXXX yen, and the amount of marginal profits was not less than XXXXXXXX yen.

The production of each of the Defendant's Systems by the Appellees falls under an infringement act of the Patent Right related to Inventions 1 and 2 and thus, under Article 102, paragraph (2) of the Patent Act, the aforementioned marginal profit amount obtained by the Appellees is presumed to be an amount of damages the Appellant suffered due to the aforementioned infringement act (hereinafter, this presumption shall be called "presumption (1)" in some cases.).

B Absence of reasons for presumption ruination and the like

(A) The Appellees assert that [i] in the aforementioned marginal profit amount of each of the Defendant's Services, the part related to the service for delivering the video to which comment indication is not attached does not fall under the profit obtained by working of Inventions 1 and 2; [ii] the comment display function of Inventions 1 and 2 is a part of the function in each of the Defendant's Systems providing each of the Defendant's Services, which is the video delivery service with comment and does not have attraction for customers, which falls under the reasons for ruination of presumption (1) and the like.

However, regarding [i], in each of the Defendant's Services, the user can give a comment to the video, and creation of such a state itself is an infringement act of the Patent Right and thus, even if the user did not actually use the comment giving function, and a ratio of the video to which no comment was given was high, it does not immediately lead to the conclusion that the aforementioned amount of marginal profit of each of the Defendant's Services does not fall under the profit received from the working of Inventions 1 and 2.

Regarding [ii], it is obvious that the comment display function of Inventions 1 and 2 has a strong attraction for customers from the active imitation thereof by the Appellees and "bilibili video".

Therefore, the aforementioned assertion by the Appellees is unreasonable.

(B) As described above, the Appellees' assertion on reasons for presumption ruination and the like is unreasonable and thus, the amount of damages of the Appellant (only for May, 2019) based on Article 102, paragraph (2) of the Patent Act is XXXXXXXX yen from the presumption (1).

C Attorney costs

The amount of damages of the Appellant corresponding to the attorney fee having a considerable causal relation with the infringement act of the Patent Right by the Appellees is not less than 10% of the amount of damages in the aforementioned B(B).

(2) Alternative claims

A. Amount of damages under Article 102, paragraph (2) of the Patent Act

(A) The sales amount from May 17, 2019 to August 31, 2022 by production of each of Defendant's Systems and by provision of each of Defendant's Services by the Appellees is, as described in the "subtotal" column in the list of sales amounts and the like in the Attachment 6, XXXXXXXXXXXX yen, the marginal profit amount is, as described in the "subtotal" column in the list of marginal profit amounts and the like in the Attachment 7-1, not less than XXXXXXXXXXXX yen.

(B) Since the production of each of Defendant's Systems by the Appellees falls under the infringement act of the Patent Right according to Inventions 1 and 2, under Article 102, paragraph (2) of the Patent Act, the total amount of XXXXXXXXXXXX yen of the marginal profit amount of XXXXXXXXXXXX yen in the aforementioned (A) obtained by the Appellees and the amount corresponding to 10% consumption tax of XXXXXXXXXXXX yen described in the "amount corresponding to the consumption tax" in the Attachment 7-1 is presumed to be the amount of damages the Appellant suffered due to the aforementioned infringement act (hereinafter, this presumption shall be called "presumption (2)" in some cases).

However, since the assertions by the Appellees on the reasons for presumption ruination and the like are all unreasonable as described in the aforementioned (1) B, the amount of damages of the Appellant under the same paragraph (for the period from May 17, 2019 to August 31, 2022) becomes the aforementioned total amount by presumption (2).

B Amount of damages under Article 102, paragraph (3) of the Patent Act

(A) In "Research and Study Report on How to Utilize Patents and the like on the basis of Value Evaluation of Intellectual Property ~ Actual State of Intellectual Property (Resources) Values and Royalty Rate ~" (hereinafter, referred to as the "Report" Exhibit Ko 23) prepared by Teikoku Databank, LTD., as "1. Trends of

Royalty Rate" in "III. Royalty Rates in Each Country", it is described that the royalty rate of the domestic questionnaire result in the "software" industrial field is "6.3%".

(B) The video delivery service with a comment function is attractive in a point that viewers give comments to the video and view the video while sharing them. However, if Inventions 1 and 2 are not worked, the comments overlap each other and cannot be read, which drastically deteriorates the attraction of this service and thus, contribution by Inventions 1 and 2 to sales and profits of each of Defendant's Services is extremely large.

Moreover, the overlapping of the comments on the video can be prevented especially by the technique of Inventions 1 and 2, and an attractive video delivery service with a comment function can be provided, which cannot be replaced by other configurations.

(C) The Patent is for preventing imitation of "NICONICO VIDEO", which is a major business of the Appellant, and the Appellant does not license this Patent to other companies and employs a policy to exclude infringement acts by other companies even through lawsuits.

Therefore, if the Patent is to be licensed to other companies, the licensing would not be granted at a royalty rate of an industrial standard, but an extremely high licensing fee should be set.

With this regard, the Appellees assert that the Appellant licensed the Patent to the operation company of "bilibili video", but the video service with comments of the "bilibili video" is not based on the license of the Patent, and the Appellant is now preparing for a patent infringement lawsuit against the aforementioned operation company and thus, the aforementioned assertion by the Appellees is unreasonable.

(D) The royalty rate set ex-post for those who infringed a patent right should naturally be an amount higher than a usual royalty rate.

(E) By comprehensively considering the circumstances in the aforementioned (A) to (D) and other circumstances appearing in this case, the royalty rate to be a basis of calculation of the amount of damages corresponding to the royalty under Article 102, paragraph (3) of the Patent Act in this case is not less than 20%.

Then, the amount of damages corresponding to the royalty under Article 102, paragraph (3) of the Patent Act of the Appellant is not less than the total amount of XXXXXXXXXXX yen acquired by multiplying the sales of XXXXXXXXXXXX yen described in the "subtotal" column in the list of sales amounts and the like in the Attachment 6 (part from May 17, 2019 to August 31, 2022) by the royalty rate of 20% and the amount of XXXXXXXXX yen corresponding to consumption tax of 10%

described in the "amount corresponding to consumption tax" column in the same list.

C Attorney costs

The amount of damages of the Appellant corresponding to the attorney costs having a considerable causal relation with the infringement act of the Patent Right by the Appellees is not less than 10% of each of the amount of damages in Article 102, paragraph (2) of the Patent Act in the aforementioned A (B) (excluding the amount corresponding to the consumption tax) or the amount of damages in the same Article, paragraph (3) in the aforementioned B (E) (excluding the amount corresponding to the consumption tax.).

(3) Summary

Thus, the Appellant claims against the Appellees for joint payment principally of the amount of damages XXXXXXXX yen under Article 102, paragraph (2) of the Patent Act, 1,000,000,000 yen, which is a part of the total amount of the amount corresponding to the attorney costs, and the delay damages thereof at the rate of 5% per annum thereto prescribed in the Civil Code before revision from June 1, 2019 until completion of the payment and joint payment alternatively for XXXXXXXXXXXX yen described in the "amount of damages under Article 102, paragraph (2) of the Patent Act" column in the list of amounts of marginal profits and the like in Attachment 7-1 or 1,000,000,000 yen (selective assertion), which is a part of XXXXXXXXXXXX yen described in the "amount of damages under Article 102, paragraph (3) of the Patent Act" column in the list of sales amounts and the like in Attachment 6 and the delay damages at the rate described in the "delay damages rate (per annum)" column from each date described in the "date to start counting delay damages" column until completion of the payment with respect to each money described in the "claimed amount" column in the list of alternative claimed amounts in Attachment 5.

(Assertion by Appellees)

(1) Principal claims

A. With respect to the assertion of the amount of damages under Article 102, paragraph (2) of the Patent Act

In the assertion by the Appellant, the part in which the sales of each of the Defendant's Services for the part (for May) from May 17 to 31, 2019 is XXXXXXXX yen and the marginal profit amount is not less than XXXXXXXX yen is denied, and the remaining part will be contested.

Exhibit Ko 24 cited by the Appellant is for the sales of the Appellee HPS from November 1, 2013 until September 30, 2014 and is not for the sales of each of

the Defendant's Services for the part for May of 2019. The sales and the marginal profit amount of each of the Defendant's Services for the period from the same month until August in 2022 is as described in Exhibit Otsu 84.

B Reasons for presumption ruination and the like

(A) Inventions 1 and 2 are inventions related to the comment display function, but in each of the Defendant's Services, the video using the comment display function is extremely rare to begin with. For example, in XXXXXXXX pieces of the video published in "FC2 Video" in Defendant's Service 1 at a point of the time of January 11, 2021, the number of those to which one or more comments are given remains XXXXXX, and the rate is XXXX percent (Exhibit Otsu 85). This is because the profits of "FC2 Video" rely mainly on adult video contents, and while viewing the adult videos, users rarely communicate with each other through comments and the like, and if a large number of comments are displayed, the video becomes hard to view or the like.

In the aforementioned marginal profits of each of Defendant's Services, the part related to the service that delivers the video with no comment indication does not fall under the profit obtained by the working of Inventions 1 and 2 and thus, Article 102, paragraph (2) of the Patent Act is not applicable to this part.

(B) The comment display function of Inventions 1 and 2 is a part of the function in each of Defendant's Systems providing each of Defendant's Services, which is the video delivery service with comments and does not have attraction for customers. In each of Defendant's Services, what attracts customers is a charm of the video itself including originality of the adult videos posted by users and other elements, and the customers are not attracted by the comment display functions or particularly by the elements of Inventions 1 and 2.

Moreover, in each of Defendant's Services, importance of the comment display function is extremely low or rather, for the users who want to view the videos, if many comments are displayed on the video, such an adverse effect that the video is hard to view occurs and thus, many video delivery services do not use the comment display function according to Inventions 1 and 2. The Appellee FC2 also puts importance on that point, and abolished the function of displaying comments on the video on August 2, 2022.

In each of Defendant's Services as above, the comment display function of Inventions 1 and 2 is worked only in a part of the functions of the entire system and does not have attraction for customers, which falls under the reasons for ruination of presumption (1).

(C) As described in the aforementioned (A), in the aforementioned marginal profits of each of the Defendant's Services, Article 102, paragraph (2) of the Patent Act is not applied to the part related to the service of delivering the video with no comment indication added. Moreover, due to the reasons for ruination in the aforementioned (B), presumption (1) asserted by the Appellant should be entirely ruined, and even if the ruination of the presumption (1) remains in part, the ruination rate thereof is not less than 99.99%.

Therefore, the assertion on the amount of damages by the Appellant on the basis of the same paragraph is unreasonable.

C With respect to the assertion on the attorney costs

The assertion by the Appellant will be contested.

(2) Alternative claims

A With respect to assertion on the amount of damages under Article 102, paragraph (2) of the Patent Act

It is accepted that the sales amount of each of the Defendant's Services from May 17, 2019 to August 31, 2022 is XXXXXXXXXXXX yen, and the marginal profit amount is XXXXXXXXXXXX yen.

However, as described in the aforementioned (1) B (C), due to the reasons for presumption ruination that, in the aforementioned marginal profits of each of Defendant's Services, Article 102, paragraph (2) of the Patent Act is not applied to the part related to the service of delivering the video with no comment indication added, the comment display function of Inventions 1 and 2 is worked only in a part of the functions of the entire system and does not have attraction for customers, the presumption (2) of Appellant's assertion is entirely ruined, and even if the ruination of the presumption (2) remains to a part, the ruination rate thereof is not less than 99.99%.

Moreover, even if payment of damages to the Appellees FC2 is ordered in this case, it is subjected to export exemption on the consumption tax.

B With respect to the assertion on the amount of damages under Article 102, paragraph (3) of the Patent Act

(A) On the basis of the "Average value of royalty rate of patent right" in the "Questionnaire results" of this Report having the item of "Computer technology" at "3.1%" (page 7), the rate of "6.3%" asserted by the Appellant as the standard of the royalty rate of the patent right related to the computer technology is too high.

(B) As in the aforementioned (1) B (B), in each of the Defendant's Services, what attracts customers is the charm of the video itself including originality of the

adult videos posted by users and other elements, and the customers are not attracted by the comment display functions of Inventions 1 and 2 or rather, for users who want to view the video, such an adverse effect occurs that, when many comments are displayed on the video, the video becomes difficult to view and thus, many video delivery services do not use the comment display function according to Inventions 1 and 2. This means that, in the video delivery business, Inventions 1 and 2 are not in demand and have no economical values.

(C) As described in the aforementioned (1) B (A), in each of Defendant's Services, there are few videos using the comment display function, and in each of Defendant's Services, those delivering a video with no comment indication do not fall under the working of Inventions 1 and 2.

(D) Since the Appellant licenses the Patent to the operation company of "bilibili video" operated in China, it cannot be considered that the Appellant does not license the Patent to the other companies and employs a policy of excluding infringement acts by the other companies even through litigation.

(E) According to the above, the royalty rate of the Patent is zero, and even if some can be approved, it should be extremely lower than the royalty rate level of the other patent right related to the computer technology and thus, the assertion on the amount of damages by the Appellant under Article 102, paragraph (3) of the Patent Act is groundless.

C. With respect to the assertion on the attorney costs

The assertion by the Appellant will be contested.

(3) Summary

According to the above, both the Appellant's principal claims and alternative claims related to the claim for damages are groundless.

No. 4 Judgment of this court

1 Described matters of the Description

(1) The Description (Exhibit Ko 2) has the following description (for FIGS. 1 to 10 cited in the description below, see Attachment 9).

A [Technical Field]

[0001]

The present invention relates to a comment delivery system, a terminal device, a comment delivery method, and a program which can perform communication between users by using contents being played, while playing video contents.

[Background Art]

[0002]

Conventionally, there is a system which displays comments given by a user on a video such as a broadcasted TV program together with the video, for example.

For example, there is such a system that, in a bulletin board related to TV programs and the like with different broadcast times depending on a region, posting for one scene of the TV program is stored correspondingly to net time from start of the broadcast, and even if the time to view the bulletin board is different, the posting made before is displayed correspondingly to the scene of the TV program (see Patent Document 1, for example). According to this system, a user can view and enjoy the comment while watching the TV program without feeling a time lag of the broadcast time.

[Technical Problem]

[0004]

However, in the aforementioned system in the prior art, the comment is simply registered in association with the video time (video play time) and is played with the video and thus, users cannot exchange comments on a real-time basis, which is not sufficiently interesting as communication.

[0005]

The present invention was made in view of such circumstances and has an object to provide a comment delivery system, a terminal device, a comment delivery method, and a program which enable sharing of the same video and promotion of communication among users by using a comment.

B [Solution to Problem]

[0006]

In order to solve the aforementioned problem, the present invention is a comment delivery system in which a video delivery server which delivers video data, a comment delivery server which delivers a comment for the video, and a plurality of terminal devices connected via a network, characterized in that the comment delivery server has a first comment-information storage portion which receives and stores comment information including comment given time, which is video play time indicating elapsed time of the video with a beginning of the video as a reference, at a point of time when the comment was given by the terminal device and the comment each time when it is transmitted from any one terminal device in the plurality of terminal devices and a comment-information delivery portion which reads out the comment information stored in the first comment-information storage portion and delivers it to the terminal device, and the terminal device has a video play portion

which receives and plays video data delivered from the video delivery server, a comment-information reception portion which receives the comment information input for the video to be played from the comment delivery server, a second comment-information storage portion which stores the comment information received by the comment-information reception portion, and a display portion which displays the video played by the video play portion, reads out the comment in the comment given time corresponding to the video play time of the video to be played from the second comment-information storage portion, and displays the read-out comment with the video.

[0007]

Moreover, the present invention is, in the aforementioned comment delivery system, characterized by having a determination portion which determines whether or not the display position of the comment displayed by the comment display portion overlaps a display position of another comment, and a display-position control portion which displays comments at positions where they do not overlap each other, when the determination portion determines that the comment display positions overlap.

C [Advantageous Effects of Invention]

[0011]

According to the present invention, it was configured such that, in the input comment information, the comment to which the comment given time corresponding to the video play time of the video to be played corresponds is read out of the comment information, and the read-out comment contents are displayed with the video. In the comment information input for the video, when a request for erasing the comment indicating the comment information to be erased is input, it is configured such that the comment is not displayed and thus, such display can be made that a user's intention is taken into consideration on whether or not the comment is improper for the video, whereby entertainment in the communication using the comment can be improved.

D [Description of Embodiments]

[0013]

The comment delivery system according to an embodiment of the present invention will be explained below with reference to the drawings. FIG. 1 is a conceptual diagram illustrating a configuration of the comment delivery system according to the embodiment of this invention. In this drawing, a video delivery server 1 delivers video data in response to a delivery request from a terminal device 3. This delivery is performed by streaming delivery, for example. A comment delivery

server 2 receives the comment for the video delivered by the video delivery server 1 from the terminal device 3 and delivers the video to each of the terminal devices 3 to be viewed. The terminal device 3 is connected to the video delivery server 1 and the comment delivery server 3 via a network 4, receives and displays the video delivered from the video delivery server 1, and receives and displays on the video the comment delivered from the comment delivery server 3.

[0014]

Subsequently, the comment delivery server 2 and the terminal device 3 in FIG. 1 will be further explained by reference to the drawings. FIG. 2 is a schematic block diagram illustrating a configuration of the comment delivery server 2. In this drawing, a comment-information storage portion 21 stores contents of the comment and the video play time with the point of time to start play of the video as a reference at a point of time when the comment contents are given as the comment given time in association with the comment contents as the comment information.

An example of data stored in this comment-information storage portion 21 is illustrated in FIG. 3. In the comment-information storage portion 21, a plurality of pieces of the comment information which collects the comments for the video delivered by the video delivery server 1 by a thread are stored. Each of the pieces of comment information includes information on a video ID which identifies the video and a thread ID which identifies a thread so that which thread of what video can be identified. The comment information includes, other than the comment given time and the comment contents, actual time for posting comment information (corresponding to the aforementioned actual time information) indicating actual time when the comment was given (uttered), a user name, which is information for identifying the user who gave the comment, and comment data associated with a comment display method, which is information for specifying how the comment is displayed on the video in plural. When the video of the video ID is being played, and the comment data are received from the terminal device 3 which is viewing the comment of the thread with the thread ID, the received comment data are configured to be additionally stored. Here, since the thread ID is stored in association with the video ID, even the same video or a plurality of different threads can be identified. This comment-information storage portion 21 corresponds to the aforementioned first comment-information storage portion.

[0015]

Subsequently, a comment-information delivery portion 22 reads out the comment information stored in the comment-information storage portion 21 and

delivers it to the terminal device 3. A comment-information update management portion 23 adds the additional comment information received from the terminal device 3 via a communication portion 24 to the comment-information storage portion 21 and stores it in accordance with the video ID and the thread ID.

The communication portion 24 performs various types of communication with the terminal device 3, outputs the information transmitted from the terminal device 3 to the comment-information update management portion 23, and outputs an instruction to add the comment information and to cause it to be stored or outputs a delivery instruction of the comment information to the comment-information delivery portion 22.

[0016]

Subsequently, the terminal device 3 will be explained by reference to the drawings. FIG. 4 is a schematic block diagram for explaining a configuration of the terminal device 3.

In this drawing, a video play portion 31 transmits a delivery request for the video specified by the user of the terminal device 3 to the video delivery server 1 and receives and plays the video delivered from the video delivery server 1. A comment-information reception portion 32 receives the comment information input for the video to be played from the comment delivery server 2. A comment-information storage portion 33 stores the comment information received by the comment-information reception portion 32. This comment-information storage portion 33 corresponds to the aforementioned second comment-information storage portion.

[0017]

A display device 34 is a liquid-crystal display device, a CRT (Cathode Ray Tube), or the like and displays various types of information. A first display portion 35 displays a video played by the video play portion 31, reads out a comment to which the comment given time corresponding to the video play time of the video to be played corresponds in the comment information stored in the comment-information storage portion 33 from the comment information, and displays the read-out comment with the video by the display device 34. Moreover, the first display portion 35 has a function of overlay-displaying the comment contents on the video. The second display portion 36 displays a list of comments as a comment list on the display device 34 on the basis of the comment data stored in the comment-information storage portion 33. Here, they are displayed in an order of information of actual time for posting the comment included in the comment data.

[0018]

The information displayed on this display device 34 will be further explained. FIG. 5 is a diagram illustrating an example of the information displayed on the display device 34. In a display column 101, a URL (uniform resource locator) when this comment delivery server is accessed is displayed. In a display column 102, a video ID of the video to be played is displayed. In a display column 103, the cumulative number of view requests of the currently displayed video is displayed as the number of views. Regarding this number of views, when another user causes the video to be played (view requested), the count number of users viewing the same video is increased at that point of time, and the count number is updated and displayed. In a display column 104, a video displayed by the first display portion is displayed. A display column 105 is a region where a comment displayed by the second display portion is displayed, and here, the comment is displayed on the video displayed by the display column 104. Moreover, here, the display column 105 is set to a size larger than that of the display column 104, and overlay-displayed comments and the like are trimmed on an outer side of a screen of the video so that it can be grasped that the comment itself is not included in the video but is written by the user for the video.

[0019]

On an operation panel 106, a play button, a stop button, a rewind button, a fast-forward button, a volume adjusting button, a column displaying a play state indicating at what part in the entire video is now played, and the like are displayed, and by placing a cursor on any one of the buttons by a mouse and by clicking it, an input of the operation corresponding to the button is accepted. On a display column 107, a length of play time of the entire video and video play time of the video currently displayed in the display column 105 are displayed. In an input column 108, a name of a user who utters a comment on the video is input through an input portion 37. Here, it may be so configured that a check box is provided in the vicinity of the input column 108, whether or not a mail address is to be input is selected in response to whether or not this check box was checked, and when the check box is checked, the input column 108 is divided into two parts so that inputs of the name of the user and the mail address of the user are accepted. In an input column 109, information specifying how to display the comment is input. Regarding how to display the comments, a position where the comment is displayed on the video, a font, a letter size, a start position and an end position for the moving display, a direction for the moving display, and the like can be set as information for specifying the overlay-display, for example. It is to be noted that, here, how to display the comment may be determined in advance so that the user does not have to make an input.

[0020]

In a comment column 110, a comment is input by the user through the input portion 37. A button 111 transmits to the comment delivery server 2 a comment input in the comment column 110, the name of the user input in the input column 108, and the information on how to display the comment input in the input column 109. A display column 112 is a region in which a comment list, which is a list of the comments, is displayed. In this comment list, a number (sign 112a) indicating an utterance order given to the comment, the name of the user who input the comment (sign 112b), the comment given time when the comment was written (sign 112c), and a part of an uttered comment (sign 112d) are displayed in accordance with the information on the order of the actual posted time. It may be so configured that, in this display column 112, an input column such as a check box for specifying whether or not the display column 112 is to be displayed on the screen is provided so that the display is to be made or to be hidden in accordance with an instruction on whether or not the input in this input column may be displayed. Moreover, it may be so configured that the number of a part of the comments displayed in this display column 112 is changed in accordance with an instruction by the user. A display column 113 displays details of the comment to which the cursor is placed by the user in the comment list displayed in the display column 112. Regarding the details of the comment, the entire comment, the name of the user who uttered the comment, the mail address, and the like are displayed.

[0022]

Subsequently, returning to FIG. 4, the input portion 37 is an input device such as a mouse and a keyboard and accepts an input of various types of information from a user. A selection portion 38 accepts an input of selection of a comment input through the input portion 37 in the list of comments displayed by the second display portion 36. A play control portion 39 reads out the comment data of the comment selected by the selection portion 38 from the comment-information storage portion 33 and, from the video play time corresponding to the comment given time of the read-out comment data, causes the video to be played by the first display portion and to be displayed on the display device 34, and causes the comment contents of the read-out comment data to be displayed by the first display portion 35 on the display device 34.

[0023]

A transmission portion 40 accepts a data input of the comment contents for the video displayed by the first display portion 35 and transmits to the comment delivery server the video play time as the comment given time at the point of time when the

comment contents were input together with the comment contents. Moreover, the transmission portion 40 has a function of transmitting various types of information to the comment delivery server 2 or the video delivery server 1 in accordance with an instruction input from the input portion 37.

[0024]

Subsequently, an operation of the aforementioned comment delivery system will be explained. Here, first, an outline of the operation of the comment delivery system will be explained.

First, the terminal device 3 accesses the comment delivery server 2, receives data of a list of the videos whose comments were written at a recent time, and displays it on the display device 34. At this time, on the display device 34, a video name, a thread name, and the like are displayed as the recent video list as shown in FIG. 6, for example. Here, when a thread to be viewed is selected by the user, and the name of the thread is clicked by a mouse, the terminal device 3 transmits to the video delivery server 1 the video ID set for the video corresponding to the clicked thread, makes a request for delivery of the video, transmits to the comment delivery server 2 the thread ID and the video ID set for the clicked thread, and makes a request for transmission of comment information. Upon receipt of this, the video delivery server 1 performs streaming delivery of the video specified by the video ID to the terminal device 3 which made the delivery request. Meanwhile, the comment delivery server 2 reads out the comment information corresponding to the thread ID and the video ID from the comment-information storage portion 21 and delivers it to the terminal device 3 which made the delivery request.

[0025]

The terminal device 3 receives the video delivered from the video delivery server 1 and displays it on the display device 34 and displays the comment contents on the video on the basis of the comment information delivered from the comment delivery server 2. Here, in accordance with the video play time from start of playing of the video, the comment contents for which the comment given time matching the video play time is set are sequentially displayed on the video.

E [0026]

Subsequently, the operations of the comment delivery server 2 and the terminal device 3 will be sequentially explained.

First, the operation of the comment delivery server 2 will be explained by using a flowchart in FIG. 7. A communication portion 24 of the comment delivery server 2 detects whether or not the delivery request for the comment information has been

received from the terminal device 3 (Step S101). When the delivery request for the comment information has been received, the communication portion 24 gives a delivery instruction of the comment information to the comment-information delivery portion 22. Here, the video ID and the thread ID of the comment information included in the delivery request are output to the comment-information delivery portion 22. The comment-information delivery portion 22 reads out the comment information corresponding to the video ID and the thread ID output from the communication portion 24 from the comment-information storage portion 21 (Step S102) and delivers the read-out comment information to the terminal device 3 which made the delivery request (Step S103). Here, all pieces of the comment information associated with the video ID and the thread ID are transmitted altogether.

[0027]

On the other hand, when the comment data transmitted from the terminal device 3, not the delivery request for the comment information, are received (Step S104), the communication portion 24 outputs the comment data to the comment-information update management portion 23. The comment-information update management portion 23 refers to the comment-information storage portion 21, identifies the comment information on the basis of the video ID and the thread ID included in the comment data output from the communication portion 24, and additionally stores the received comment data with respect to the identified comment information (Step S105). When it is additionally stored, the comment-information delivery portion 22 identifies the terminal device 3, which is a terminal device 3 playing the video with the video ID concerned and viewing the comment of the thread ID concerned together with the video with the video ID concerned, and delivers the additionally stored comment data to each of the identified terminal devices 3 (Step S106). On the other hand, when it is not the delivery request for the comment information or comment data transmitted from the terminal device 3 has not been received, the processing proceeds to Step S101. Here, as a method of identifying the terminal device 3 which is playing the video with the same video ID and viewing the comment of the thread with the thread ID concerned, there can be such a method that a session is established in advance with the terminal device 3 which accessed the comment delivery server 2, and the terminal device 3 whose session is valid can be identified as that viewing the video, for example.

[0028]

Subsequently, an operation of the terminal device 3 will be explained by reference to the drawings. FIG. 8 is a flowchart for explaining the operation of the

terminal device 3.

When an instruction to play the video is input from the user (Step S201), the input portion 37 of the terminal device 3 transmits to the video delivery server 1 the video ID of the instructed video by the transmission portion 40, makes a delivery request for the video, and transmits to the comment delivery server 2 the delivery request for the comment information. Then, when the comment-information reception portion 32 receives the comment information delivered from the comment delivery server 2 (Step S202), it causes the comment information to be stored in the comment-information storage portion 33.

[0029]

When the comment information is received and stored in the comment-information storage portion 33, the video play portion 31 receives the video delivered from the video delivery server 1, plays the received video, and displays it by the first display portion 35 on the display device 34 (Step S203). When the video play is started, the first display portion 35 determines whether or not there is comment data to which the comment given time matching the video play time is set on the basis of the current video play time by referring to the comment-information storage portion 33 (Step S204). When there is the comment data to which the comment given time matching the video play time is set (Step S205 - YES), the first display portion 35 calculates a display position of the comment data (Step S206). In accordance with the calculated display position, the display control of the comment on the video is executed (Step S206).

On the other hand, the video play portion 31 determines whether or not the play has ended and if the play has ended, the processing is finished, while if the play has not ended, the processing proceeds to Step S204.

[0030]

On the other hand, in Step S205, if there is no comment to be displayed, the transmission portion 40 detects whether or not a comment has been input from the input portion 37 (Step S209). If there is an input of a comment, play time (video play time) indicated by a player of software which plays the video at a point of time when the comment was input (point of time when a "write" button (sign 111) was clicked) is read out, the video play time is made the comment given time, and the video ID of the video being played, the thread ID of the comment being viewed, the current actual time information (information of the current time), the user name of the user of the terminal device 3, the input comment contents, and the comment display method are associated and additionally stored in the comment list as the comment

information in the comment-information storage portion 33 (Step S210). The transmission portion 40 transmits the additionally stored comment information to the comment delivery server 2 (Step S211), and the processing proceeds to Step S208.

[0031]

In Step S209, when it is not a comment input, the terminal device 3 detects whether or not the comment data have been received by the comment-information reception portion 32 (Step S212). When the comment data is received, the comment-information reception portion 32 additionally stores the received comment data in the comment-information storage portion 33 and the processing proceeds to Step S208.

[0032]

On the other hand, in Step S212, when it is not the reception of the comment data, the selection portion 38 of the terminal device 3 detects whether or not an input of a comment selection operation was performed from the input portion 37 (Step S214). When there is an input of the comment selection operation, the selection portion 38 outputs comment contents of the selected comment data to the play control portion 39. Upon receipt of this output, the play control portion 39 reads out the comment given time stored in association with the selected comment data by referring to the comment-information storage portion 33 and rewinds or fast-forwards the video play position in accordance with the video play time according to the read-out comment given time so that the play is performed from the video play time matching the comment given time stored in association with the comment data (Step S215), and causes the comment contents of the comment given time to be displayed, and the processing proceeds to Step S208.

F [0033]

Subsequently, a case where a comment is displayed on the screen will be explained by reference to drawings. Here, in the "List of recent comments" in FIG. 5, a case in which a thread of "Share how you like the food" associated with the video of "Rice omelet by famous chef" was selected will be explained. When this thread is selected, the video of "Rice omelet by famous chef" is played in a region of the display column 104 in FIG. 5, for example. The comment is sequentially displayed on the video in accordance with the video play time. In FIG. 5, the screen in a case where the video play time is 9 seconds is shown, and here, a comment by a user F of "Looks delicious!" with the comment given time of 9 seconds is movingly displayed from a right side to a left side of the screen (sign 115). When the video play proceeds, and the video play time reaches 13 seconds, a screen as shown in FIG. 9 is displayed. Here, the comment with the comment given time of 9 seconds of "Looks

delicious!" has moved to the left side on the screen, and only a part "..cious!" is displayed in a trimmed state outside the display column 104 and inside the display column 109 (sign 200). Moreover, a comment by a user Z of "Work by a famous chef is good." with the comment given time of 10 seconds is displayed at a position below the comment by the user B (sign 201), and a comment by a user E of "Where does this egg come from?" with the comment given time of 12 seconds is displayed at a position on a lower side of the screen (sign 202). As described above, the comments are sequentially displayed.

[0034]

As described above, the explanation was made with attention given to an operation of only one terminal device 3, but actually, comments can be exchanged among users who are viewing the same video and in the same thread as follows. Here, explanation will be made by reference to FIG. 10.

For example, when a video is played, and a comment that "Where does this egg come from?" is additionally input as an utterance by a user E (sign a) at a point of time when the video play time is 12 seconds, the comment information of the additionally input comment is delivered to the terminal device 3 which views the same video in the same thread through the comment delivery server 2.

[0035]

After the delivery, when the same video is played by another user C (sign b), the comment information including the added comments is delivered to the terminal device 3 of the user C. And at a point of time when the video play time is 12 seconds, a comment by the user E that "Where does this egg come from?" is displayed. When the user C who viewed this comment inputs, as a reply thereto, a comment that "It seems from XX prefecture." and transmits it to the comment delivery server 2 (sign c) at a point of time when the video play time of the user C is 15 seconds (at a point of time of 100 seconds in the video play time of the user E, for example), the transmitted comment is delivered to the terminal device 3 of the user E. At this time, at a point of time of 100 seconds of the video play time, for example, a part of the user C's comment is displayed in accordance with an order of actual time in a list of comments of the user E (sign d). For example, it is displayed at the bottom (or at the top) of the comment list as the latest comment. Then, when a part of the comment is clicked by the user E who viewed this comment list, the video being played returns to the point of time of 150 seconds of the video play time and is played, and a comment of "It seems from XX prefecture." is displayed on the screen of the user E's terminal device 3 (sign e). As a result, the user E can enjoy it as if a reply was made to

his/her comment. By repeating such exchange of comments, even users viewing the video at different timings can promote communication through comments. As described above, the comments are managed in an order of comment input in actual time and are displayed as a comment list so that even users with video play timings not matching one another can exchange comments on a real-time basis, whereby the communication can be promoted.

[0036]

Moreover, when the comment as above and the video play from a point of time when the comment was written are repeated, a difference in video play timings gets close to 0 among the users, and comments can be exchanged while the same video is viewed substantially at the same timing.

[0037]

Here, the case in which a plurality of the users are viewing the same video was explained, but in such a situation that no user is viewing a certain video, if a user plays the video, the comment information having been stored until then is delivered to the terminal device 3 from the comment delivery server 2 and is sequentially played in accordance with a timing of the video play. As a result, even in a situation where no other users are viewing, the comments made in the past can be viewed sequentially in accordance with the video play time of the video. Here, comments can also be written.

[0038]

It is to be noted that, in the aforementioned embodiment, the case in which, when a comment is added to the comment list, and the added comment is clicked by a user, it is played from the video play time matching the comment given time set for the comment, and the comment is displayed has been explained, but if the added comment is not clicked, the comment is displayed on the video at a point of time when the video play time has reached the comment given time set for the added comment.

Moreover, even if a comment was written by another user in the video play time of the video being viewed by himself/herself, it is displayed in the comment list in the order of actual time and thus, by clicking the added comment, the comment can be viewed by rewinding or fast-forwarding to a point of time when the comment was written. Moreover, here, when the video play time is rewound, the comments having been written until then, including the newly written additional comments, are sequentially displayed correspondingly to the comment given time in accordance with the video play time.

[0039]

Moreover, here, rewinding and fast-forwarding of the play time can be performed by moving a slide bar of the play-state display column of the operation panel 106, but with this operation, the video is rewound or fast-forwarded, which results in such a state that the comment desired to be viewed disappears soon from the screen and becomes hard to find, but by selecting it from the comment list, viewing is made possible from a scene desired to be viewed.

Moreover, in the aforementioned embodiment, the case in which the comment data delivered from the comment delivery server 2 are received by the terminal device 3 and are reflected on the screen to be displayed was explained, but it may be so configured that a comment input by the user on his/her own terminal device 3 is immediately (before it is transmitted to the comment delivery server 2 and is received on the comment delivery server 2 side) displayed on a screen at a point of time when the comment is input. Specifically, when a comment is input in Step S209 in FIG. 8, the input comment is displayed on his/her own terminal device 3, the processing proceeds to Step S210 at which the input comment is additionally stored in the comment list and then, it is transmitted to the comment delivery server 2.

G [0040]

Subsequently, display of a comment will be explained.

For the input comment, its position for display such as an upper stage, a middle stage, a lower stage, and the like on the screen and display time for moving display of the comment can be set by inputting display time for the moving display of the comment in the input column 109. Moreover, if the display time is to be set, it can be so configured that the comment is displayed on the upper stage of the screen for a certain period of time (4 seconds, for example) and then erased, for example. Moreover, the moving speed can be adjusted by specifying time from when it appears in the display region on the screen until when it moves to an outside of the region and then, disappears (4 seconds, for example). Furthermore, in a case where a large number of comments are intensively input at a certain video play time or the like, if they overlap on a line at the same height, when they are displayed, they can be displayed at a changed height on the screen or moving-displayed. Furthermore, if the moving speed is different depending on a length of a character string of the comment due to the setting of the display time, the subsequent comment might catch up before the comment finishes moving and thus, in such a case, too, it may be so configured that the subsequent comment is displayed on the line at the different height or moving-displayed.

[0043]

It is to be noted in the aforementioned embodiment, the case where the video delivery server 1 and the comment delivery server 2 are different servers was explained, but it may be so configured that the functions of the video delivery server 1 and the comment delivery server 2 are realized by the same server.

Moreover, in the aforementioned embodiment, when the comment and the video are viewed in this service, the case where the comment delivery server 2 is accessed, the data of the recent comment list are received, and the video and the thread are selected from the recent comment list displayed on the display device 34 was explained, but it may be so configured that the thread for this video is specified, and a URL with which the comment and the video can be viewed is created and made public on the Internet. Specifically, a URL including the video ID and the thread ID and from which the video can be played and the comment information of the thread can be received by being clicked may be written on a bulletin board on a blog or a site of the Internet so that other users can click. Moreover, such URL may be set to a thumbnail image or the like so as to be clicked.

H [0063]

As described above, the embodiment of the present invention has been described in detail with reference to the drawings, but specific configuration is not limited to this embodiment but includes designs and the like within a range not departing from the gist of the present invention.

(2) According to the described matters in the aforementioned (1) and the description in the scope of claims according to each of the Inventions, the Description is found to have a disclosure as follows regarding each of the Inventions.

A. Conventionally, there is such a system that displays comments made by a user on a video such as a broadcasted TV program together with the video, but in this system, the comment is simply registered correspondingly to the video time (video play time) and is played together with the video and thus, users cannot exchange comments on a real-time basis, which is not sufficiently interesting as communication ([0002], [0004]).

B. The "present invention" has an object to provide a comment delivery system which enables sharing of the same video and promoting of communication among users by using a comment ([0005]).

The comment delivery system of the "present invention" employs, in order to solve the aforementioned problem, such a configuration including a server and a plurality of terminal devices connected thereto via a network and characterized in that

[i] the server receives a comment given for the video by a user who is viewing the video transmitted from the server and transmits, to the terminal device, comment information including a comment given time, which is a video play time indicating an elapsed time of the video with a beginning of the video as a reference and corresponding to a point of time when the comment was given; [ii] the terminal device receives the video and the comment information related to the video from the server and overlay-displays the comment on the video in the comment given time corresponding to the video play time of the video, and moreover, [iii] the system has a determination portion which determines whether or not a display position of the comment displayed on the terminal device overlaps a display position of another comment and a display-position control portion which displays the comments at positions where each of the comments does not overlap each other, when the determination portion determines that the comment display positions overlap ([0006], [0007], [0018]).

According to the "present invention", such an effect is exerted that, in the input comment information, the comment to which the comment given time corresponding to the video play time of the video to be played corresponds is read out from the comment information, and the read-out comment contents can be displayed with the video, whereby entertainment in the communication using the comments can be improved ([0011]).

2 Issue 1 (governing law)

Other than the correction as follows, it is as described in No. 4, 2 in "Facts and Reasons" in the judgment in prior instance, which will be cited.

(1) The phrase "580" on page 74, line 17 in the judgment in prior instance shall be altered to "No. 580", and a part from "of this case" on the same page, line 18 to the end of line 20 shall be altered to "regarding the claims for injunction of delivery of each of the Defendant's files under Article 100, paragraphs (1) and (2) of the Patent Act by the Appellant against the Appellees and for erasing of the program for the Defendant's Server and removal of each of the Defendant's Servers, the laws and orders of our country, which is a country where the Patent Right was registered, shall be the governing law."

(2) Subsequent to the word "judgment" on page 74, line 25 in the judgment in prior instance, "reference" shall be added, and "Japanese Patent" on page 75, line 2 shall be altered to "Patent Right in our country", "Japan" on the same page, line 4 to "our country", and "the pertaining governing law is the Japanese law." on the same page, line 5 to "for that, the laws in our country shall be the governing law.".

3 Issue 2 (Whether or not each of Defendant's Systems belongs to the technical scope of Invention 1) and Issue 3 (Whether or not each of Defendant's Systems belongs to the technical scope of Invention 2)

Other than the alternation of the "Invention" to "each of the Inventions", "Basic facts (6)" to "Basic facts (4)", and "Defendant's System" to "each of Defendant's Systems", it is as described in No. 4, 3 and 4 in "Facts and Reasons" in the judgment in prior instance, which shall be cited.

4 Issue 4 (Presence/absence of "production" of each of Defendant's Systems by the Appellees)

(1) Found facts

Other than the correction as follows, it is as described in No. 4, 5(1) in "Facts and Reasons" in the judgment in prior instance, which shall be cited.

A. The part on page 104, lines 19 to 22 in the judgment in prior instance shall be altered as follows.

"According to the Basic Facts in No. 2, 2 as well as each of the pieces of evidence and the entire import of the oral argument which will be described later, the following facts are found with regard to the management of each of Defendant's Services and the operation of each of Defendant's Systems and the like.

A. Management situation of each of Defendant's Services by the Appellee FC2"

B. The phrase "Defendant's Service 1 is" on page 105, line 4 in the judgment in prior instance shall be altered to "in Defendant's Service 1", "Defendant's Service 3 is" on the same page, line 25 to "in Defendant's Service 3, and "which is" on the same page, the last line to "is prepared".

C. The phrase "Defendant's Service" on page 106, line 3 in the judgment in prior instance shall be altered to "each of Defendant's Services", "3(3)B(A)a" on the same page, line 14 to "3(2)A(B)a", and the part from the same page, line 22 to page 111, line 24 shall be altered as follows.

"C Process in which a video with a comment is displayed on the user terminal existing in Japan (hereinafter, referred to as the "user terminal in the country") in Defendant's Service 1

In Defendant's Service 1, the process in which the video with a comment is displayed on the user terminal in the country is classified according to the FLASH version and the HTML 5 version as follows (Exhibits Ko 5 and 6, the entire import of the oral argument).

(A) FLASH version of Defendant's Service 1 (see Attachment 8-2)

[i] The user installs Adobe Flash Player as a plugin (expanded function) of a browser in the user terminal (user terminal in the country, hereinafter, the same applies to this clause) in advance.

[ii] The user specifies a webpage of Defendant's Service 1 for causing the desired video to be displayed on the browser of the user terminal.

[iii] In response to [ii], the web server of Appellee FC2 transmits the HTML file and the SWF file of the aforementioned webpage to the user terminal.

[iv] The user terminal receives the aforementioned HTML file and SWF file and stores them in a cache of the browser.

FLASH loads the SWF file in the cache of the browser.

[v] The user presses the play button of the video in the webpage displayed on the browser of the user terminal.

[vi] In the SWF file loaded by FLASH in [iv], an order to demand the browser to make a request for acquisition of information related to the video and the comment is stored, FLASH instructs the browser to acquire the video file and the comment file in accordance with the order, the browser makes a request for the video file to the video delivery server of the Appellee FC2 in accordance with the instruction, and makes a request for the comment file to the comment delivery server of Appellee FC2.

[vii] In response to the request in [vi], the video delivery server of Appellee FC2 transmits the video file, and the comment delivery server of Appellee FC2 transmits the comment file to the user terminal, respectively.

[viii] The user terminal receives the video file and the comment file in [vii].

As a result, the user terminal causes the comment to be overlay-displayed on the video in the browser on the basis of the received video file and comment file.

At the display, calculation for determining whether the two comments overlap or not and, when it is determined that they overlap, specification of display positions which do not overlap are executed on the basis of a condition specified by the SWF file.

(B) HTML 5 version of Defendant's Service 1 (see Attachment 8-3)

[i] The user specifies the webpage of Defendant's Service 1 in order to cause the desired video to be displayed on the browser of the user terminal (the user terminal in the country, hereinafter, the same applies to this clause).

[ii] In response to [i], the web server of Appellee FC2 transmits the HTML file and the JS file of the aforementioned webpage to the user terminal.

[iii] The user terminal receives the aforementioned HTML file and JS file and stores them in the cache of the browser.

[iv] In the JS file stored in [iii], an order to demand the browser to make a request for acquisition of information related to the video and the comment is stored, the browser makes a request for the video file to the video delivery server of Appellee FC2 and makes a request for the comment file to the comment delivery server of Appellee FC2 in accordance with the order.

[v] In response to the request in [iv], the video delivery server of Appellee FC2 transmits the video file, and the comment delivery server of Appellee FC2 transmits the comment file to the user terminal, respectively.

[vi] The user terminal receives the video file and the comment file in [v].

[vii] The user presses the play button of the video in the webpage displayed on the browser of the user terminal.

As a result, the user terminal causes the comment to be overlay-displayed on the video in the browser on the basis of the received video file and comment file.

At the display, calculation for determining whether the two comments overlap or not and, when it is determined that they overlap, specification of display positions which do not overlap are executed on the basis of a condition specified by the JS file.

D. Process in which the video with a comment is displayed on the user terminal in the country in Defendant's Services 2 and 3

In Defendant's Services 2 and 3, the process in which the video with a comment is displayed on the user terminal in the country is classified according to the FLASH version and the HTML 5 version as follows (Exhibits Ko 5 and 6, the entire import of the oral argument).

It is to be noted that Defendant's Service 1 differs from Defendant's Services 2 and 3 in a point that, in Defendant's Service 1, the video file is transmitted from the video delivery server of Appellee FC2 to the user terminal, whereas in Defendant's Services 2 and 3, the video file is transmitted from the video delivery server of another video delivery service to the user terminal.

(A) FLASH version of Defendant's Services 2 and 3

[i] The user installs Adobe Flash Player as a plugin (expanded function) of a browser in the user terminal (user terminal in the country, hereinafter, the same applies to this clause) in advance.

[ii] The user specifies a webpage of Defendant's Service 2 or 3, causing the

desired video (the video of another video delivery service registered in Defendant's Service 2 or 3) to be displayed on the browser of the user terminal.

[iii] In response to [ii], the web server of Appellee FC2 transmits the HTML file and the SWF file of the aforementioned webpage to the user terminal.

[iv] The user terminal receives the aforementioned HTML file and SWF file and stores them in a cache of the browser.

FLASH loads the SWF file in the cache of the browser.

[v] In the SWF file loaded by FLASH in [iv], an order to demand the browser to make a request for acquisition of information related to the video and the comment is stored, FLASH instructs the browser to acquire the video file and the comment file in accordance with the order, and the browser makes a request for the comment file to the comment delivery server of Appellee FC2 and makes a request for the video file to the video delivery server of another video delivery service in accordance with the instruction.

[vi] In response to the request in [v], the comment delivery server of Appellee FC2 transmits the comment file, and the video delivery server of another video delivery service transmits the video file to the user terminal, respectively.

[vii] The user terminal receives the video file and the comment file in [vi].

[viii] The user presses the play button of the video in the webpage displayed on the browser of the user terminal.

As a result, the user terminal causes the comment to be overlay-displayed on the video in the browser on the basis of the received video file and comment file.

At the display, calculation for determining whether the two comments overlap or not, and when it is determined that they overlap, specification of display positions which do not overlap are executed on the basis of a condition specified by the SWF file.

(B) HTML 5 version of Defendant's Services 2 and 3

[i] The user specifies the webpage of Defendant's Service 2 or 3 in order to cause the desired video (the video of another video delivery service registered in Defendant's Service 2 or 3) to be displayed on the browser of the user terminal (the user terminal in the country, hereinafter, the same applies to this clause).

[ii] In response to [i], the web server of the Appellee FC2 transmits the HTML file and the JS file of the aforementioned webpage to the user terminal.

[iii] The user terminal receives the aforementioned HTML file and JS file and stores them in the cache of the browser.

[iv] In the JS file stored in [iii], an order to demand the browser to make a request for acquisition of information related to the video and the comment is stored, and the browser makes a request for the comment file to the comment delivery server of Appellee FC2 and makes a request for the video file to the video delivery server of another video delivery service in accordance with the order.

[v] In response to the request in [iv], the comment delivery server of Appellee FC2 transmits the comment file, and the video delivery server of another video delivery service transmits the video file to the user terminal, respectively.

[vi] The user terminal receives the video file and the comment file in [v].

[vii] The user presses the play button of the video in the webpage displayed on the browser of the user terminal.

As a result, the user terminal causes the comment to be overlay-displayed on the video in the browser on the basis of the received video file and comment file.

At the display, calculation for determining whether the two comments overlap or not and, when it is determined that they overlap, specification of display positions which do not overlap are executed on the basis of a condition specified by the JS file.

D. All instances of "Defendant's Service" on page 111, line 25, from the same page, the last line to page 112, line 1 in the judgment in prior instance shall be altered to "each of Defendant's Services".

(2) Presence/absence of "production" of each of Defendant's Systems by Appellee FC2

A. Whether or not the act of Appellee FC2 in the FLASH version of Defendant's Service 1 is applicable to the "production" (Article 2, paragraph (3), item (i) of the Patent Act) as the act or working of Invention 1

(A) Introduction

Invention 1 is an invention of a comment delivery system including a plurality of terminal devices connected to a server via a network, and the type of the invention is an invention of a product, and the "production" (Article 2, paragraph (3), item (i) of the Patent Act) of the product as an act of working is interpreted to refer to an act of newly creating a product belonging to the technical scope of the invention.

As in Invention 1, the "production" in the invention of the system in which the server and the terminal are connected via a network such as the Internet and which exerts an integrated function as a whole (hereinafter, referred to as a "network-type system") is interpreted to refer to such an act of newly creating the system in which a

plurality of elements, each of which does not singularly satisfy all the constituent features of the invention, are connected via the network so as to have an organic relationship with one another and to have a function of satisfying all the constituent features of the Invention as a whole.

Thus, in determining whether or not the act of Appellee FC2 in the FLASH version of Defendant's Service 1 falls under the "production" (Article 2, paragraph (3), item (i) of the Patent Act) as the act of working of the Invention 1, first, in the FLASH version of Defendant's Service 1, what is the act of newly creating Defendant's System 1 shall be examined, and on the basis of this, whether or not the act falls under the "production" in Article 2, paragraph (3), item (i) of the Patent Act and what the subject of the act is shall be sequentially examined.

(B) Act of newly creating Defendant's System 1 in the FLASH version of Defendant's Service 1

a. In the FLASH version of Defendant's Service 1, as in No. 4, 5(1)C(A) in the judgment in prior instance cited after correction, in response to the user specifying the webpage of Defendant's Service 1 for causing the desired video to be displayed on the browser of the user terminal in the country ([ii]), the web server of the Appellee FC2 transmits the HTML file and the SWF file of the aforementioned webpage to the user terminal ([iii]), these files received by the user terminal are stored in a cache of the browser, and FLASH of the user terminal loads the SWF file in the cache of the browser ([iv]); subsequently, when the user presses the play button of the video in the webpage displayed on the browser in the user terminal ([v]), in accordance with the order stored in the aforementioned SWF file, FLASH instructs the browser to acquire the video file and the comment file, and the browser makes a request for the video file to the video delivery server of Appellee FC2 and a request for the comment file to the comment delivery server of Appellee FC2 in accordance with the order ([vi]), and in response to the aforementioned request, the video delivery server of the Appellee FC2 transmits the video file, and the comment delivery server of the Appellee FC2 transmits the comment file to the user terminal, respectively ([vii]), and the user terminal receives the video file and the comment file ([viii]). As a result, the user terminal can cause the comment to be overlay-displayed on the video in the browser on the basis of the received video file and comment file. As described above, at a point of time when the user terminal received the video file and the comment file ([viii]), the video delivery server and the comment delivery server of Appellee FC2 and the user terminal are connected via the network using the Internet, and the overlay-display of the comment on the video is made possible in the browser of the

user terminal and thus, it can be considered that Defendant's System 1 including the function satisfying all the constituent features of Invention 1 is newly created at the point of time when the user terminal received each of the aforementioned files (hereinafter, the aforementioned act of newly creating Defendant's System 1 shall be referred to as "Production 1-1").

b. On the other hand, the Appellees assert that: [i] the act of Appellee FC2 related to the "production" of each of Defendant's Systems is only manufacture of a program corresponding to each of Defendant's Systems and upload of the program to the server, both of which are completed in the U.S., and after that, an act of use including the upload of the comments and the videos by the users exists until the comment and the video are displayed on the user terminal, but the display device on the user terminal is a general-purpose browser, and the act of use has no relation with the featured part of each of the Inventions; [ii] in Defendant's System 1, the user terminal only passively displays the video and the comment in accordance with the description in the program uploaded by Appellee FC2 to the server, and the contents of the comments uploaded by a third party to the server of Appellee FC2 and the video uploaded to the server of Appellee FC2 (the video uploaded to a third party's server in Defendant's Systems 2 and 3). The video and the comment displayed on the user terminal is only a result of use of an already produced device (each of Defendant's Systems) by a user using the general-purpose browser of the user terminal, and the "act" to "newly" "create" the "product" does not exist there; [iii] according to the point described in Exhibit Otsu 311 that "in general, a system related to communication is accompanied by transmission/reception of data and thus, the interpretation that even repetition of production, disposal of the system related to the communication for the first unit, the second unit, the third unit, and the n-th unit is included in the 'production' every time at timing of transmission/reception of the data means that the system is re-produced at each timing of the data transmission/reception in the system, which cannot be accepted", it should be considered that the act of Appellee FC2 does not fall under the "production" of Invention 1.

However, regarding [i], it should be considered that Defendant's System 1 including the function which satisfies all the constituent features of Invention 1 is not completed only by the manufacture of the program corresponding to Defendant's System 1 and the upload of the program to the server by the Appellee FC2 as described in the aforementioned a.

Regarding [ii], as described in the aforementioned a, the video delivery server and the comment delivery server of the Appellee FC2 are connected to the user

terminal via the network using the Internet, and Defendant's System 1 including the function satisfying all the constituent features of Invention 1 is newly created by the reception by the user terminal of a required file, and if the user terminal does not receive the aforementioned file, Defendant's System 1 cannot play the role.

Regarding [iii], as described above, Defendant's System 1 is newly created when the video delivery server and the comment delivery server of Appellee FC2 are connected to the user terminal via the network using the Internet, and the user terminal receives a required file, and it exists until the file stored in the cache of the browser of the user terminal is disposed of. Moreover, even if the creation of Defendant's System is repeated each time the aforementioned file is received, it cannot be considered not to fall under the "production" for that reason.

Therefore, the aforementioned assertion by the Appellees is groundless.

(C) Whether or not Production 1-1 falls under the "production" in Article 2, paragraph (3), item (i) of the Patent Act

a. The principle of territoriality for the patent right means that the patent right in each country is prescribed by laws in the country concerned for the establishment, transfer, effects, and the like thereof, and the effects of the patent right are approved only in the territory of the country concerned (see Supreme Court Judgment 1995 (O) No. 1988 rendered by Third Petty Bench on July 1, 1997 / Minshu Vol. 51, No. 6, page 2299, Supreme Court Judgment 2000 (Ju) No. 580 rendered by First Petty Bench on September 26, 2002 / Minshu Vol. 56, No. 7, page 1551), and it is interpreted that the aforementioned principle is also applicable in the Patent Act of our country.

As described in the aforementioned (B)a, Production 1-1 is performed such that the web server of the Appellee FC2 transmits the HTML file and the SWF file of the webpage of Defendant's Service 1 for causing the desired video to be displayed to the user terminal in the country, the user terminal receives them, the video delivery server of the Appellee FC2 transmits the video file, and the comment delivery server of Appellee FC2 transmits the comment file to the user terminal, respectively, and the user terminal receives them, and the aforementioned web server, the video delivery server, and the comment delivery server are all present in the U.S., while the user terminal exists in Japan. That is, in Production 1-1, the transmission of each of the aforementioned files from the server existing in the U.S. to the user terminal in the country and the reception of them by the user terminal are performed across the U.S. and our country. The newly created Defendant's System 1 exists across the U.S. and our country. Thus, from the principle of territoriality, whether or not Production 1-1 falls under the "production" in Article 2, paragraph (3), item (i) of the Patent Act in

our country is relevant.

b. In the network-type system, installation of a server outside Japan (hereinafter, referred to simply as "outside the country") is generally performed at present, and since the country in which the server exists does not constitute an obstacle in use of the network-type system, even if the server constituting the network-type system, which is an alleged infringement article, exists outside the country, if the terminal constituting the system exists in Japan (hereinafter, referred to as "in the country"), the system can be used in the country by using it, and the use can influence economic profits that the patentee can obtain by working the invention in the country.

Then, regarding the invention of the network-type system, by strictly interpreting, without any exception, the principle of territoriality and by interpreting that the invention does not fall under the "working" in Article 2, paragraph (3) of the Patent Act in our country on the ground that the server, which is a part of the elements constituting the system, exists outside the country means that the patent can be easily avoided only by installing the server outside the country, and the patent right according to the invention of the system cannot be sufficiently protected, which is not reasonable.

On the other hand, the interpretation without any exception that the invention falls under the "working" in Article 2, paragraph (3) of the Patent Act on the ground that the terminal, which is a part of the elements constituting the system, exists in the country becomes excessive protection for the patent right and could incur a trouble in economic activities, which also is not reasonable.

On the basis of the above, from the viewpoint of appropriate protection of the patent right pertaining to the invention of the network-type system, regarding whether or not the act of newly creating the network-type system falls under the "production" in Article 2, paragraph (3), item (i) of the Patent Act, even if the server, which is a part of the elements constituting the system exists outside the country, by comprehensively considering a specific mode of the act, a function/role performed in the invention by those elements existing in the country among the elements constituting the system, a place where the effect of the invention can be obtained by use of the system, an influence that the use thereof exerts on the economic profits of the patentee of the invention and the like, it is reasonable to interpret that, when the act is found to be performed in the territory of our country, it falls under the "production" in Article 2, paragraph (3), item (i) of the Patent Act.

By examining this for Production 1-1, the specific mode of Production 1-1 is

performed by transmission of each of the files from the server existing in the U.S. to the user terminal in the country and by reception of them by the user terminal in the country, in which the transmission and the reception (transmission/reception) are performed as a unit, and Defendant's System 1 is completed by the reception of each of the files by the user terminal in the country and thus, it can be conceived that the aforementioned transmission/reception is performed in the country.

Subsequently, Defendant's System 1 is constituted by the server of Appellee FC2 existing in the U.S. and the user terminal existing in the country, and the aforementioned user terminal existing in the country performs a function of the determining portion of constituent feature 1F and the function of the display-position control portion of constituent feature 1G required as major functions of Invention 1 to display comments to be displayed on the video so as not to overlap each other.

Moreover, Defendant's System 1 can be used from inside the country via the aforementioned user terminal, and the effect of Invention 1, which is improvement of entertainment in communication using the comment, is exerted in the country, and the use thereof in the country can influence the economic profits obtained by Appellant by using the system according to Invention 1 in the country.

By comprehensively considering the aforementioned circumstances, Production 1-1 can be considered to be performed in the territory of our country and thus, it is found to fall under the "production" under Article 2, paragraph (3), item (i) of the Patent Act in the relationship with Invention 1.

c. On the other hand, the Appellees assert that: [i] according to the principle of territoriality, "the effect of the patent is approved only in a territory of the country concerned" and thus, from the viewpoint that it is natural consequence that the act of creation overseas (outside the country) does not fall under the "production" in Article 2, paragraph (3), item (i) of the Patent Act and that, according to the all-elements Rule, the working of the patent invention is to work all the elements configuring the patent invention concerned, so that if even a part of a product is created overseas, it should be considered not to fall under the "production" in Article 2, paragraph (3), item (i) of the Patent Act; [ii] just because the possibility of patent workaround is a problem, it is a leap of logic to consider that if only a part of a product satisfying the constituent features is created in the country, it falls under the "production" or rather, the interpretation that, if a part of a product satisfying the constituent features is created in the country, the effects of the Patent Act in our country immediately take effect has more problems; and [iii] in the court examples in our country, the principle of territoriality has been strictly conformed to by the Supreme Court Judgment of the

Card Reader Case (judgment rendered by First Petty Bench on September 26, 2002 as described above) and the like, and an adverse effect caused by making an exception thereto is clearly anticipated and thus, even if an exception to the principle of territoriality is to be made, it should be dealt with by a legislative process.

However, regarding [i], with respect to the invention of the network-type system, on whether or not the act of newly creating a system to be an alleged infringement article falls under the "production" in Article 2, paragraph (3), item (i) of the Patent Act, even if the server, which is a part of the elements configuring the system concerned, exists outside the country, when the act concerned can be regarded as having been performed in the territory of our country, it should be interpreted to fall under the "production" in Article 2, paragraph (3), item (i) of the Patent Act by comprehensively considering the circumstances taught in the aforementioned b and thus, the assertion in [i] cannot be accepted.

Regarding [ii], with respect to the aforementioned determination on whether or not it falls under the "production" in Article 2, paragraph (3), item (i) of the Patent Act, it should not be considered such that, even if a part of a product satisfying the constituent features is created in the country, the effects of the Patent Act in our country immediately take effect and thus, the assertion in [ii] lacks the premise thereof.

Regarding [iii], in the light that the principle of territoriality for the patent right means that the patent right in each country is prescribed by laws in the country concerned for the establishment, transfer, effects, and the like thereof, and the effects of the patent right are approved only in the territory of the country concerned, it should be considered that the interpretation, when the act concerned can be found to be performed in the territory of our country as described above, it falls under the "production" in Article 2, paragraph (3), item (i) of the Patent Act does not violate the principle of territoriality. In addition, the Supreme Court Judgment of the Card Reader Case cited by the Appellees is not considered to even teach that, in order to fall under the "production" as a natural consequence from the principle of territoriality, the act of newly creating a product satisfying all the constituent features of the Patent Invention is required to be completed in the territory of our country. Moreover, in the treaties concluded by our country and the Patent Act and other laws and orders, as well, there is no such prescription as the contents of the principle of territoriality that, in order to fall under the "production", the act of newly creating the product satisfying all the constituent features of the patent invention is required to be completed in the territory of our country and thus, the assertion in [iii] cannot be accepted.

Therefore, the aforementioned assertion by the Appellees is groundless.

(D) Subject that "produced" Defendant's System 1 (according to FLASH version of Defendant's Service 1)

a. Defendant's System 1 (according to the FLASH version of Defendant's Service 1) is newly created as the result of, as in the aforementioned (B) a, the web server of the Appellee FC2 transmitting the HTML file and the SWF file of the webpage of the Defendant's System 1 for causing the desired video to be displayed to the user terminal, the user terminal receiving them, in response to the request from the browser in accordance with the order by the aforementioned SWF file stored in the cache of the browser of the user terminal, the video delivery server of Appellee FC2 transmitting the video file, and the comment delivery server of Appellee FC2 transmitting the comment file to the user terminal, respectively, and the user terminal receiving them. In light of Appellee FC2 installing and managing the aforementioned web server, the video delivery server, and the comment delivery server, and these servers transmitting the HTML file and the SWF file, the video file, as well as the comment file to the user terminal, and the reception of each of the files by the user terminal being performed automatically without intervention of a separate operation by the user but in accordance with the description in the program uploaded by Appellee FC2 to the server, the subject that "produced" Defendant's System 1 should be considered to be Appellee FC2.

With this regard, in the "production" of Defendant's System 1, as in the aforementioned (B) a, it is required that the user specifies the webpage of Defendant's Service 1 for causing the desired video to be displayed in the browser of the user terminal ([ii]) and presses the play button for the video in the webpage displayed on the browser ([v]), but in the webpage displayed on the basis of the HTML file stored in the web server installed and managed by Appellee FC2, each of the aforementioned acts by the user is limited to an act performed with viewing the page and watching the video by the user. That is, when the page is displayed on the browser, as described above, the web server of Appellee FC2 transmits the HTML file and the SWF file of the page to the user terminal, and these files received by the user terminal are stored in the cache of the browser ([iv]), and regarding the request for the video file and the comment file, it is made in accordance with the order by the aforementioned SWF file ([vi]), and a particular act by the user is not required in obtaining the aforementioned video file and comment file and thus, each of the aforementioned acts by the user is limited to those performed through viewing the webpage managed by Appellee FC2, and the act of "production" of Defendant's System 1 by the user himself/herself cannot

be evaluated as subjective performance.

b. In response to the above, the Appellees assert that [i] the transmission by the server existing in the U.S. of the webpage data, the JS file (SWF file in the FLASH version), the video file, and the comment file is not performed by Appellee FC2, but it is automatically performed in response to a request due to the incorporation of the program in the server connected to the Internet, which is only a flow of a causal effect; [ii] the reception by the user terminal existing in Japan (in the country) of the aforementioned webpage data, the JS file (SWF file), the video file, and the comment file is performed by user's specifying of the webpage or clicking on the play button displayed on the webpage, which means that the user's operation intervenes. Even if Appellee FC2 performs the transmission act in [i], since the Patent Act clearly distinguishes and prescribes "transfer" and "acceptance", "import" and "export", and "provision" and "reception", it should not be interpreted that Appellee FC2 performs the aforementioned act of reception.

However, regarding [i], as described in the aforementioned a, Appellee FC2 installs and manages the web server, the video delivery server, and the comment delivery server, and these servers transmit the HTML file and the SWF file, the video file, as well as the comment file to the user terminal, and the reception of each of the files by the user terminal is performed automatically without intervention of a separate operation by the user but in accordance with the description in the program uploaded by Appellee FC2 to the server and thus, the subject that "produced" Defendant's System 1 should be considered to be Appellee FC2.

Moreover, regarding [ii], as described in the aforementioned a, each of the user's acts of specifying of the webpage or clicking on the play button displayed on the webpage is limited to the performance through viewing of the webpage managed by Appellee FC2, and the reception of each of the aforementioned files by the user terminal is automatically performed without intervention of a separate operation by the user as described above and thus, the subject that causes the user terminal to receive each of the aforementioned files should be considered to be Appellee FC2.

Therefore, the aforementioned assertion by the Appellees is groundless.

(E) Summary

According to the above, it is found that Appellee FC2 "produced" (Article 2, paragraph (3), item (i) of the Patent Act) Defendant's System 1 by Production 1-1.

B. Whether or not the act of Appellee FC2 in the HTML 5 version of Defendant's Service 1 falls under the "production" (Article 2, paragraph (3), item (i) of the Patent Act) as the act of working of Invention 1

(A) Act of newly creating Defendant's System 1 in the HTML 5 version of the Defendant's Service 1

As described in the aforementioned A(A), the "production" in the invention of the network-type system is interpreted to refer to an act of newly creating the system in which a plurality of elements, each of which does not singularly satisfy all the constituent features of the invention concerned, are connected via the network so as to have an organic relationship with one another and to have a function of satisfying all the constituent features of the Invention as a whole.

In the HTML 5 version of the Defendant' Service 1, as in No. 4, 5(1) C (B) in the judgment in prior instance cited after correction, in response to the user specifying the webpage of Defendant's Service 1 for causing the desired video to be displayed on the browser of the user terminal in the country ([i]), the web server of Appellee FC2 transmits the HTML file and the JS file of the aforementioned webpage to the user terminal ([ii]), these files received by the user terminal are stored in the cache of the browser ([iii]), after that, in accordance with the order stored in the aforementioned JS file, the browser makes a request for the video file to the video delivery server of Appellee FC2 and makes a request for the comment file to the comment delivery server of Appellee FC2 ([iv]), in response to the aforementioned request, the video delivery server of Appellee FC2 transmits the video file, and the comment delivery server of Appellee FC2 transmits the comment file to the user terminal, respectively ([v]), and the user terminal receives the aforementioned video file and comment file ([vi]), whereby the user terminal can overlay-display the comment on the video in the browser on the basis of the received video file and comment file. As described above, at a point of time when the user terminal receives the aforementioned video file and comment file ([vi]), the video delivery server and the comment delivery server of Appellee FC2 and the user terminal are connected via the network using the Internet, and the comment can be overlay-displayed on the video in the browser of the user terminal. Thus, it can be considered that, at the point of time when the user terminal receives each of the aforementioned files, Defendant's System 1 including the function satisfying all the constituent features of Invention 1 is newly created (hereinafter, the aforementioned act of newly creating Defendant's System 1 shall be called "Production 1-2" and shall be called together with Production 1-1 "Production 1").

(B) Whether or not Production 1-2 falls under the "production" under Article 2, paragraph (3), item (i) of the Patent Act

a. As described in the aforementioned (A), Production 1-2 is performed by the

transmission by the web server of Appellee FC2 to the user terminal of the HTML file and the JS file of the webpage of Defendant's Service 1 for causing the desired video to be displayed, the reception thereof by the user terminal, the transmission of the video file by the video delivery server of Appellee FC2 and of the comment file by the comment delivery server of Appellee FC2 to the user terminal, respectively, and the reception thereof by the user terminal. However, the aforementioned web server, the video delivery server, and the comment delivery server all exist in the U.S., while the user terminal exists in the country. That is, in Production 1-2, the transmission of each of the aforementioned files from the server existing in the U.S. to the user terminal in the country and the reception thereof by the user terminal are performed across the U.S. and our country, and the newly created Defendant's System 1 exists across the U.S. and our country. Thus, in view of the principle of territoriality, whether or not Production 1-2 falls under the "production" under Article 2, paragraph (3), item (i) of the Patent Act of our country is relevant.

b. From the viewpoint taught in the aforementioned A (C) b, by examining Production 1-2, the specific mode of Production 1-2 is performed by the transmission of each of the files from the server existing in the U.S. to the user terminal in the country, and the reception thereof by the user terminal in the country, in which the transmission and the reception (transmission/reception) are performed as a unit, and Defendant's System 1 is completed by the reception of each of the files by the user terminal in the country and thus, it can be conceived that the aforementioned transmission/reception is performed in the country.

Subsequently, Defendant's System 1 is configured by the server of Appellee FC2 existing in the U.S. and the user terminal existing in the country, and the aforementioned user terminal existing in the country performs a function of the determining portion of the constituent feature 1F and the function of the display-position control portion of the constituent feature 1G required as major functions of Invention 1 to display comments to be displayed on the video so as not to overlap each other.

Moreover, Defendant's System 1 can be used from inside the country via the aforementioned user terminal, and the effect of Invention 1, which is improvement of entertainment in communication using the comment, is exerted in the country, and the use thereof in the country can influence the economic profits obtained by Appellant by using the system according to Invention 1 in the country.

By comprehensively considering the aforementioned circumstances, Production 1-2 can be considered to be performed in the territory of our country and

thus, it is found to fall under the "production" under Article 2, paragraph (3), item (i) of the Patent Act in the relationship with Invention 1.

(C) Subject that "produced" Defendant's System 1 (according to HTML 5 version of Defendant's Service 1)

Defendant's System 1 (according to HTML 5 version of Defendant's Service 1) is newly created as the result that, as in the aforementioned (A), the web server of Appellee FC2 transmits the HTML file and the JS file of the webpage of Defendant's Service 1 for causing the desired video to be displayed to the user terminal, the user terminal receives them and, in response to the request from the browser in accordance with the order by the aforementioned JS file stored in the cache of the browser of the user terminal, the video delivery server of Appellee FC2 transmits the video file, and the comment delivery server of Appellee FC2 transmits the comment file to the user terminal, respectively, and the user terminal receives them. Appellee FC2 installs and manages the aforementioned web server, the video delivery server, and the comment delivery server, and these servers transmit the HTML file and the JS file, the video file, and the comment file to the user terminal, and the reception of each of the files by the user terminal is performed automatically without intervention of a separate operation by the user but in accordance with the description in the program uploaded by Appellee FC2 to the server and thus, the subject that "produced" Defendant's System 1 should be considered to be Appellee FC2.

With this regard, in the "production" of Defendant's System 1, as in the aforementioned (A), it is required that the user specifies the webpage of Defendant's Service 1 for causing the desired video to be displayed in the browser of the user terminal ([i]), but in the webpage displayed on the basis of the HTML file stored in the web server installed and managed by Appellee FC2, the aforementioned act by the user is limited to an act performed with viewing the page and watching the video by the user, and as described above, since the reception of each of the aforementioned files after that is automatically performed in accordance with the description in the program uploaded by Appellee FC2 without intervention of a separate operation by the user, the act of "production" of Defendant's System 1 by the user himself/herself cannot be evaluated as subjective performance.

(D) Summary

According to the above, it is found that Appellee FC2 "produced" Defendant's System 1 by Production 1-2.

C. Whether or not the act of Appellee FC2 in Defendant's Services 2 and 3 falls under the "production" (Article 2, paragraph (3), item (i) of the Patent Act) as the act

of working of Invention 1

(A) Act of newly creating Defendant's System 2 or 3 in Defendant's Services 2 and 3

As described in the aforementioned A(A), the "production" in the invention of the network-type system is interpreted to refer to an act of newly creating a system in which a plurality of elements, each of which does not singularly satisfy all the constituent features of the invention, are connected via the network so as to have an organic relationship with one another and to have a function of satisfying all the constituent features of the Invention as a whole.

In the FLASH version of Defendant' Services 2 and 3, as in No. 4, 5 (1) D (A) in the judgment in prior instance cited after correction, when the user specifies the webpage of Defendant's Service 2 or 3 for causing the desired video to be displayed on the browser of the user terminal in the country ([ii]), in response to that, the web server of Appellee FC2 transmits the HTML file and the SWF file of the aforementioned webpage to the user terminal ([iii]), these files received by the user terminal are stored in the cache of the browser, FLASH of the user terminal loads the SWF file in the cache of the browser ([iv]), and subsequently, in accordance with the order stored in the aforementioned SWF file, FLASH instructs the browser to acquire the video file and the comment file, and the browser makes a request for the comment file to the comment delivery server of Appellee FC2 and makes a request for the video file to the video delivery server of another video delivery service in accordance with the instruction ([v]), and in response to the aforementioned request, the comment delivery server of Appellee FC2 transmits the comment file and the aforementioned video delivery server transmits the video file to the user terminal, respectively ([vi]), and the user terminal receives the aforementioned video file and comment file ([vii]), whereby the user terminal can cause the comment to be overlay-displayed on the video in the browser on the basis of the received video file and comment file.

Moreover, in the HTML 5 version of Defendant's Services 2 and 3, as in No. 4, 5 (1) D (B) in the judgment in prior instance cited after correction, in response to the user specifying the webpage of Defendant's Service 2 or 3 for causing the desired video to be displayed on the browser of the user terminal in the country ([i]), the web server of Appellee FC2 transmits the HTML file and the JS file of the aforementioned webpage to the user terminal ([ii]), these files received by the user terminal are stored in the cache of the browser ([iii]), and subsequently, in accordance with the order stored in the aforementioned JS file, the browser makes a request for the comment file to the comment delivery server of Appellee FC2 and makes a request for the video file

to the video delivery server of another video delivery service ([iv]), and in response to the aforementioned request, the comment delivery server of Appellee FC2 transmits the comment file and the video delivery server transmits the video file to the user terminal, respectively ([v]), and the user terminal receives the aforementioned video file and the comment file ([vi]), whereby the user terminal can cause the comment to be overlay-displayed on the video in the browser on the basis of the aforementioned video file and comment file thus received.

As described above, at a point of time when the user terminal receives the aforementioned video file and comment file ([vii] in the FLASH version, [vi] in the HTML 5 version), the video delivery server of another video delivery service as well as the comment delivery server of Appellee FC2 and the user terminal are connected via the network using the Internet, and the comment can be overlay-displayed on the video in the browser of the user terminal. Thus, it can be considered that, at the point of time when the user terminal receives each of the aforementioned files, Defendant's System 2 or 3 including the function satisfying all the constituent features of Invention 1 is newly created (hereinafter, the act of newly creating Defendant's System 2 shall be called "Production 2" and the act of newly creating Defendant's System 3 shall be called "Production 3".).

(B) Whether or not Productions 2 and 3 fall under the "production" under Article 2, paragraph (3), item (i) of the Patent Act

a. As described in the aforementioned (A), Productions 2 and 3 are performed by the transmission by the web server of Appellee FC2 of the HTML file and the SWF file or the JS file of the webpage of Defendant's Service 2 or 3 for causing the desired video to be displayed to the user terminal, the reception thereof by the user terminal, the transmission of the comment file by the comment delivery server of Appellee FC2 and the video file by the video delivery server of another video delivery service to the user terminal, respectively, and the reception thereof by the user terminal. However, at least both the aforementioned web server and the comment delivery server exist in the U.S., and the aforementioned video delivery server also exists outside the country in some cases (No. 4, 5(1) B (B) in the judgment in prior instance cited after correction), while the user terminal exists in the country. That is, in Productions 2 and 3, the transmission of each of the aforementioned files from the server existing outside the country to the user terminal in the country and the reception thereof by the user terminal are performed across outside the country and inside the country, and the newly created Defendant's Systems 2 and 3 exist across outside the country and inside the country. Thus, in view of the principle of territoriality, whether or not

Productions 2 and 3 fall under the "production" under Article 2, paragraph (3), item (i) of the Patent Act in our country is relevant.

b. From the viewpoint taught in the aforementioned A (C) b, by examining Productions 2 and 3, the specific modes of Productions 2 and 3 are performed by the transmission of each of the files from the server existing outside the country (note that, as described in the aforementioned a, the video delivery server might exist in the country in some cases) to the user terminal in the country and the reception thereof by the user terminal in the country, in which the transmission and reception (transmission/reception) are performed as a unit, and Defendant's System 2 or 3 is completed by the reception of each of the files by the user terminal in the country and thus, it can be conceived that the aforementioned transmission/reception are performed in the country.

Subsequently, Defendant's Systems 2 and 3 are configured by the comment delivery server of Appellee FC2 existing in the U.S., the video delivery server existing outside or inside the country, and the user terminal existing in the country, and the aforementioned user terminal existing in the country performs a function of the determining portion of the constituent feature 1F and the function of the display-position control portion of the constituent feature 1G required as major functions of Invention 1 to cause comments to be displayed on the video so as not to overlap each other.

Moreover, Defendant's Systems 2 and 3 can be used from inside the country via the aforementioned user terminal, and the effect of Invention 1, which is improvement of entertainment in communication using the comment, is exerted in the country, and the use thereof in the country can influence the economic profits obtained by Appellant by using the system according to Invention 1 in the country.

By comprehensively considering the aforementioned circumstances, Productions 2 and 3 can be considered to be performed in the territory of our country and thus, it is found to fall under the "production" under Article 2, paragraph (3), item (i) of the Patent Act in the relationship with Invention 1.

(C) Subject that "produced" Defendant's Systems 2 and 3

Defendant's Systems 2 and 3 are newly created as the result of, as in the aforementioned (A), the web server of the Appellee FC2 transmitting the HTML file and the SWF file or the JS file of the webpage of Defendant's Service 2 or 3 for causing the desired video to be displayed to the user terminal, the user terminal receiving them and, in response to the request from the browser in accordance with the order by the aforementioned SWF file or JS file stored in the cache of the browser

of the user terminal, the comment delivery server of the Appellee FC2 transmitting the comment file and the video delivery server of another video delivery service transmitting the video file to the user terminal, respectively, and the user terminal receiving them. The Appellee FC2 installs and manages the aforementioned web server and comment delivery server, and these servers transmit the HTML file and the SWF file or the JS file as well as the comment file to the user terminal, and the reception of each of the files by the user terminal is performed automatically without intervention of a separate operation by the user but in accordance with the description in the program uploaded by Appellee FC2 to the server and thus, the subject that "produced" Defendant's Systems 2 and 3 should be considered to be Appellee FC2.

With this regard, in the "production" of Defendant's Systems 2 and 3, as in the aforementioned (A), it is required that the user specifies the webpage of Defendant's Service 2 or 3 for causing the desired video to be displayed in the browser of the user terminal ([ii] in the FLASH version, [i] in the HTML 5 version), but in the webpage displayed on the basis of the HTML file stored in the web server installed and managed by Appellee FC2, the aforementioned act by the user is limited to an act performed with viewing the page and watching the video by the user, and as described above, since the reception of each of the aforementioned files after that is automatically performed in accordance with the description in the program uploaded by Appellee FC2 to the server without intervention of a separate operation by the user, the act of "production" of Defendant's System 2 or 3 by the user himself/herself cannot be evaluated as subjective performance.

(D) Summary

According to the above, it is found that Appellee FC2 "produced" Defendant's System 2 by Production 2 and "produced" Defendant's System 3 by Production 3.

D. Whether or not the act of Appellee FC2 in Defendant's Service 1 falls under the "production" (Article 2, paragraph (3), item (i) of the Patent Act) as the act of working of Invention 2

Defendant's System 1 newly created by Production 1 of Appellee FC2 satisfies all the constituent features of Invention 2 and belongs to the technical scope thereof and thus, on the grounds similar to those taught in the aforementioned A and B, Production 1 is found to fall under the "production" under Article 2, paragraph (3), item (i) of the Patent Act also in the relationship with Invention 2.

E. Whether or not the act of Appellee FC2 in Defendant's Services 2 and 3 falls under the "production" (Article 2, paragraph (3), item (i) of the Patent Act) as the act

of working of Invention 2

Defendant's Systems 2 and 3 newly created by Productions 2 and 3 of Appellee FC2 satisfy all the constituent features of Invention 2 and belong to the technical scope thereof and thus, on the grounds similar to those taught in the aforementioned C, Productions 2 and 3 are found to fall under the "production" under Article 2, paragraph (3), item (i) of the Patent Act also in the relationship with Invention 2.

F. Conclusion

According to the above, it is found that Appellee FC2 "produced" Defendant's System 1 by Production 1, Defendant's System 2 by Production 2, and Defendant's System 3 by Production 3, and infringed the Patent Right.

The assertion by Appellees against that is groundless.

(3) Presence/absence of "production" of each of Defendant's Systems by Appellee HPS

The situation of involvement of Appellee HPS with each of Defendant's Systems is as No. 4, 5 (1) E in the judgment in prior instance cited after correction, and at least on May 17, 2019 when the establishment of the Patent Right was registered and after, it is not found that Appellee HPS engaged in the business related to each of Defendant's Services and there is no other evidence sufficient to approve it.

Therefore, it is not found that Appellee HPS "produced" each of Defendant's Systems and infringed the Patent Right.

The assertion by Appellant against that is groundless.

5 Issue 5 (Establishment of the defense of invalidity)

As described in Attachment 10 (Determination on Issue 5 (Establishment of the defense of invalidity))

6 Issue 6 (Establishment of abuse of right)

Appellees assert that the Application was filed for the purpose of dragging up another litigation again (see the assertion by Appellees in "(14) Issue 5-14 (Violation of public order and morality (Invalidation Reason 14))" described in Attachment 10), and in view of the history of application as above, it is obvious that the division of the Application was filed for the purpose of substantially deviating from the prescription in Article 17-2, paragraph (3), item (iii) and item (iv) of the Patent Act and thus, exercise of the Patent Right against Appellees is abuse of right and is not allowed.

However, in light of the teaching in (12) and (14) described in Attachment 10, the assertion by the Appellees lacks the premises thereof, which cannot be

accepted.

7 Issue 7 (Necessity of injunction and removal or the like)

(1) Injunction

A. As described in the aforementioned 4, it is found that Appellee FC2 "produced" Defendant's System 1 by Production 1, Defendant's System 2 by Production 2, and Defendant's System 3 by Production 3, and infringed the Patent Right.

Moreover, as described in the aforementioned 4(2)A(B)a and the same B(A), in Production 1, the video file and the comment file are transmitted from the server of Appellee FC2 to the user terminal in the country, and these files are received by the user terminal in the country, whereby Defendant's System 1 was "produced".

With regard to this point, Appellee FC2 asserts that, regarding Defendant's Service 1, the function of overlay-displaying the comment on the video in the display device of the user terminal was abolished on August 2, 2022, and the specification was changed to provision of a comment display region separately from the video display region.

Thus, by examining that, it is found that, according to the evidence (Exhibits Otsu 97 to 99), in Defendant's Service 1, at a point of time of March 14, 2023, the specification is configured such that the comment is displayed on a region different from the region on which the video is displayed. Note that there is no evidence sufficient to find that the specification change was made before that date.

Then, it cannot be found that the infringement of the Patent Right by Production 1 has been committed by Appellee FC2 on the same day and after.

However, in Defendant's Service 1, the service in which the comment is displayed together with the video has been still provided, and by considering that it is easy to overlay-display the comment on the video again by changing the specification so as to provide the service related to the Patent Right infringement, in order to prevent the infringement of the Patent Right by Production 1, it is found to be necessary to injunct the delivery of the video file and the comment file from the server of Appellee FC2 to the user terminal existing in Japan (transmission of both files to the user terminal in the country and having them received by the user terminal in the country) in such a mode that the comments overlay-displayed on the video on the display device of the user terminal move in the horizontal direction and are displayed so as not to overlap each other.

B. Moreover, regarding Productions 2 and 3, in view that Appellee FC2 transferred the business related to Defendant's Services 2 and 3 to Shwe Nandar Co.,

Ltd. on September 25, 2020 (No. 4, 5 (1) A (B) a in the judgment in prior instance cited after correction), it is not found that Appellee FC2 infringed the Patent Right by Productions 2 and 3 on the same day and after, and it is not found, either, that there is a concern of future infringement and thus, regarding Productions 2 and 3, it should be considered that there is no necessity for the injunction of the delivery of the video file and the comment file.

C. According to the above, Appellant's claim for injunction is found to be grounded to the limit of making a claim against Appellee FC2 for the injunction of the delivery of the video file and the comment file from the server of Appellee FC2 to the user terminal existing in the country in such a mode that the comments overlay-displayed on the video on the display device of the user terminal move in the horizontal direction and are displayed so as not to overlap each other in Defendant's Service 1.

(2) Removal and the like

A. As described in the aforementioned (1), on March 14, 2023 and after, it is not found that infringement of the Patent Right by Production 1 has been committed by Appellee FC2.

In addition, in Defendant's Service 1, at a point of time of January 11, 2021 when the delivery service of the video with comments pertaining to the Patent Right infringement was provided, too, among XXXXXXXX pieces of video made public in Defendant's Service 1, the number of pieces of the video with comments was XXXXXXX (Exhibit Otsu 85), and the rate remains at XXXX %, and as described in the aforementioned (1) A, in Defendant' Service 1, it is possible to provide the video delivery service without infringing the Patent Right and thus, the erasing of the program and the removal of the server related to Defendant's Service 1 are not found to be necessary.

B. Subsequently, Appellee FC2 transferred the business related to Defendant's Services 2 and 3 to Shwe Nandar Co., Ltd. on September 25, 2020 as described in the aforementioned (1) B.

There is no evidence sufficient to find that Appellee FC2 holds the programs and servers pertaining to Defendant's Services 2 and 3.

Then, the erasing of the program and the removal of the server pertaining to Defendant's Services 2 and 3 are not found to be necessary.

C. According to the above, both the claim for erasing of the program for Defendant's Server and the claim for removal of each of Defendant's Servers by Appellant are groundless.

8 Issue 8 (Amount of damage of Appellant)

(1) Amount of damage pursuant to Article 102, paragraph (2) of the Patent Act

A. Principal claims

Appellant asserts that Appellees produced each of Defendant's Systems and provided each of Defendant's Services from May 17, 2019, when the establishment of the Patent Right was registered, to August 31, 2022, and produced a sale of XXXXXXXXXX yen, whereby Appellees obtained the amount of profits (marginal profits) not less than XXXXXXXXXX yen. Among them, the sales amount from May 17 to 31, 2019 (amount for May) was XXXXXXXX yen, and the amount of marginal profits was not less than XXXXXXXX yen.

However, the aforementioned sales amount and the marginal profit amount submitted by Appellant as the grounds for the aforementioned assertion by Exhibit Ko 24 cannot be approved, and there is no other evidence sufficient to approve them.

Therefore, the aforementioned assertion by Appellant is groundless.

B Alternative claims

(A) Rate of each o Defendant's Services provided by Defendant's Systems 1 to 3 "produced" by Productions 1 to 3

As described in the aforementioned 4, Appellee FC2 "produced" Defendant's System 1 by Production 1, Defendant's System 2 by Production 2, and Defendant's System 3 by Production 3 and infringed the Patent Right, and all of Productions 1 to 3 are performed by the transmission of the video file and the comment file by the server to the user terminal and the reception thereof by the user terminal.

However, in view of the facts that the number of pieces of the video with comments delivered by each of Defendant's Services is limited, and at a point of time of January 11, 2021, among XXXXXXXX pieces of the video made public in Defendant's Service 1, the number of pieces of the video with comments was XXXXXXX (Exhibit Otsu 85), and the rate remains at XXXX%, and although each of Defendant's Services was provided also in languages other than Japanese, most of the users thereof exist in Japan (Exhibit Ko 9, the entire import of the oral argument), it is reasonable to acknowledge that the rate of those provided by Defendant's Systems 1 to 3 "produced" by Productions 1 to 3 in each of Defendant's Services is XXX% over the whole period during which the Patent Right was infringed.

(B) Amount of Profits of Appellee FC2 (amount of marginal profit)

a. Defendant's Service 1

According to Exhibit Otsu 84, it is found that the sales amount of Defendant's Service 1 during the period from May 17, 2019 to August 31, 2022 is, as

described in "Defendant's Service 1" column in the "Sales amounts" column of the list of sales amount and the like in the Attachment 6, XXXXXXXXXXXX yen in total, and the amount of marginal profits thereof is, as described in "Defendant's Service 1" column in the "Marginal profit amount" column of the list of marginal profit amounts and the like in Attachment 7-1, XXXXXXXXXXXX yen in total.

Among them, the rate of those provided by Defendant's System 1 "produced" by Production 1, which is the infringement act of the Patent Right is, as described in the aforementioned (A), XXX% and thus, the sales amount by Production 1 is found to be XXXXXXXXXXX yen (XXXXXXXXXXXX yen × XXXXX), and the amount of marginal profits of Appellee FC2 obtained by Production 1 is found to be, as described in the "Production 1" column in the "Marginal profit breakdown" column of the calculation of marginal profit amount in the Attachment 7-2, XXXXXXXXX yen in total.

b Defendant's Service 2

According to Exhibit Otsu 84, it is found that the sales amount of Defendant's Service 2 during the period from May 17, 2019 to October 31, 2020 is, as described in the "Defendant's Service 2" column in the "Sales amounts" column of the list of sales amount and the like in Attachment 6, XXXXXXXX yen in total, and the amount of marginal profits thereof is, as described in the "Defendant's Service 2" column in the "Marginal profit amount" column of the list of marginal profit amounts and the like in Attachment 7-1, XXXXXXXX yen in total.

Among them, the rate of those provided by Defendant's System 2 "produced" by Production 2, which is the infringement act of the Patent Right is, as described in the aforementioned (A), XXX% and thus, the sales amount by Production 2 is found to be XXXXXX yen (XXXXXXXX yen × XXXXX), and the amount of marginal profits of the Appellee FC2 obtained by Production 2 is found to be, as described in the "Production 2" column in the "Marginal profit breakdown" column of the calculation of marginal profit amount in Attachment 7-2, XXXXXX yen in total.

c Defendant's Service 3

According to Exhibit Otsu 84, it is found that the sales amount of Defendant's Service 3 during the period from May 17, 2019 to October 31, 2020 is, as described in the "Defendant's Service 3" column in the "Sales amounts" column of the list of sales amount and the like in Attachment 6, XXXXX yen in total, and the amount of marginal profits thereof is, as described in the "Defendant's Service 3" column in the "Marginal profit amount" column of the list of marginal profit amounts and the like" in Attachment 7-1, XXXXXX yen in total.

Among them, the rate of those provided by Defendant's System 3 "produced" by Production 3, which is the infringement act of the Patent Act is, as described in the aforementioned (A), XXX% and thus, the sales amount by Production 3 is found to be XXXX yen (XXXXXX yen × XXXXX), and the amount of marginal profits of Appellee FC2 obtained by Production 3 is found to be, as described in the "Production 3" column in the "Marginal profit breakdown" column of the calculation of marginal profit amount in Attachment 7-2, XXXX yen in total.

d Conclusion

(a) According to the aforementioned a to c, the amount of marginal profits of Appellee FC2 obtained by Productions 1 to 3 is found to be, as described in the "Marginal profit amount (including part corresponding to consumption tax (10%))" column of the calculation of marginal profit amounts in Attachment 7-2, XXXXXXXXXXX yen in total.

It is to be noted that, Appellee FC2 asserts that even if the payment of the damages is ordered to Appellee FC2 in this case, it is subject to export exemption on the consumption tax. However, since there is no evidence sufficient to approve that the provision of each of the Defendant's Services by Appellee FC2 falls under the export transaction, the aforementioned assertion by Appellee FC2 is groundless.

(b) As described above, the amount of marginal profits of Appellee FC2 obtained by Productions 1 to 3 is XXXXXXXXXXX yen in total, and this amount of marginal profits is presumed to be the amount of damage suffered by the Appellant under Article 102, paragraph (2) of the Patent Act (hereinafter, this presumption shall be referred to as the "Presumption").

(C) Ruination of presumption

The Appellees assert that, in each of the Defendant's Services, the fact that the comment display function of each of the Inventions is a part of the functions of the whole system and does not have attraction for customers falls under the reason for ruination of the Presumption.

Thus, by examining this, in consideration that, in the video delivered by each of the Defendant's Services, most of those contributing to the sales amount are adult videos (Exhibits Ko 4-1, 2, 9, 11, entire import of the oral argument), and it cannot be denied that the display of the comments on the video interferes with the viewing, at the point of time of January 11, 2021, among XXXXXXXX pieces of video made public in the Defendant's Service 1, the number of pieces of the video with comments was XXXXXXX (Exhibit Otsu 85), and the rate remains at XXXX%, the role played by the comment display function is limited, and it is found that most of the users of

each of the Defendant's Services use it for the purpose of viewing the videos themselves rather than the comment display function. The technically featured part of each of the Inventions is to prevent display, in an overlapping manner, a plurality of comments overlay-displayed on the video in the video with comment delivery system (aforementioned 1 (2) B), and the technical meaning itself is found to be limited in the aforementioned system.

By comprehensively considering the aforementioned circumstances, it is reasonable to find that the contribution rate of each of the Inventions to the use of each of the Defendant's Services is XX, and for the part exceeding the aforementioned contribution rate, there is no considerable causal effect found between the marginal profit amount in the aforementioned (B) d (b) and the amount of damages suffered by the Appellant.

Therefore, the Presumption is found to be ruined to the aforementioned limit and thus, the amount of damages of the Appellant based on the Article 102, paragraph (2) of the Patent Act corresponds to the rate of the aforementioned marginal profit amount and it is found to be, as described in the "Amount of damages under Article 102, paragraph (2) of the Patent Act" column in the Breakdown list of approved amounts in the Attachment 4-2, XXXXXXXXX yen in total.

(2) Amount of damages based on Article 102, paragraph (3) of the Patent Act (Alternative claims)

A Regarding the amount of damages of the Appellant based on Article 102, paragraph (3) of the Patent Act, [i] in "Research and Study Report on How to Utilize Patents and the like on the basis of Value Evaluation of Intellectual Property ~ Actual State of Intellectual Property (Resources) Values and Royalty Rate ~" (the "Report") prepared by Teikoku Databank, LTD., "(2) Questionnaire Result" in "1. Royalty Rate by Technical Category (domestic questionnaire)" in "II. Royalty Rates in Our Country" describes that the "average value of the royalty rate of the patent right" is "3.7%" for the "Whole", "2.9%" for "Electric", and "3.1%" for "Computer Technology", "1. Trends of Royalty Rate" in "III. Royalty Rates in Each Country" describes "6.3%" for "Software" in the industrial field as the questionnaire result on the royalty rates of domestic businesses, and "Royalty Rates of Judicial Decision by Industry (2004 to 2008)" in "(i) Japan" in "2. Questionnaire Result of Royalty Rates by Judicial Decision" has the description that, in the royalty rates by judicial decision for the "electric" industry, the average value is "3.0%", the maximum value is "7.0%", and the minimum value is "1.0%" (number of cases: "6"); [ii] as described in the aforementioned (1) B (C), the technically featured part of each of the Inventions is to

prevent display, in an overlapping manner, a plurality of comments overlay-displayed on the video in the video with comment delivery system, and by comprehensively considering that the technical meaning thereof is not high, the contribution of each of the Inventions to the formation of purchaser motivation in each of the Defendant's Services is limited, and various circumstances emerge in this case, it is reasonable to approve the amount obtained by multiplying the sales according to Productions 1 to 3 by the royalty rate of 2%.

Since it is found that the total amount of the sales amounts by Productions 1 to 3 (including the part corresponding to the consumption tax (10%)) is XXXXXXXXXXX yen (XXXXXXXXXXX yen + XXXXXX yen + XXXX yen (total amount of each of the sales amounts of the Productions 1 to 3 described in the aforementioned (1) B (B) a to c added with the part corresponding to the consumption tax (10%))), it is XXXXXXXX yen (XXXXXXXXXXX yen X 0.02).

None of the assertions against the above by the Appellant and Appellees can be accepted.

B The assertion of the amount of damages based on Article 102, paragraph (2) of the Patent Act and the assertion of the amount of damage based on the same Article, paragraph (3) by the Appellant are found to be selective and thus, it is acknowledged that the higher total amount of damages XXXXXXXXX yen based on the same Article, paragraph (2) in the aforementioned (1) B (C) is the amount of damages of the Appellant of this case.

(3) Attorney costs

The amount of damage according to Productions 1 to 3 of the Appellant is, as described in the "Amount of damages under Article 102, paragraph (2) of the Patent Act" column in the Breakdown list of approved amounts in Attachment 4-2, XXXXXXXXX yen in total.

By considering various circumstances such as the nature/contents of this case, the approved amount of this case, the history of procedures in the court of prior instance and this court, and the like, it is reasonable to acknowledge that the amount corresponding to the attorney costs having a considerable causal relation with the tort by the Patent Right infringement of Appellee FC2 is, as described in the "Amount corresponding to attorney's fee" column in the Breakdown list of approved amounts in the Attachment 4-2, XXXX yen in total.

(4) Summary

According to the above, the amount of damages of the Appellant in this case is, as described in the "Total for all the periods" column in the "Subtotal of amount of

damages" column in the Breakdown list of approved amounts in the Attachment 4-2, 11,015,517 yen in total.

Thus, the Appellant may make a claim against Appellee FC2 for payment of 11,015,517 yen as compensation of damages based on the tort of the Patent Right infringement, and the delay damages at each of the rates described in the "Delay damages rate (per annum)" column from each date described in the "Date to start counting delay damages" column until completion of the payment with respect to each of the moneys described in the "Approved amount" column in the list of approved amounts in Attachment 4-1.

No. 5 Conclusion

According to the above, the claims of the Appellant have reasons to the limit of the claim against Appellee FC2 for injunction of, in Defendant's Service 1, the delivery of the video file and the comment file from the server of Appellee FC2 to the user terminal existing in the country so as to realize such a mode that the comments overlay-displayed on the video on the display device of the user terminal move in the horizontal direction and are displayed so as not to overlap each other and a claim for payment of 11,015,517 yen and the money at each of the rates described in the "Delay damages rate (per annum)" column from each date described in the "Date to start counting delay damages" column until completion of the payment with respect to each of the moneys described in the "Approved amount" column in the list of approved amounts in Attachment 4-1, while the remaining is groundless and shall be dismissed.

Therefore, the judgment in prior instance which dismissed all the claims of the Appellant (excluding the expanded claim in this court) is partially unreasonable, and this appeal is partially grounded, and the expanded claim by the Appellant in this court is partially grounded and thus, the judgment shall be rendered as in the main text by changing the part relating to Appellee FC2 in the judgment in prior instance as in the main text, clause 1 of this judgment, by dismissing the appeal by the Appellant against Appellee HPS, and by dismissing the expanded claim by the Appellant against Appellee HPS in this court.

Intellectual Property High Court, Special Division

Presiding Judge:	OHTAKA Ichiro
Judge:	KANNO Masayuki
Judge:	HONDA Tomonari
Judge:	SHOJI Tamotsu

Judge: OGAWA Takatoshi

Attachment 1 List of Defendant's files

1 In "FC2 Video" (https://video.fc2.com/), the video file and the comment file delivered by the Appellees from the server to the user terminal (including those delivered separately and those in which the video file and the comment file are in a unit)

2 In "FC2 SayMove!" (http://say-move.org/), the video file and the comment file delivered by the Appellees from the server to the terminal of the video viewer (including those delivered separately and those in which the video file and the comment file are in a unit)

3 In "FC2 HIMAWARI Video" (http://himado.in/), the video file and the comment file delivered by the Appellees from the server to the terminal of the video viewer (including those delivered separately and those in which the video file and the comment file are in a unit)

Attachment 2 List of programs for Defendant's Servers

1 In "FC2 Video" (https://video.fc2.com/), the program for server by which the Appellees deliver the video file and the comment file to the user terminal (including the program for server for delivering either one of the video file and the comment file and the program for server for delivering the video file and the comment file as a unit)

2 In "FC2 SayMove!" (http://say-move.org/), the program for server (including the program for server for delivering either one of the video file and the comment file and the program for server for delivering the video file and the comment file as a unit) by which the Appellees deliver to the user terminal the video file and the comment file (including those in which the video file and the comment file are a unit)

3 In "FC2 HIMAWARI Video" (http://himado.in/), the program for server (including the program for server for delivering either one of the video file and the comment file and the program for server for delivering the video file and the comment file as a unit) by which the Appellees deliver to the user terminal the video file and the comment file (including those in which the video file and the comment file are a unit)

Attachment 3 List of Defendant's Servers

1 In "FC2 Video" (https://video.fc2.com/), the server provided for use by the Appellees to deliver the video file and the comment file to the user terminal (including the server provided to be used for delivering either one of the video file and the comment file, and the server provided to be used for delivering the video file and the comment file as a unit)

2 In "FC2 SayMove!" (http://say-move.org/), the server provided for use by the Appellees to deliver the video file and the comment file to the user terminal (including the server provided to be used for delivering either one of the video file and the comment file, and the server provided to be used for delivering the video file and the comment file as a unit)

3 In "FC2 HIMAWARI Video" (http://himado.in/), the server provided for use by the Appellees to deliver the video file and the comment file to the user terminal (including the server provided to be used for delivering either one of the video file and the comment file, and the server provided to be used for delivering the video file and the comment file as a unit)

ATTACHMENT 4-1 LIST OF APPROVED AMOUNTS

PERIOD	APPROVED AMOUNT	DATE TO START COUNTING DELAY DAMAGES	DELAY DAMAGES RATE (PER ANNUM)
May 17 - 31, 2019	[redacted]	Jun. 1, 2019	5%
Jun. 1 - 30, 2019		Jul. 1, 2019	5%
Jul. 1 - 31, 2019		Aug. 1, 2019	5%
Aug. 1 - 31, 2019		Sep. 1, 2019	5%
Sep. 1 - 30, 2019		Oct. 1, 2019	5%
Oct. 1 - 31, 2019		Nov. 1, 2019	5%
Nov. 1 - 30, 2019		Dec. 1, 2019	5%
Dec. 1 - 31, 2019		Jan. 1, 2020	5%
Jan. 1 - 31, 2020		Feb. 1, 2020	5%
Feb. 1 - 29, 2020		Mar. 1, 2020	5%
Mar. 1 - 31, 2020		Apr. 1, 2020	5%
Apr. 1 - 30, 2020		May 1, 2020	3%
May 1 - 31, 2020		Jun. 1, 2020	3%
Jun. 1 - 30, 2020		Jul. 1, 2020	3%
Jul. 1 - 31, 2020		Aug. 1, 2020	3%
Aug. 1 - 31, 2020		Sep. 1, 2020	3%
Sep. 1 - 30, 2020		Oct. 1, 2020	3%
Oct. 1 - 31, 2020		Nov. 1, 2020	3%
Nov. 1 - 30, 2020		Dec. 1, 2020	3%
Dec. 1 - 31, 2020		Jan. 1, 2021	3%
Jan. 1 - 31, 2021		Feb. 1, 2021	3%
Feb. 1 - 28, 2021		Mar. 1, 2021	3%
Mar. 1 - 31, 2021		Apr. 1, 2021	3%
Apr. 1 - 30, 2021		May 1, 2021	3%
May 1 - 31, 2021		Jun. 1, 2021	3%
Jun. 1 - 30, 2021		Jul. 1, 2021	3%
Jul. 1 - 31, 2021		Aug. 1, 2021	3%
Aug. 1 - 31, 2021		Sep. 1, 2021	3%
Sep. 1 - 30, 2021		Oct. 1, 2021	3%
Oct. 1 - 31, 2021		Nov. 1, 2021	3%
Nov. 1 - 30, 2021		Dec. 1, 2021	3%
Dec. 1 - 31, 2021		Jan. 1, 2022	3%
Jan. 1 - 31, 2022		Feb. 1, 2022	3%
Feb. 1 - 28, 2022		Mar. 1, 2022	3%
Mar. 1 - 31, 2022		Apr. 1, 2022	3%
Apr. 1 - 30, 2022		May 1, 2022	3%
May 1 - 31, 2022		Jun. 1, 2022	3%
Jun. 1 - 30, 2022		Jul. 1, 2022	3%
Jul. 1 - 31, 2022		Aug. 1, 2022	3%
Aug. 1 - 31, 2022		Sep. 1, 2022	3%

TOTAL OF ALL PERIODS	[redacted]		

ATTACHMENT 4-2 BREAKDOWN LIST OF APPROVED AMOUNTS

PERIOD	AMOUNT OF DAMAGES UNDER ARTICLE 102, PARAGRAPH (2) OF THE PATENT ACT	AMOUNT CORRESPONDING TO ATTORNEY'S FEE	SUBTOTAL OF AMOUNT OF DAMAGES
May 17 - 31, 2019	[redacted]		
Jun. 1 - 30, 2019			
Jul. 1 - 31, 2019			
Aug. 1 - 31, 2019			
Sep. 1 - 30, 2019			
Oct. 1 - 31, 2019			
Nov. 1 - 30, 2019			
Dec. 1 - 31, 2019			
Jan. 1 - 31, 2020			
Feb. 1 - 29, 2020			
Mar. 1 - 31, 2020			
Apr. 1 - 30, 2020			
May 1 - 31, 2020			
Jun. 1 - 30, 2020			
Jul. 1 - 31, 2020			
Aug. 1 - 31, 2020			
Sep. 1 - 30, 2020			
Oct. 1 - 31, 2020			
Nov. 1 - 30, 2020			
Dec. 1 - 31, 2020			
Jan. 1 - 31, 2021			
Feb. 1 - 28, 2021			
Mar. 1 - 31, 2021			
Apr. 1 - 30, 2021			
May 1 - 31, 2021			
Jun. 1 - 30, 2021			
Jul. 1 - 31, 2021			
Aug. 1 - 31, 2021			
Sep. 1 - 30, 2021			
Oct. 1 - 31, 2021			
Nov. 1 - 30, 2021			
Dec. 1 - 31, 2021			
Jan. 1 - 31, 2022			
Feb. 1 - 28, 2022			
Mar. 1 - 31, 2022			
Apr. 1 - 30, 2022			
May 1 - 31, 2022			

Jun. 1 - 30, 2022	[redacted]
Jul. 1 - 31, 2022	
Aug. 1 - 31, 2022	
TOTAL FOR ALL THE PERIODS	

ATTACHMENT 5 LIST OF ALTERNATIVE CLAIMED AMOUNTS

PERIOD	CLAIMED AMOUNT	DATE TO START COUNTING DELAY DAMAGES	DELAY DAMAGES RATE (PER ANNUM)
May 17 - 31, 2019	[redacted]	Jun. 1, 2019	5%
Jun. 1 - 30, 2019		Jul. 1, 2019	5%
Jul. 1 - 31, 2019		Aug. 1, 2019	5%
Aug. 1 - 31, 2019		Sep. 1, 2019	5%
Sep. 1 - 30, 2019		Oct. 1, 2019	5%
Oct. 1 - 31, 2019		Nov. 1, 2019	5%
Nov. 1 - 30, 2019		Dec. 1, 2019	5%
Dec. 1 - 31, 2019		Jan. 1, 2020	5%
Jan. 1 - 31, 2020		Feb. 1, 2020	5%
Feb. 1 - 29, 2020		Mar. 1, 2020	5%
Mar. 1 - 31, 2020		Apr. 1, 2020	5%
Apr. 1 - 30, 2020		May 1, 2020	3%
May 1 - 31, 2020		Jun. 1, 2020	3%
Jun. 1 - 30, 2020		Jul. 1, 2020	3%
Jul. 1 - 31, 2020		Aug. 1, 2020	3%
Aug. 1 - 31, 2020		Sep. 1, 2020	3%
Sep. 1 - 30, 2020		Oct. 1, 2020	3%
Oct. 1 - 31, 2020		Nov. 1, 2020	3%
Nov. 1 - 30, 2020		Dec. 1, 2020	3%
Dec. 1 - 31, 2020		Jan. 1, 2021	3%
Jan. 1 - 31, 2021		Feb. 1, 2021	3%
Feb. 1 - 28, 2021		Mar. 1, 2021	3%
Mar. 1 - 31, 2021		Apr. 1, 2021	3%
Apr. 1 - 30, 2021		May 1, 2021	3%
May 1 - 31, 2021		Jun. 1, 2021	3%
Jun. 1 - 30, 2021		Jul. 1, 2021	3%
Jul. 1 - 31, 2021		Aug. 1, 2021	3%
Aug. 1 - 31, 2021		Sep. 1, 2021	3%
Sep. 1 - 30, 2021		Oct. 1, 2021	3%
Oct. 1 - 31, 2021		Nov. 1, 2021	3%
Nov. 1 - 30, 2021		Dec. 1, 2021	3%
Dec. 1 - 31, 2021		Jan. 1, 2022	3%
Jan. 1 - 31, 2022		Feb. 1, 2022	3%
Feb. 1 - 28, 2022		Mar. 1, 2022	3%
Mar. 1 - 31, 2022		Apr. 1, 2022	3%
Apr. 1 - 30, 2022		May 1, 2022	3%
May 1 - 31, 2022		Jun. 1, 2022	3%
Jun. 1 - 30, 2022		Jul. 1, 2022	3%
Jul. 1 - 31, 2022		Aug. 1, 2022	3%
Aug. 1 - 31, 2022		Sep. 1, 2022	3%

TOTAL FOR ALL THE PERIODS	[redacted]

ATTACHMENT6 LIST OF SALES AMOUNTS AND THE LIKE

PERIOD	SALES AMOUNTS			SUBTOTAL	AMOUNT CORRESPONDING TO ROYALTY (ROYALTY RATE 20%)	AMOUNT CORRESPONDING TO CONSUMPTION TAX	AMOUNT CORRESPONDING TO ATTORNEY'S FEE	AMOUNT OF DAMAGES UNDER ARTICLE 102, PARAGRAPH (3) OF THE PATENT ACT
	DEFENDANT'S SERVICE 1	DEFENDANT'S SERVICE 2	DEFENDANT'S SERVICE 3					
May 17 - 31, 2019	[redacted]							
Jun. 1 - 30, 2019								
Jul. 1 - 31, 2019								
Aug. 1 - 31, 2019								
Sep. 1 - 30, 2019								
Oct. 1 - 31, 2019								
Nov. 1 - 30, 2019								
Dec. 1 - 31, 2019								
Jan. 1 - 31, 2020								
Feb. 1 - 29, 2020								
Mar. 1 - 31, 2020								
Apr. 1 - 30, 2020								
May 1 - 31, 2020								
Jun. 1 - 30, 2020								
Jul. 1 - 31, 2020								
Aug. 1 - 31, 2020								
Sep. 1 - 30, 2020								

Oct. 1 - 31, 2020	[redacted]
Nov. 1 - 30, 2020	
Dec. 1 - 31, 2020	
Jan. 1 - 31, 2021	
Feb. 1 - 28, 2021	
Mar. 1 - 31, 2021	
Apr. 1 - 30, 2021	
May 1 - 31, 2021	
Jun. 1 - 30, 2021	
Jul. 1 - 31, 2021	
Aug. 1 - 31, 2021	
Sep. 1 - 30, 2021	
Oct. 1 - 31, 2021	
Nov. 1 - 30, 2021	
Dec. 1 - 31, 2021	
Jan. 1 - 31, 2022	
Feb. 1 - 28, 2022	
Mar. 1 - 31, 2022	
Apr. 1 - 30, 2022	
May 1 - 31, 2022	
Jun. 1 - 30, 2022	
Jul. 1 - 31, 2022	
Aug. 1 - 31, 2022	

TOTAL FOR ALL THE PERIODS	[redacted]

TRUNCATE AFTER DECIMAL POINT

ATTACHMENT 7-1 LIST OF MARGINAL PROFIT AMOUNTS AND THE LIKE

PERIOD	MARGINAL PROFIT AMOUNT				AMOUNT CORRESPONDING TO CONSUMPTION TAX	AMOUNT CORRESPONDING TO ATTORNEY'S FEE	AMOUNT OF DAMAGES UNDER ARTICLE 102, PARAGRAPH (2) OF THE PATENT ACT	AMOUNT OF PARTIAL CLAIM
	DEFENDANT'S SERVICE 1	DEFENDANT'S SERVICE 2	DEFENDANT'S SERVICE 3	SUBTOTAL				
May 17 - 31, 2019	[redacted]							
Jun. 1 - 30, 2019								
Jul. 1 - 31, 2019								
Aug. 1 - 31, 2019								
Sep. 1 - 30, 2019								
Oct. 1 - 31, 2019								
Nov. 1 - 30, 2019								
Dec. 1 - 31, 2019								
Jan. 1 - 31, 2020								
Feb. 1 - 29, 2020								
Mar. 1 - 31, 2020								
Apr. 1 - 30, 2020								
May 1 - 31, 2020								
Jun. 1 - 30, 2020								
Jul. 1 - 31, 2020								
Aug. 1 - 31, 2020								
Sep. 1 - 30, 2020								

Oct. 1 - 31, 2020	[redacted]
Nov. 1 - 30, 2020	
Dec. 1 - 31, 2020	
Jan. 1 - 31, 2021	
Feb. 1 - 28, 2021	
Mar. 1 - 31, 2021	
Apr. 1 - 30, 2021	
May 1 - 31, 2021	
Jun. 1 - 30, 2021	
Jul. 1 - 31, 2021	
Aug. 1 - 31, 2021	
Sep. 1 - 30, 2021	
Oct. 1 - 31, 2021	
Nov. 1 - 30, 2021	
Dec. 1 - 31, 2021	
Jan. 1 - 31, 2022	
Feb. 1 - 28, 2022	
Mar. 1 - 31, 2022	
Apr. 1 - 30, 2022	
May 1 - 31, 2022	
Jun. 1 - 30, 2022	
Jul. 1 - 31, 2022	
Aug. 1 - 31, 2022	

TOTAL FOR ALL THE PERIODS	

TRUNCATE AFTER DECIMAL POINT

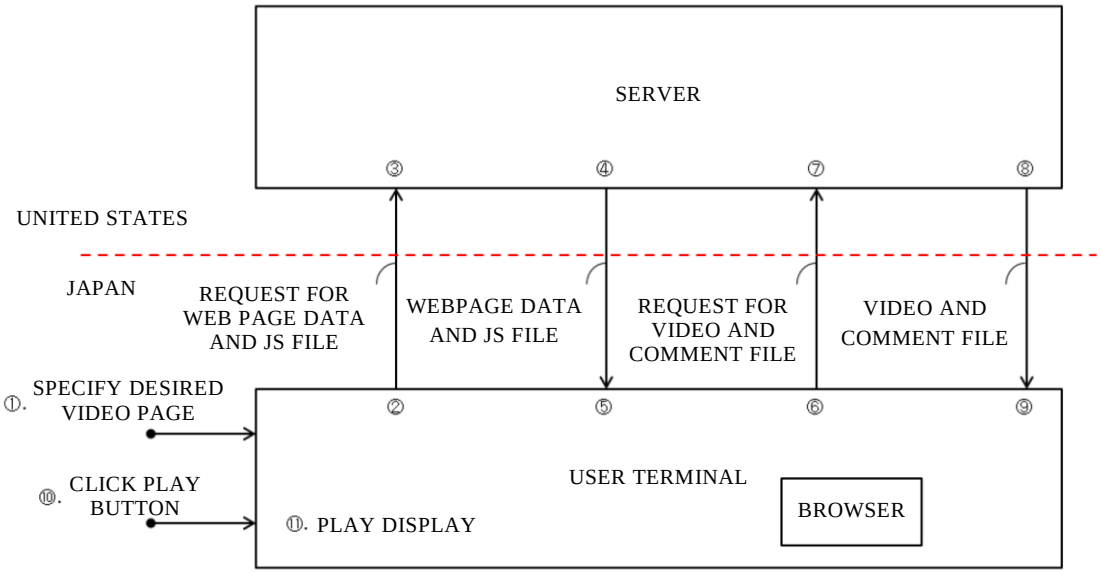
ATTACHMENT 7-2 CALCULATION OF MARGINAL PROFIT AMOUNTS

PERIOD	MARGINAL PROFIT BREAKDOWN				MARGINAL PROFIT AMOUNT (INCLUDING PART CORRESPONDING TO CONSUMPTION TAX (10%))
	PRODUCTION 1	PRODUCTION 2	PRODUCTION 3	SUB TOTAL	
May 17 - 31, 2019	[redacted]				
Jun. 1 - 30, 2019					
Jul. 1 - 31, 2019					
Aug. 1 - 31, 2019					
Sep. 1 - 30, 2019					
Oct. 1 - 31, 2019					
Nov. 1 - 30, 2019					
Dec. 1 - 31, 2019					
Jan. 1 - 31, 2020					
Feb. 1 - 29, 2020					
Mar. 1 - 31, 2020					
Apr. 1 - 30, 2020					
May 1 - 31, 2020					
Jun. 1 - 30, 2020					
Jul. 1 - 31, 2020					
Aug. 1 - 31, 2020					
Sep. 1 - 30, 2020					
Oct. 1 - 31, 2020					
Nov. 1 - 30, 2020					
Dec. 1 - 31, 2020					
Jan. 1 - 31, 2021					
Feb. 1 - 28, 2021					
Mar. 1 - 31, 2021					
Apr. 1 - 30, 2021					
May 1 - 31, 2021					
Jun. 1 - 30, 2021					
Jul. 1 - 31, 2021					
Aug. 1 - 31, 2021					
Sep. 1 - 30, 2021					
Oct. 1 - 31, 2021					
Nov. 1 - 30, 2021					
Dec. 1 - 31, 2021					
Jan. 1 - 31, 2022					
Feb. 1 - 28, 2022					
Mar. 1 - 31, 2022					

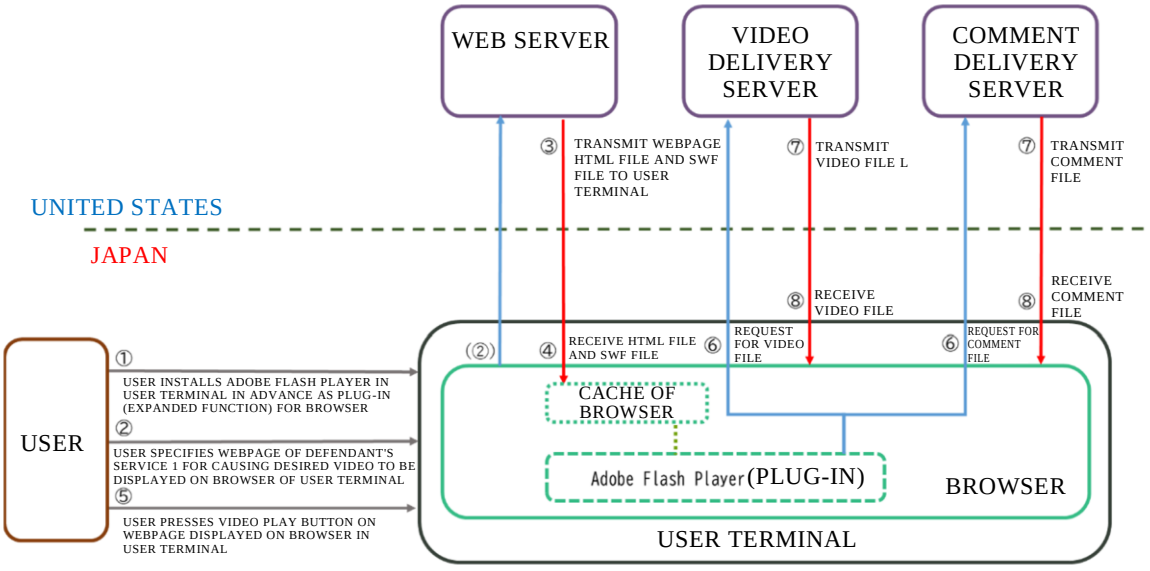
Apr. 1 - 30, 2022	[redacted]
May 1 - 31, 2022	
Jun. 1 - 30, 2022	
Jul. 1 - 31, 2022	
Aug. 1 - 31, 2022	
TOTAL FOR ALL THE PERIODS	

ATTACHMENT 8-1 OPERATION OF EACH OF DEFENDANT'S SYSTEMS (HTML 5 VERSION OF DEFENDANT'S SYSTEM 1)

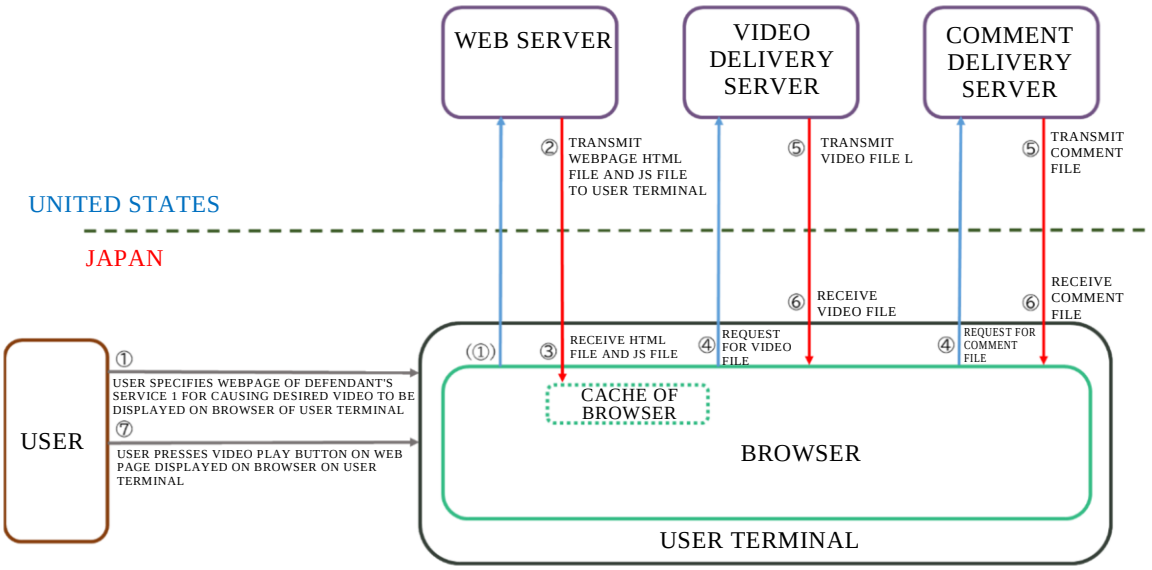
[FIG]



ATTACHMENT 8-2 FLASH VERSION OF DEFENDANT'S SERVICE 1

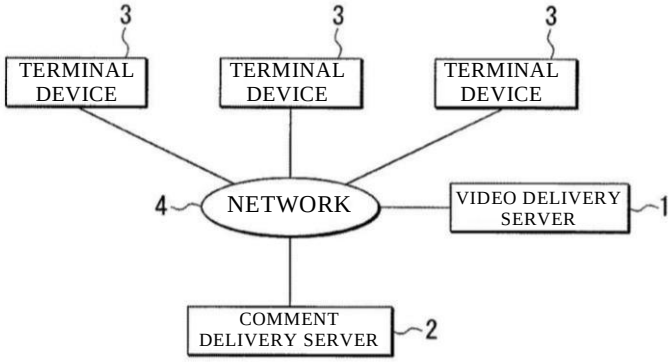


ATTACHMENT 8-3 HTML 5 VERSION OF DEFENDANT'S SYSTEM 1

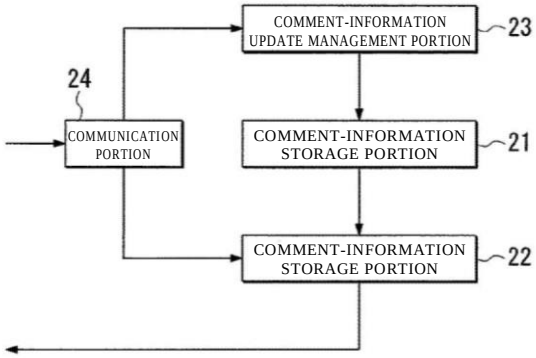


ATTACHMENT 9 DESCRIPTION DRAWINGS

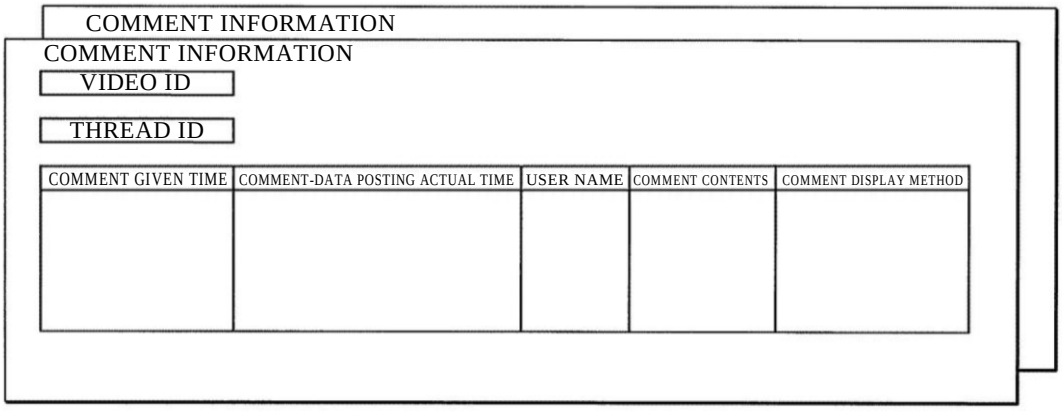
[FIG. 1]



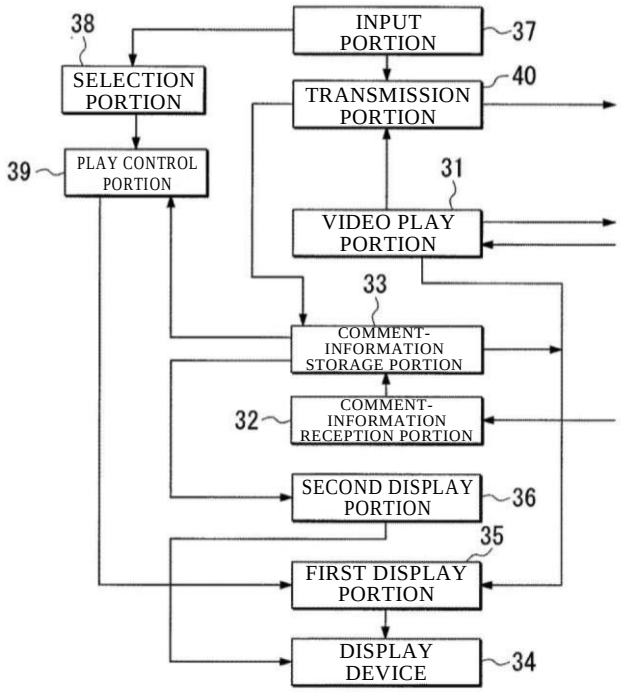
[FIG. 2]



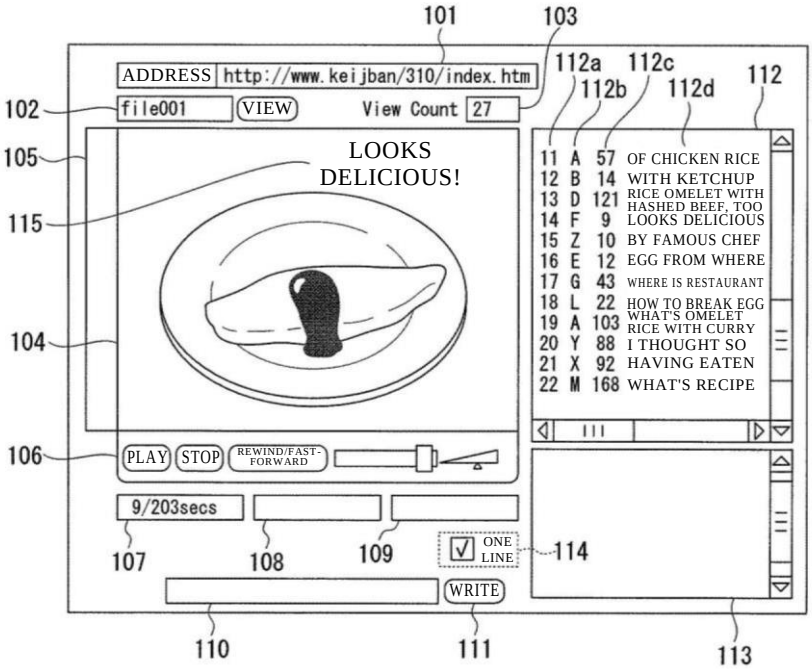
[FIG. 3]



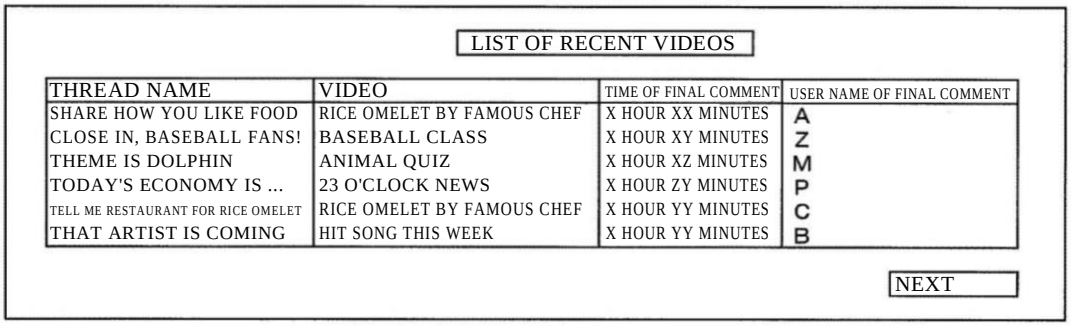
[FIG. 4]


INPUT PORTION
37
38
SELECTION PORTION
40
TRANSMISSION PORTION
39
PLAY CONTROL PORTION
31
VIDEO PLAY PORTION
33
COMMENT-INFORMATION STORAGE PORTION
32
COMMENT-INFORMATION RECEPTION PORTION
SECOND DISPLAY PORTION
36
35
FIRST DISPLAY PORTION
DISPLAY DEVICE
34

[FIG. 5]

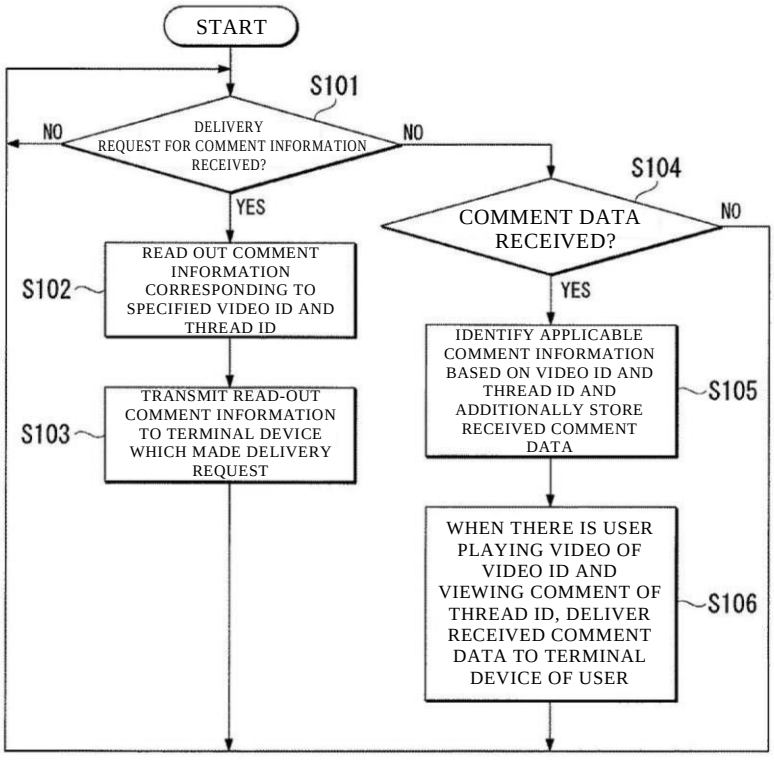

101
103
ADDRESS
http://www.keijban/310/index.htm
112a
112b
112c
112d
112
102
file001
VIEW
View Count
27
105
LOOKS DELICIOUS!
115
11 A 57 OF CHICKEN RICE
12 B 14 WITH KETCHUP
13 D 121 RICE OMELET WITH HASHED BEEF, TOO
14 F 9 LOOKS DELICIOUS
15 Z 10 BY FAMOUS CHEF
16 E 12 EGG FROM WHERE
17 G 43 WHERE IS RESTAURANT
18 L 22 HOW TO BREAK EGG
19 A 103 WHAT'S OMELET RICE WITH CURRY
20 Y 88 I THOUGHT SO
21 X 92 HAVING EATEN
22 M 168 WHAT'S RECIPE
104
106
PLAY
STOP
REWIND/FAST-FORWARD
9/203secs
107
108
109
ONE LINE
114
WRITE
110
111
113

[FIG. 6]

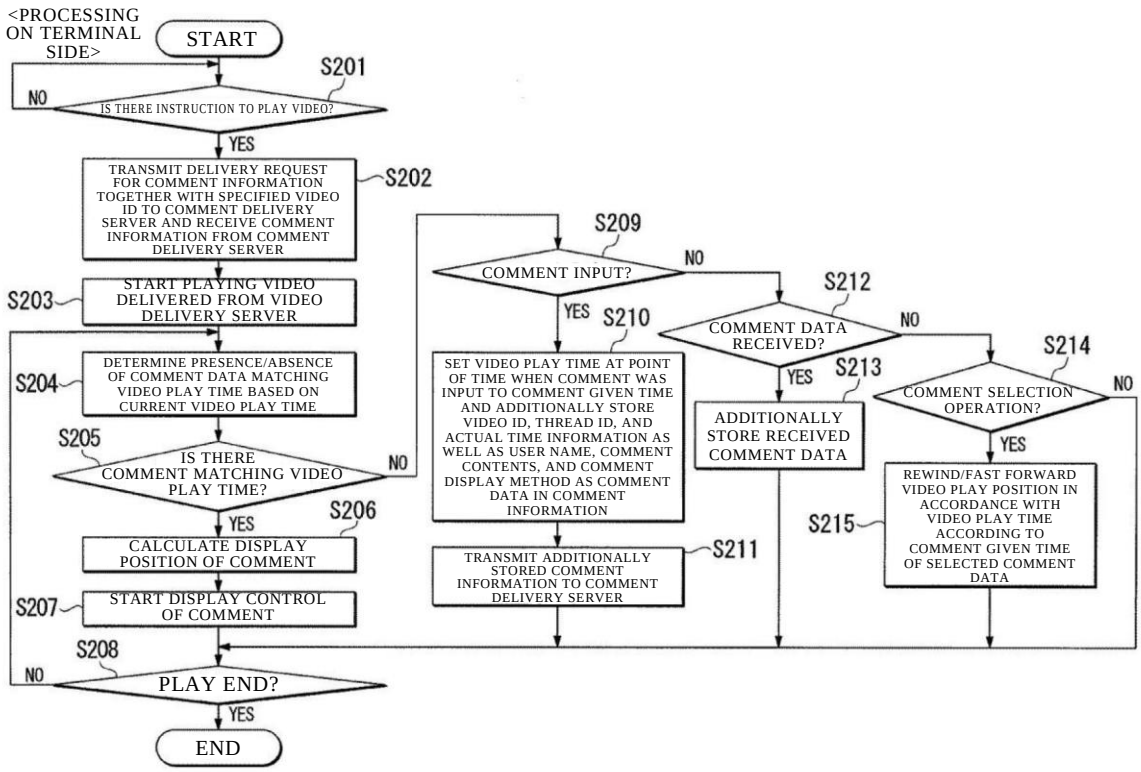


[FIG. 7]

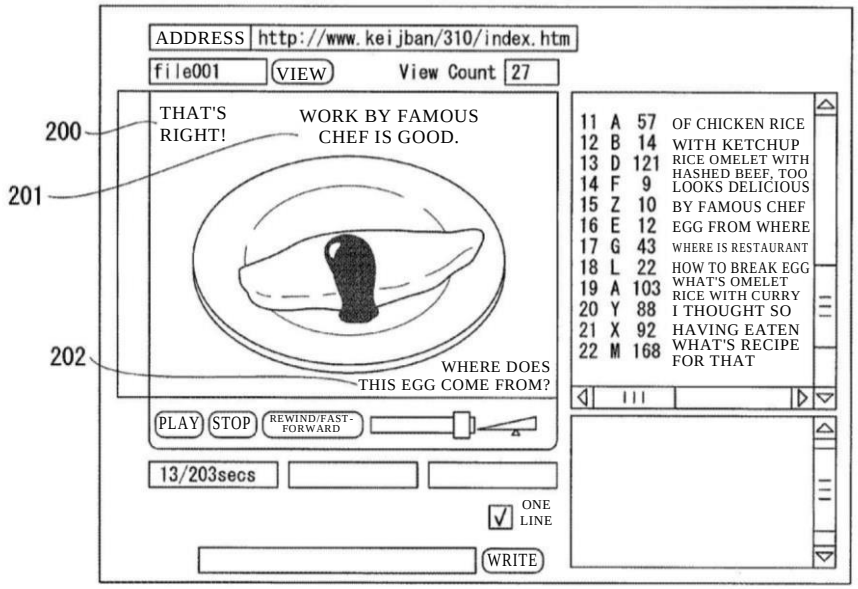
<PROCESSING ON COMMENT DELIVERY SERVER SIDE>



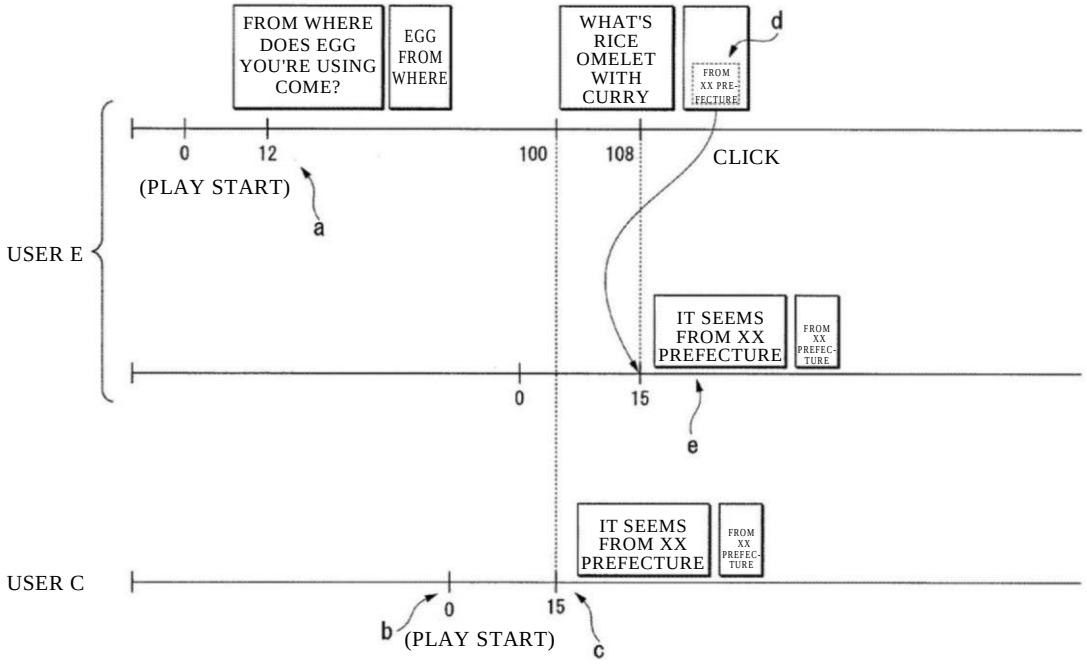
[FIG. 8]


<PROCESSING ON TERMINAL SIDE>
START
S201
IS THERE INSTRUCTION TO PLAY VIDEO?
NO
YES
TRANSMIT DELIVERY REQUEST FOR COMMENT INFORMATION TOGETHER WITH SPECIFIED VIDEO ID TO COMMENT DELIVERY SERVER AND RECEIVE COMMENT INFORMATION FROM COMMENT DELIVERY SERVER
S202
S203
START PLAYING VIDEO DELIVERED FROM VIDEO DELIVERY SERVER
S204
DETERMINE PRESENCE/ABSENCE OF COMMENT DATA MATCHING VIDEO PLAY TIME BASED ON CURRENT VIDEO PLAY TIME
S205
IS THERE COMMENT MATCHING VIDEO PLAY TIME?
NO
YES
S206
CALCULATE DISPLAY POSITION OF COMMENT
S207
START DISPLAY CONTROL OF COMMENT
S208
PLAY END?
NO
YES
END
S209
COMMENT INPUT?
NO
YES
S210
SET VIDEO PLAY TIME AT POINT OF TIME WHEN COMMENT WAS INPUT TO COMMENT GIVEN TIME AND ADDITIONALLY STORE VIDEO ID, THREAD ID, AND ACTUAL TIME INFORMATION AS WELL AS USER NAME, COMMENT CONTENTS, AND COMMENT DISPLAY METHOD AS COMMENT DATA IN COMMENT INFORMATION
S211
TRANSMIT ADDITIONALLY STORED COMMENT INFORMATION TO COMMENT DELIVERY SERVER
S212
COMMENT DATA RECEIVED?
NO
YES
S213
ADDITIONALLY STORE RECEIVED COMMENT DATA
S214
COMMENT SELECTION OPERATION?
NO
YES
S215
REWIND/FAST FORWARD VIDEO PLAY POSITION IN ACCORDANCE WITH VIDEO PLAY TIME ACCORDING TO COMMENT GIVEN TIME OF SELECTED COMMENT DATA

[FIG. 9]


ADDRESS
http://www.keijban/310/index.htm
file001
VIEW
View Count 27
200
THAT'S RIGHT!
WORK BY FAMOUS CHEF IS GOOD.
201
202
WHERE DOES THIS EGG COME FROM?
11 A 57 OF CHICKEN RICE
12 B 14 WITH KETCHUP
13 D 121 RICE OMELET WITH HASHED BEEF, TOO
14 F 9 LOOKS DELICIOUS
15 Z 10 BY FAMOUS CHEF
16 E 12 EGG FROM WHERE
17 G 43 WHERE IS RESTAURANT
18 L 22 HOW TO BREAK EGG
19 A 103 WHAT'S OMELET RICE WITH CURRY
20 Y 88 I THOUGHT SO
21 X 92 HAVING EATEN
22 M 168 WHAT'S RECIPE FOR THAT
PLAY
STOP
REWIND/FAST-FORWARD
13/203secs
ONE LINE
WRITE

[FIG. 10]


FROM WHERE DOES EGG YOU'RE USING COME?
EGG FROM WHERE
WHAT'S RICE OMELET WITH CURRY
FROM XX PRE-FECTURE
d
0
12
100
108
CLICK
(PLAY START)
a
USER E
IT SEEMS FROM XX PREFECTURE
FROM XX PREFEC-TURE
0
15
e
IT SEEMS FROM XX PREFECTURE
FROM XX PREFEC-TURE
USER C
b
0
15
(PLAY START)
c

Attachment 10 Determination on Issue 5 (Establishment of the defense of invalidity)

5 Issue 5 (Establishment of the defense of invalidity)

(1) Issue 5-1 (Lack of inventive step (Invalidation Reason 1) with Exhibit Otsu 17 publication as a primarily cited reference)

A. Introduction

The Appellees assert that: [i] Exhibit Otsu 17 describes Exhibit Otsu 17 Invention (the judgment in prior instance, from page 127, lines 8 to 24) as follows; [ii] the Invention 1 and Exhibit Otsu 17 Invention are different only in a point that Invention 1 includes a determining portion which determines whether or not a display position of the second comment when displayed on the video overlaps a display position of the first comment (constituent feature 1F) and a display-position control portion for adjustment such that, when they are determined to overlap, the first comment and the second comment are displayed at positions not overlapping each other (constituent feature 1G), while Exhibit Otsu 17 Invention does not include such configuration (Difference 1); [iii] according to Exhibits Otsu 26 to 28, in order to solve the problem of lowering of visibility caused by overlapping display of character strings, when the text information is to be displayed in the "video", determination on whether or not the character strings overlap, and in the case of overlap, changing of the positions so that they do not overlap was publicly known (the position-change publicly-known art) at the time of priority date of the Application (priority date of the original application, the same applies to the following), and the determination on whether or not the character strings overlap and in the case of overlap, changing of the position so as not to overlap was customarily used in the art for displaying the text information in the "video" (the position-change customarily-used art); [iv] according to Exhibits Otsu 48, 61, and 62, at the time of the priority date of the Application, in the "screen display of a computer", a determining function of determining whether or not display positions of two different displayed objects overlap and when they are determined to overlap, a display-control function of adjustment such that they are displayed at positions that do not overlap were well known (the position-change well-known art 2); and [v] a person ordinarily skilled in the art could have easily conceived of the configuration of Invention 1 related to Difference 1 (configurations of constituent features 1F and 1G) by applying the position-change publicly-known art, the position-change customarily-used art, or the position-change well-known art 2 in Exhibit Otsu 17 Invention and thus, Invention 1 lacks inventive step and thus, it shall be determined as follows.

[Exhibit Otsu 17 Invention]

"(A) (G) A viewer machine which plays a video and displays a single or a plurality of comments given to the video on the video, characterized by having

(B) a memory which stores the comment and a synchronized description described in SMIL (Synchronized Multimedia Integration Language) which specifies timing to start display of the comment (hereinafter, referred to as a "comment storing memory");

(C) a video play portion which plays and displays the video; and

(D) a comment playing portion which reads out the comment for which the display should be started at timing corresponding to a video play time of the video in the synchronized description stored in the memory on the basis of the video play time of the video to be played and displays the read-out comment on a viewer screen, in which

(E) the comment overlaps at least a part of the video; and

(F) the comment moves horizontally."

B. The position-change publicly-known art and the position-change customarily-used art

The Appellees assert that paragraphs [0059] and [0095] in Exhibit Otsu 26, Exhibit Otsu 27 on the upper left column on page 4, lines 2 to 8, 14 to 19, and paragraphs [0007] and [0011] in Exhibit Otsu 28 illustrate the position-change publicly-known art, and from these descriptions, the position-change customarily-used art can be acknowledged.

(A) Described matters in Exhibit Otsu 26

Exhibit Otsu 26 (Unexamined Patent Application Publication No. 1996-107552 publication) has descriptions as follows:

"[Industrial Field of Application]

The present invention relates to a text-broadcast special playing device and a teletext-broadcast special playing device and in more detail to a text-broadcast special playing device and a teletext-broadcast special playing device having special program presenting/processing functions such as reception/demodulation of text broadcast data transmitted by superimposing data consisting of characters and figures on a vertical blanking interval of a TV (television) video signal and singular display, superimposed display, or scroll-display of this data on a TV screen." ([0001]), "[Prior Art] In a text broadcasting system currently in operation, the text broadcast data are sent out in a data packet format with the data superimposed in a predetermined horizontal scanning period in a vertical blanking interval of a television signal as a unit length. These

text broadcast data include not only text information but also information data of figures and the like. Therefore, in the following explanation, these pieces of data shall be collectively referred to simply as program data." ([0002]), "As a publicly-known document describing the text broadcasting system, "Guide to ~ Hybrid Position System ~ Text Broadcasting Reception" (edited by Japan Broadcasting Corporation, published by Japan Broadcasting Corporation, Sho 61-1-15) has a detailed description, for example. On the basis of this document, the text broadcasting system as a premise of the Invention will be explained below mainly in relation to matters related to the present invention in particular. The text broadcasting is broadcasting by encoding image information configured by texts and figures and superimposing it on a TV broadcast wave in a form of a digital signal, by converting it to a video signal on a reception side, and by displaying it on a TV receiver. A text signal having the image information is superimposed in a VBL (vertical blanking interval) not appearing on the TV screen in the TV video signal and transmitted."([0003]), "There are two types of display of text broadcasting; that is, single display in which the whole screen is a text program, and a super display in which the text program is superimposed on a part of the TV screen for display. Moreover, there are display modes such as [i] a full-screen fixed display (stationary text and a figure are displayed in a display region); [ii] a super fixed display (stationary text and a figure are superimposed and displayed on a video of the TV broadcasting); [iii] subtitle display (super fixed display in which a text and a figure directly related to the contents of a TV broadcast program broadcast at the same time are displayed); [iv] one-line horizontal-scroll display (a text and a figure in one horizontal line moving from right to left are displayed by being superimposed on the video of the TV broadcasting); [v] full-screen vertical scroll (a text and a figure moving from down to up are displayed in a main-text display region); and [vi] multi-screen display (a main-text display region is divided into four quadrants, and a screen is displayed on each quadrant at the same time by the full-screen fixed display)." ([0009]), "The text broadcasting is a kind of data transmission, and texts and figures, which are information to be transmitted, are encoded, divided into appropriate lengths, superimposed on H (horizontal scanning period) in the VBL (vertical blanking interval) of the video signal, and transmitted. A process from the transmission to presentation is hierarchized in accordance with a layered model established by ISO (International Organization for Standardization) so as to be consistent with data transmission having other, different rules (protocols)." ([0010]), "The present invention was made in view of such points and has an object to provide a text-

broadcast special playing device and a teletext-broadcast special playing device configured to obtain information of text broadcasting and teletext broadcasting while viewing the TV video by converting the full-screen fixed display screen to a scroll screen so as to realize scroll-display without a break in the text in the middle." ([0058]), "[Means for Solving the Problem] In order to solve the aforementioned problems, (1) in a text-broadcast receiving device which receives/demodulates text data transmitted by superimposing data consisting of characters, figures, and added sound on a vertical blanking interval of a television video signal, having a presented-screen conversion table for storing text information for each block of a minimum character unit and a special-play control portion for scroll-display based on the presented-screen conversion table in order to convert a full-screen fixed display screen to a scroll screen; and moreover, (2) the special-play control portion has a coordinate-address conversion portion for converting a presented coordinate of the transmitted text data to an address of the presented-screen conversion table and a table generating portion for generating the presented-screen conversion table on the basis of the address converted by the coordinate-address conversion portion; and moreover, (3) the scroll-display by the special-play control portion is superimposed display; and moreover, (4) the presented-screen conversion table includes a character code indicating a size of a character, a color code indicating a display color, and an attribute code for character decoration processing or the like; and moreover, (5) when the text-broadcast program is viewed on a wide-aspect monitor, a display-mode discriminating portion for discriminating a screen mode and a special-play display control portion for automatically converting a presentation position to an optimal position in accordance with the screen mode discriminated by the display-mode discriminating portion are provided; and moreover, (6) when the text-broadcast program is to be displayed on a video different from the TV broadcast in which the text broadcast is superimposed on the wide-aspect monitor, when the video has a CinemaScope size or the like and subtitles, and when the subtitles move by a subtitle moving function and overlap the scroll-display position, a subtitle-position detection portion for detecting a subtitle position and the special-play display control portion for retreating to an optimal position by avoiding the subtitle position detected by the subtitle-position detection portion are provided; and moreover, (7) a signal detection portion for detecting average brightness and a peak brightness of a specified region on the TV video and the special-play display control portion which compares a value of the presented position and moves the presented position to a region with lower brightness, easy to be seen, and not obstructing information of the TV video are

provided." ([0059]), "Moreover, when a subtitle is provided by a subtitle moving function or the like, the subtitle position is detected by the subtitle-position detection portion 30, and scroll-display is performed by the special-play (scroll) display-position control portion 31 to an optimal position by avoiding the subtitle position (claim 6). Furthermore, average brightness and peak brightness of a specified region on the TV video are detected by the signal detection portion 5, and the presented position is moved by the special-play (scroll) display-position control portion 31 to a region with lower brightness, easy to reproduce, and not obstructing the information of the TV video, and scroll-displayed (claim 7)." ([0095]).

From the aforementioned description, it is found that Exhibit Otsu 26 discloses such an art that, in text broadcasting in which image information configured by characters and figures is encoded and superimposed in a form of a digital signal on the TV broadcast wave, converted to a video signal on a reception side, and displayed on a TV receiver, when the TV video has a subtitle, the scroll-display is made at an optimal position by avoiding the subtitle position so that the subtitle does not overlap the scroll-display position of the text data. On the other hand, the aforementioned art described in Exhibit Otsu 26 is an art related to a TV receiver on the premise of the text broadcasting and is not related to the video in general.

(B) Described matters in Exhibit Otsu 27

Exhibit Otsu 27 (Unexamined Patent Application Publication No. 1984-105788 publication) has the following description: "Field of the Invention The present invention relates to a teletext receiver.", "Background Art and Problem In television broadcasting, television multiplex text-broadcast for broadcasting various types of information such as news, weather forecasts, announcements, and the like by using a vertical blanking interval of main programs is considered. As an example, there is a system proposed by NHK, and this system has display modes as follows: (i) full-screen fixed mode: As shown in FIG. 1, an image of text broadcast is fixed and displayed on a full screen of a picture tube; (ii) vertical scroll mode: As shown in FIG. 2, an image of text broadcasting is displayed over the full screen of the picture tube, but this is scrolled in an upper direction at an appropriate speed except the uppermost line; and (iii) horizontal scroll mode: As shown in FIG. 3, one line in a sentence of the text broadcast is displayed with respect to a main broadcast image, but this is scrolled in a horizontal direction." (so far, on page 1), "Incidentally, in the horizontal scroll mode, as shown in FIG. 3, as well, the one line by the text broadcast is superimposed and displayed with respect to the main broadcast image and thus, if characters by the main broadcast such as a name of a batter in a baseball game, for example, is

displayed at this display position, the two displays overlap and both become hard to see." (on page 4, upper left column, lines 2 to 8), "Object of the Invention An object of the present invention is to solve the problems as described above and particularly to prevent a cost increase at that time as much as possible." (on page 4, upper left column, lines 9 to 12), "Summary of Invention Thus, in the present invention, a position in the horizontal scroll is made changeable to a vertical direction by using a function for vertical scroll. Therefore, overlap of characters in the horizontal scroll and characters in the main broadcasting can be avoided, and both can be viewed." (on page 4, upper left column, lines 13 to 19), "Effects of Invention Since a display position in the horizontal scroll can be set in an arbitrary line, the displayed character in the horizontal scroll does not overlap the character in the main broadcast image, but both can be viewed. Moreover, a cost increase is rarely caused by this." (on page 6, lower right column, lines 12 to 17).

From the aforementioned description, it is found that Exhibit Otsu 27 discloses such an art that, in the receiver of television multiplex text broadcasting, the overlap of the character in the main broadcast image and the displayed character of the text broadcasting is avoided, and both can be viewed. On the other hand, the aforementioned art described in Exhibit Otsu 27 is the art related to the receiver on the premise of the television multiplex text broadcasting and is not related to the video in general.

(C) Described matters in Exhibit Otsu 28

Exhibit Otsu 28 (Unexamined Patent Application Publication No. 1994-165139 publication) has the following description:

"[Industrial Field of Application] The present invention relates to a closed caption decoder for extracting a text signal transmitted by being superimposed on a video signal and for displaying text information at a predetermined position on a screen, and a television receiver including this closed caption decoder and displaying the text information together with the video on the screen." ([0001]), "[Prior Art] In the United States, a closed caption (character multiplex) system in which the same contents as those in sound are made into text information, which is superimposed on a scanning line signal in the vertical blanking interval of a video signal and transmitted is employed for many television programs, video software, and the like, so that a deaf person and a hearing-impaired person can enjoy television broadcasting in the same manner as a healthy person, and a character encoding method, a transmission method, and the like are defined in detail on the basis of the FCC (Federal Communications Commission) standards. In Japan, utilization of the closed caption system for

language teaching materials is being considered." ([0002]), "[Problem to be Solved by the Invention] Since the conventional closed caption decoder is as described above, when the closed caption decoder is used as a language teaching material, with such a display style that a display position of text information is not fixed but is changed for each screen, the text information should be followed with the eyes each time the screen is changed and thus, it is not possible to concentrate on the subtitles, and the teaching effect is lowered." ([0006]), "In addition, when the Japanese subtitle is to be compared with the English subtitle of the closed caption, there is a problem that the display position cannot be changed on the receiver side even if the subtitle of the closed caption overlaps the Japanese subtitle and becomes difficult to read." ([0007]), "The present invention was made in order to solve the problem as described above and has an object to provide a closed caption decoder capable of changing a display position of a closed caption on a receiver side by providing a function of converting address data, and a television receiver including the closed caption decoder." ([0008]), "[Means for Solving the Problem] A closed caption decoder according to the present invention is, in a closed caption decoder which extracts and decodes an encoded text signal superimposed on a video signal in a vertical blanking interval and displays text information at a predetermined position on a screen, characterized by including means for specifying a display position of the text information on a screen, a circuit for converting a display address of the text information included in a text signal into a display address corresponding to the specified display position, and means for displaying the text information at the converted display address." ([0009]), "A television receiver according to the present invention includes the closed caption decoder and displays the text information together with the video on a screen." ([0010]), "[Action] A closed caption decoder and a television receiver including the same according to the present invention extract and decode a text signal superimposed on a video signal in a vertical blanking interval, convert a display address of text information included in the text signal into a display address specified on a reception side by a conversion program, a cursor, or the like, and display the text information at the converted display address." ([0011]), and "[Effect of the Invention] As described above, in the closed caption decoder and the television receiver including the same according to the present invention, the display address of the text information by the closed caption determined on the transmission side of the video signal can be changed on the reception side and thus, such an excellent effect is exerted that it becomes easier to concentrate on the text information by fixing it to a certain display position and to compare the two by moving it to a position not overlapping the text

information by an open caption, for example." ([0023]).

From the aforementioned descriptions, it is found that Exhibit Otsu 28 discloses such an art that exerts the effect that, in the television receiver including the closed caption decoder which displays on the screen the text information transmitted by being superimposed on the video signal together with the video, overlap between the Japanese subtitle and the English subtitle in the closed caption can be avoided, and the two can be compared more easily, for example. On the other hand, the aforementioned art described in Exhibit Otsu 28 is an art related to the television receiver including the closed caption decoder which displays the text information on a screen together with the video and is not related to the video in general.

(D) Conclusion

As described above, each of the arts described in Exhibits Otsu 26 to 28 is an art related to the television receiver and the like on the premise of the text broadcast and is not related to the video in general, or is not identical to the configuration of Invention 1 according to Difference 1.

From the descriptions in Exhibits Otsu 26 to 28 on which the Appellees base their arguments, it cannot be found that, at the time of the priority date of the Application, the position-change publicly-known art asserted by the Appellees was publicly known, or that the position-change customarily-used art asserted by the Appellees was customarily used.

C. Position-change well-known art 2

The Appellees assert that, from the descriptions in Exhibit Otsu 48, on page 80, Exhibit Otsu 61, on pages 190, 191, 196, and 199, and Exhibit Otsu 62, on pages 182 and 188, the position-change well-known art 2 can be acknowledged.

(A) Described matters in Exhibit Otsu 48

Exhibit Otsu 48 ("ActionScript Pocket Reference") has the following descriptions: "09 Examine whether it overlaps another instance (collision determination)", "This is a method of examining the overlap (collision determination) between the commentary movie-clip instance and an arbitrary xy coordinate or another movie clip, a button, or a text field instance. If they overlap, true will return, while if not, false will return.", "The xy coordinate ((blackened triangle), (white triangle)) which can be specified in the aforementioned format is a global coordinate." For the determination condition of (blackened star), specify true for the determination in a region with a line/paint (hit region), or false for the determination in a region rectangle of the instance. This determination condition cannot be set in the format below for examining the overlap between the instances. It is determined with the

region rectangle at all times." (so far, on page 80).

From the aforementioned description, it is found that Exhibit Otsu 48 discloses such an art (collision determination) that examines overlap between the movie-clip instance, and other movie clips, a button, and a text field instance.

(B) Described matters in Exhibit Otsu 61

Exhibit Otsu 61 (Foundation ActionScript Animation: Making Things Move!) has the following description (abstract translation of original English):
"Collision detection method ... (blackened square) a test can be conducted on the basis of an actual pixel of each of the objects (movie clips). That is, it is a test on whether the shape of this movie clip overlaps the shape of that movie clip. As the test, (there are such methods that) an actual pixel which can be visually recognized for creating a graphic of the movie clip is considered, or a test is conducted on the basis of the boundary of the rectangle of the movie clip. Thus, this method has several options for how it would be applied. This format of collision detection is incorporated in Flash. (blackened square) ... a test can be conducted also on the basis of a distance. A distance between two objects is measured, and "are they close enough to collide?" is asked. This is close to a collision detection method of a role of a setter himself/herself. It is necessary to calculate the distance and to determine when the object becomes sufficiently close.", "hitTest is embedded", "The Flash movie clip has included a method called hitTest." (so far, on page 190), "The following method is the simplest method for determining whether a collision has occurred or not. That is, a first object is specified, and a periphery thereof is surrounded by a rectangle. A side on an upper part of the rectangle passes an uppermost part of a pixel which can be visually recognized in the graphic of the object, a side of a lower part passes through a lowermost part of the visually recognizable pixel, and left and right sides pass the farthest part of the visually recognizable pixel. Similar processing is executed for the object to be tested with respect to that. On the basis of the above, it is checked whether these two rectangles cross each other in any way. If they cross each other, a collision has occurred." (on page 191), "Collision detection based on distance: In this section, incorporation of the hitText in a method group is discarded, and the collision detection is performed by oneself. In order to determine whether the two objects would collide or not, this includes a method of using a distance between them." (on page 196), "A problem accompanying a good operation example of hitTest based on a collision distance based on hitting is supposed to include many problems related to a reaction of a complete program when two objects collide against each other, and a method of efficiently manipulating intersection among many objects and the like,

which have not been discussed. However, I have managed to create an explanation of hitTest without using many of those which have not yet been shown.", "The idea is as follows. That is, at the center of the display screen, a movie clip of one large circle called a center ball is installed. And a movie-clip group of smaller circles is added, and random sizes and speeds are set to those circles. They move on the basis of a basic motion code and are bounced back by a wall. On an edge of each of the circles, a collision check based on the distance between each of the moving balls and the center ball is conducted. In the case of a collision, an offset of a target to be hit is calculated on the basis of an angle between the two balls and the shortest distance to avoid the collision. OK, this might be difficult to understand. What it means is that, if a moving ball collides against the center ball, the ball is bounced back. This is performed by setting the target just outside the center ball. Then, once the ball reaches the target, a collision would not occur and thus, the hitting operation ends, and it begins to move simply on the basis of a usual motion code.", "The result is as if a bubble is bounced back by a large bubble, as shown in FIG. 9-4. A few of the small bubbles enter the large bubble in accordance with the moving speed thereof, but they are bounced back." (so far, on page 199).

From the aforementioned description, it is found that Exhibit Otsu 61 discloses such an art that the collision check for determining whether two objects (movie clips) collide or not is performed, and in the case of the collision, one of the objects is bounded back by the other.

(C) Described matters of Exhibit Otsu 62

Exhibit Otsu 62 ("Web production seminar FlashMX2004") has the following descriptions: "action to discriminate a hit region", "Use hitTest", "'hittest();' in ActionScript determines whether an instance having an overlapping region overlaps the hit region. In the case of overlap, true is returned, while if not, false is returned.", "Use example of hitTest: In this Lesson, hitTest is used, and it is configured such that, when a popup window comes onto 'topicFitBase', which is the movie clip for determination placed on a stage, the popup window is joined thereto without a gap and returns to an original position so as to be adsorbed." (so far, on page 182), "It is configured such that, by moving the popup window which has been moved to a certain position, the popup window returns to the original position.", "Here, another instance is disposed at the same coordinate position as the position where the popup window was first disposed. When the popup window overlaps the instance, the coordinate of the popup window is substituted by the coordinate of the instance. In this way, the popup window returns to the original coordinate position." (so far, on

page 188).

From the aforementioned descriptions, it is found that Exhibit Otsu 62 discloses an art configured such that, when the popup window is overlaid on the movie clip for determination "topicFitBase", the popup window returns to the original coordinate position.

(D) Conclusion

As described above, Exhibit Otsu 48 discloses the art for examining the overlap between the movie clip instance and another movie-clip instance (collision determination), Exhibit Otsu 61 discloses the art that the collision check for determining whether or not the two objects (movie clips) collide is performed, and in the case of a collision, one of the objects is bounced back by the other, and Exhibit Otsu 62 discloses the art that it is configured such that, when the popup window is overlaid on the movie clip for determination "topicFitBase", the popup window returns to the original coordinate position. But when it is determined that they overlap, one of the objects is simply bounced back by the other, or the popup window returns to the original coordinate position, and it cannot be considered to be a function of adjustment so that they are displayed at positions not overlapping each other (display control function). Moreover, none of the arts described in Exhibits Otsu 48, 61, and 62 is identical with the configuration of Invention 1 according to Difference 1 (the configurations of the constituent features 1F and 1G), either.

Moreover, it cannot be acknowledged that, from the descriptions in Exhibits Otsu 48, 61, and 62 on which the Appellees base their arguments, the position-change well-known art 2 asserted by the Appellees was well known at the time of priority date of the Application.

D. How easily Difference 1 could have been conceived of

The Appellees assert that a person ordinarily skilled in the art could have easily conceived of the configuration of Invention 1 according to Difference 1 (configurations of the constituent features 1F and 1G) by applying the position-change publicly-known art, the position-change customarily-used art, or the position-change well-known art 2 in Exhibit Otsu 17 Invention.

However, as described in the aforementioned B and C, from the descriptions in Exhibits Otsu 26 to 28, 48, 61, and 62 on which the Appellees base their arguments, none of the position-change publicly-known art, the position-change customarily-used art, and the position-change well-known art 2 can be acknowledged and thus, the aforementioned assertion by the Appellees lacks the premise thereof, and cannot be accepted.

E. Summary

As described above, it cannot be approved that the configuration of Invention 1 according to Difference 1 (configurations of constituent features 1F and 1G) could have been easily conceived of in Exhibit Otsu 17 Invention as asserted by the Appellees.

Moreover, the constituent features 2F and 2G of Invention 2 correspond to constituent features 1F and 1G of Invention 1, respectively, and thus, similarly to the above, it cannot be approved that the configurations of constituent features 2F and 2G of Invention 2 could have been easily conceived of in Exhibit Otsu 17 Invention.

Therefore, even without the need to determine the remaining points, Invalidation Reason 1 asserted by the Appellees is groundless.

(2) Issue 5-2 (Lack of inventive step with Exhibit Otsu 18 publication as the primarily cited reference (Invalidation Reason 2))

A. Appellees assert that Invention 1 lacks inventive step because [i] Exhibit Otsu 18 describes Exhibit Otsu 18 invention (judgment in prior instance, from page 137, line 16 to page 138, line 2) as follows; [ii] Invention 1 and Exhibit Otsu 18 invention are different only in a point that Invention 1 includes the determining portion which determines whether or not, when the second comment is displayed on the video, the display position overlaps the display position of the first comment (constituent feature 1F) and the display-position control portion which makes adjustment such that, when they are determined to overlap, the first comment and the second comment are displayed at positions not overlapping each other (constituent feature 1G), while Exhibit Otsu 18 invention does not include such configurations (Difference 1); and [iii] a person ordinarily skilled in the art could have easily conceived of the configurations of Invention 1 according to Difference 1 (configurations of constituent features 1F and 1G) by applying the position-change publicly-known art, the position-change customarily-used art, or the position-change well-known art 2 in Exhibit Otsu 18 invention.

[Exhibit Otsu 18 Invention]

"(A)(F) A display device which plays a video and displays a text on the video, comprising:

(B) a storage portion which collects a single piece or a plurality of pieces of text data corresponding to the video and stores them in a log file;

(C) a video play portion which plays and displays the video; and

(D) a single or a plurality of text-data display portions which read the text data and display the single piece or the plurality of pieces of text data, wherein

(E) the single piece or the plurality of pieces of text data are displayed by at least partially overlapping the video"

B. However, as taught in the aforementioned (1) D, from the descriptions in Exhibits Otsu 26 to 28, 48, 61, and 62 on which the Appellees base their arguments, none of the position-change publicly-known art, the position-change customarily-used art, and the position-change well-known art 2 can be acknowledged, and it cannot be approved that a person ordinarily skilled in the art could have easily conceived of the configuration of Invention 1 according to Difference 1 (configurations of constituent features 1F and 1G) in Exhibit Otsu 18 invention and thus, the aforementioned assertion by the Appellees lacks the premise thereof, and cannot be accepted. The same applies to Invention 2.

Therefore, even without the need to determine the remaining points, Invalidation Reason 2 asserted by the Appellees is groundless.

(3) Issue 5-3 (Lack of inventive step with Exhibit Otsu 19 publication as the primarily cited reference (Invalidation Reason 3))

A. The Appellees assert that Invention 1 lacks inventive step because [i] Exhibit Otsu 19 describes Exhibit Otsu 19 invention (judgment in prior instance, from page 146, line 11 to page 147, line 6) as follows; [ii] Invention 1 and Exhibit Otsu 19 invention are different only in a point that Invention 1 includes the determining portion which determines whether or not, when the second comment is displayed on the video, the display position overlaps the display position of the first comment (constituent feature 1F) and the display-position control portion which makes adjustment such that, when they are determined to overlap, the first comment and the second comment are displayed at positions not overlapping each other (constituent feature 1G), while Exhibit Otsu 19 invention does not include such configurations (Difference 1); and [iii] a person ordinarily skilled in the art could have easily conceived of the configurations of Invention 1 according to Difference 1 (configurations of the constituent features 1F and 1G) by applying the position-change publicly-known art, the position-change customarily-used art, or the position-change well-known art 2 in Exhibit Otsu 19 invention.

[Exhibit Otsu 19 Invention]

"(A)(F) A live viewer terminal 21 in a live delivery system, having a live delivery server 100 which receives a single or a plurality of chat messages transmitted from a plurality of live viewer terminals 21 and transmits them to each of the live viewer terminals 21, and the live viewer terminal 21 which is connected to the live delivery server 100, displays a video, and displays the chat message on the video,

characterized by having:

(B) a memory (difference time memory) for temporarily storing a single or a plurality of utterances (chat messages) and an utterance time indicating a difference time from start of live play time at a point of time when the utterance was made;

(C) a communicating device 22 which receives chat input information transmitted from the live delivery server 100 each time when the live delivery server 100 receives the chat input information from the live viewer terminal 21 and stores it in the memory;

(D) a video play portion which is connected to the live delivery server 100 and plays a video in the live viewer terminal 21; and

(E) a media dedicated player 23 which reads out the message with which the utterance time corresponding to video play time of the video (utterance information) is associated in the single or the plurality of messages stored in the memory on the basis of the video play time of the video to be played and scroll-displays the read-out message on the video."

B. However, as taught in the aforementioned (1) D, from the descriptions in Exhibits Otsu 26 to 28, 48, 61, and 62 on which the Appellees base their arguments, none of the position-change publicly-known art, the position-change customarily-used art, and the position-change well-known art 2 can be acknowledged, and it cannot be approved that a person ordinarily skilled in the art could have easily conceived of the configuration of Invention 1 according to Difference 1 (configurations of constituent features 1F and 1G) in Exhibit Otsu 19 invention and thus, the aforementioned assertion by the Appellees lacks the premise thereof, and cannot be accepted. The same applies to Invention 2.

Therefore, even without the need to determine the remaining points, Invalidation Reason 3 asserted by the Appellees is groundless.

(4) Issue 5-4 (Lack of inventive step with Exhibit Otsu 20 document as the primarily cited reference (Invalidation Reason 4))

A. The Appellees assert that Invention 1 lacks inventive step because: [i] Exhibit Otsu 20 describes Exhibit Otsu 20 invention (judgment in prior instance, from page 152, lines 10 to 21) as follows; [ii] Invention 1 and Exhibit Otsu 20 invention are different only in a point that, in Invention 1, the first comment and the second comment "move in a horizontal direction" (constituent feature 1E), while this point is not clear in Exhibit Otsu 20 invention (Difference 1), and Invention 1 includes the determining portion which determines whether or not, when the second comment is displayed on the video, the display position overlaps the display position of the first

comment (constituent feature 1F) and the display-position control portion which makes adjustment such that, when they are determined to overlap, the first comment and the second comment are displayed at positions not overlapping each other (constituent feature 1G), while it is not clear if Exhibit Otsu 20 invention includes such configuration or not (Difference 2); [iii] regarding Difference 1, a person ordinarily skilled in the art could have easily conceived of the configuration of Invention 1 according to Difference 1 (configuration of the constituent feature 1E) by applying the art of scroll-display of a text displayed on a screen of a terminal device in a horizontal or vertical direction (Exhibits Otsu 29 to 33 and the like), which is a basic art and a customarily-used art of a video editing software or programing in Exhibit Otsu 20 invention; and [iv] regarding Difference 2, a person ordinarily skilled in the art could have easily conceived of the configuration of Invention 1 according to Difference 2 (configurations of the constituent features 1F and 1G) by applying the position-change publicly-known art, the position-change customarily-used art, or the position-change well-known art 2 in Exhibit Otsu 20 invention.

[Exhibit Otsu 20 Invention]

"(E) A system having (A) a display device which plays a video and displays a single or a plurality of annotations given to the video, in which

(B) information related to time to cause the annotation to match a time axis of a video is stored, comprising:

(C) a video play portion which plays and displays the video in a video display region for playing a video, and

(D) a display portion which reads out an annotation and displays the annotation on the video on the basis of the time axis of the video to be played."

B. However, as taught in the aforementioned (1) D, from the descriptions in Exhibits Otsu 26 to 28, 48, 61, and 62 on which the Appellees base their arguments, none of the position-change publicly-known art, the position-change customarily-used art, and the position-change well-known art 2 can be acknowledged, and it cannot be approved that a person ordinarily skilled in the art could have easily conceived of the configuration of Invention 1 according to Difference 2 (configurations of the constituent features 1F and 1G) in Exhibit Otsu 20 invention and thus, the aforementioned assertion by the Appellees lacks the premise thereof, and cannot be accepted. The same applies to Invention 2.

Therefore, even without the need to determine the remaining points, Invalidation Reason 4 asserted by the Appellees is groundless.

(5) Issue 5-5 (Lack of inventive step with Exhibit Otsu 21 publication as the

primarily cited reference (Invalidation Reason 5))

A. The Appellees assert that the Invention 1 lacks inventive step because: [i] Exhibit Otsu 21 describes Exhibit Otsu 21 invention (judgment in prior instance, from page 160, the last line to page 161, line 15) as follows; [ii] Invention 1 and Exhibit Otsu 21 invention are different only in a point that Invention 1 includes the determining portion which determines whether or not, when the second comment is displayed on the video, the display position overlaps the display position of the first comment (constituent feature 1F) and the display-position control portion which makes adjustment such that, when they are determined to overlap, the first comment and the second comment are displayed at positions not overlapping each other (constituent feature 1G), while it is not clear if Exhibit Otsu 21 invention includes such configuration or not (Difference 1); and [iii] a person ordinarily skilled in the art could have easily conceived of the configuration of Invention 1 according to Difference 1 (configurations of the constituent features 1F and 1G) by applying the position-change publicly-known art, the position-change customarily-used art, or the position-change well-known art 2 in Exhibit Otsu 21 invention.

[Exhibit Otsu 21 Invention]

"(A) A system for simultaneously delivering a video and a text, including a server and a plurality of terminal devices connected thereto via a network, including

(B) a plurality of information terminal devices 200 which play the video and display a single or a plurality of texts on the video such that the two are seen simultaneously, in which

(C) a display memory 272 for temporarily storing a single or a plurality of texts and relative time information from a point of time of start of video play (play time information of the text in play of the video); and

(D) a display control portion 270 which plays and displays the video on a video area displaying a video and reads out from the display memory 272 the single or plurality of texts corresponding to relative time corresponding to the video play time of the video in the information stored in the display memory 272 on the basis of the video play time of the video to be played, scrolls the read-out text on a data area, and displays it overlapping at least a part of the video are provided."

B. However, as taught in the aforementioned (1) D, from the descriptions in Exhibits Otsu 26 to 28, 48, 61, and 62 on which the Appellees base their arguments, none of the position-change publicly-known art, the position-change customarily-used art, and the position-change well-known art 2 can be acknowledged, and it cannot be approved that a person ordinarily skilled in the art could have easily conceived of the

configuration of Invention 1 according to Difference 1 (configurations of constituent features 1F and 1G) in Exhibit Otsu 21 invention and thus, the aforementioned assertion by the Appellees lacks the premise thereof, and cannot be accepted. The same applies to Invention 2.

Therefore, even without the need to determine the remaining points, Invalidation Reason 5 asserted by the Appellees is groundless.

(6) Issue 5-6 (Lack of inventive step with Exhibit Otsu 24 publication as the primarily cited reference (Invalidation Reason 6))

A. The Appellees assert that Invention 1 lacks inventive step because: [i] Exhibit Otsu 24 describes Exhibit Otsu 24 invention (judgment in prior instance, from page 170, lines 3 to 14) as follows; [ii] Invention 1 and Exhibit Otsu 24 invention are different only in a point that, in Invention 1, the first comment and the second comment "move in a horizontal direction" (constituent feature 1E), while it is not clear in Exhibit Otsu 24 invention (Difference 1), and Invention 1 includes the determining portion which determines whether or not, when the second comment is displayed on the video, the display position overlaps the display position of the first comment (constituent feature 1F) and the display-position control portion which makes adjustment such that, when they are determined to overlap, the first comment and the second comment are displayed at positions not overlapping each other (constituent feature 1G), while it is not clear if Exhibit Otsu 24 invention includes such configuration or not (Difference 2); [iii] regarding Difference 1, a person ordinarily skilled in the art could have easily conceived of the configuration of Invention 1 according to Difference 1 (configuration of the constituent feature 1E) by applying the art of scroll-display of a text displayed on a screen of a terminal device in a horizontal or vertical direction (Exhibits Otsu 29 to 33 and the like), which is a basic art and a customarily-used art of a video editing software or programing in Exhibit Otsu 24 invention; and [iv] regarding Difference 2, a person ordinarily skilled in the art could have easily conceived of the configuration of Invention 1 according to Difference 2 (configurations of the constituent features 1F and 1G) by applying the position-change publicly-known art, the position-change customarily-used art, or the position-change well-known art 2 in Exhibit Otsu 24 invention.

[Exhibit Otsu 24 Invention]

"(A)(E) A display device which plays a video and displays a single or a plurality of chat messages on the video, characterized by having:

(B) a chat server which records the chat message;

(C) a video play portion which plays and displays the video on a first display

column, which is a region where the video is displayed; and

(D) a chat-message display portion which reads out the chat message and displays the chat message on a second display column, which is a region where the chat message is displayed."

B. However, as taught in the aforementioned (1) D, from the descriptions in Exhibits Otsu 26 to 28, 48, 61, and 62 on which the Appellees are base their arguments, none of the position-change publicly-known art, the position-change customarily-used art, and the position-change well-known art 2 can be acknowledged, and it cannot be approved that a person ordinarily skilled in the art could have easily conceived of the configuration of Invention 1 according to Difference 2 in Exhibit Otsu 24 invention and thus, the aforementioned assertion by the Appellees lacks the premise thereof, and cannot be accepted. The same applies to Invention 2.

Therefore, even without the need to determine the remaining points, Invalidation Reason 6 asserted by the Appellees is groundless.

(7) Issue 5-7 (Lack of inventive step with Exhibit Otsu 25 document as the primarily cited reference (Invalidation Reason 7))

A. The Appellees assert that Invention 1 lacks inventive step because: [i] Exhibit Otsu 25 describes Exhibit Otsu 25 invention (judgment in prior instance, from page 179, lines 6 to 25) as follows; [ii] Invention 1 and Exhibit Otsu 25 invention are different only in a point that, in Invention 1, the first comment and the second comment "move in a horizontal direction" (constituent feature 1E), while this point is not clear in Exhibit Otsu 25 invention (Difference 1), and Invention 1 includes the determining portion which determines whether or not, when the second comment is displayed on the video, the display position overlaps the display position of the first comment (constituent feature 1F) and the display-position control portion which makes adjustment such that, when they are determined to overlap, the first comment and the second comment are displayed at positions not overlapping each other (constituent feature 1G), while it is not clear if Exhibit Otsu 25 invention includes such configuration or not (Difference 2); [iii] regarding Difference 1, a person ordinarily skilled in the art could have easily conceived of the configuration of Invention 1 according to Difference 1 (configuration of constituent feature 1E) by applying the art of scroll-display of a text displayed on a screen of a terminal device in a horizontal or vertical direction (Exhibits Otsu 29 to 33 and the like), which is a basic art and a customarily-used art of video editing software or programing in Exhibit Otsu 25 invention; and [iv] regarding Difference 2, a person ordinarily skilled in the art could have easily conceived of the configuration of Invention 1 according to

Difference 2 (configurations of the constituent features 1F and 1G) by applying the position-change publicly-known art, the position-change customarily-used art, or the position-change well-known art 2 in Exhibit Otsu 25 invention.

[Exhibit Otsu 25 Invention]

"(A) A display device which plays a video and displays a single or a plurality of comments on the video, in which

(B) a message subject located on a lower part of a window 110 has start time substantially corresponding to a timeline point of an AV product viewed by a viewer, and a storage system 1230 accumulates information (CT-related information) related to a relationship with a point on the timeline of the AV product together with a comment input by the viewer.

(E) A display device, characterized by (C) having a video play portion which plays and displays the AV product on a window 120 (FIG. 1B), which is a region where the AV product is displayed, and

(D) a comment display portion which reads out a comment corresponding to a comment input time corresponding to the timeline of the AV product from the storage system 1230 in the CT-related information accumulated in the storage system 1230 on the basis of the play time of the AV product to be played and displays the read-out comment on the windows 110 and 150, which are regions for displaying the comment."

B. However, as taught in the aforementioned (1) D, from the descriptions in Exhibits Otsu 26 to 28, 48, 61, and 62 on which the Appellees base their arguments, none of the position-change publicly-known art, the position-change customarily-used art, and the position-change well-known art 2 can be acknowledged, and it cannot be approved that a person ordinarily skilled in the art could have easily conceived of the configuration of Invention 1 according to Difference 2 (configurations of constituent features 1F and 1G) in Exhibit Otsu 25 invention and thus, the aforementioned assertion by the Appellees lacks the premise thereof, and cannot be accepted. The same applies to Invention 2.

Therefore, even without the need to determine the remaining points, Invalidation Reason 7 asserted by the Appellees is groundless.

(8) Issue 5-8 (Violation of clarity requirement (Invalidation Reason 8))

The Appellees assert that, the description that "transmits the video and comment information to the terminal device" in constituent feature 1C of Invention 1 is not clear in terms of at what timing the comment received by the server is transmitted to the terminal and thus, the description in the scope of claims (claim 1) of

the Invention 1 is unclear and fails to fulfill the clarity requirement (Article 36, paragraph (6), item (ii) of the Patent Act).

However, according to the description in the scope of claims (claim 1) of Invention 1 that "a comment delivery system including a server and a plurality of terminal devices connected to the server via a network, in which the server receives a first comment and a second comment to a video given by a user who is viewing the video transmitted from the server and transmits the video and comment information to the terminal device", it can be understood that the timing of transmission that "transmits the video and comment information to the terminal device" in constituent feature 1C is after the server receives the first comment and the second comment to the video given by the user who is viewing the video and thus, the contents of "transmits the video and comment information to the terminal device" in constituent feature 1C are clear.

Therefore, Invalidation Reason 8 asserted by the Appellees is groundless.

(9) Issue 5-9 (Violation of support requirement (Invalidation Reason 9))

The Appellees assert that: [i] since the description in paragraph [0008] in the Description together with the description in paragraph [0004] should be understood to describe that the comment is transmitted to the terminal device "each time" when the comment delivery server receives the comment, but in view that the scopes of claims (claims 1 and 2) of Inventions 1 and 2 do not have description on timing at which the terminal device receives the comment information, and it is impossible to exchange comments on a real-time basis and, claims 1 and 2 exceed the range described in the Detailed Description of the Invention, and thus fail to fulfill the support requirement (Article 36, paragraph (6), item (i) of the Patent Act); [ii] paragraph [0011] of the Description has such description that "according to the present invention, ... and in the comment information input with respect to the video, when a comment erasing request indicating the comment information to be erased is input, the comment is caused not to be displayed and thus, whether or not the comment is not appropriate for the video can be displayed by considering an intention of the user, which can improve entertainment in communication using the comment.", but the scopes of claims (claims 1 and 2) of Inventions 1 and 2 have the description on the display of the comment by the terminal device but do not have the description on not to display and thus, the means for solving the problem of the invention described in the Detailed Description of the Invention is not reflected, and the scope described in the Detailed Description of the Invention is exceeded, thus failing to fulfill the support requirement.

By examining the above, the support requirement is prescribed such that "the invention for which the patent is sought should be stated in the detailed explanation of the invention in the Description" (Article 36, paragraph (6), item (i) of the Patent Act) and is a requirement to prevent monopoly of an art not disclosed (supported) in the Detailed Description of the Invention in advance and thus, when violation of the support requirement is asserted, it is reasonable to interpret that, if it is specifically asserted to be too wide, the assertion should be specific in a relationship between a specific invention specifying matter and the description in the Description.

However, the aforementioned assertion by the Appellees does not specify the invention specifying matters in Inventions 1 and 2 and does not specifically point out that the description is too wide in the relationship with that in the Description, either or rather, it only points out that the description in the Description is not described in the scope of claims and thus, the assertion itself is groundless.

Therefore, Invalidation Reason 9 asserted by the Appellees is groundless.

(10) Issue 5-10 (Violation of enablement requirement (Invalidation Reason 10))

The Appellees assert that the scopes of claims (claims 1 and 2) of Inventions 1 and 2 do not have the description on at what timing the terminal device receives the comment information, the exchange of the comments on the real-time basis is not possible, and [0011] in the Description has the description that "when a comment erasing request indicating the comment information to be erased is input, the comment is caused not to be displayed", but even though the scopes of claims (claims 1 and 2) of Inventions 1 and 2 have the description that the terminal device displays the comment, they do not have description on not to display the comment and thus, it falls under the case in which the invention cannot be grasped from one claim, and the description in the Detailed Description of the Invention in the Description does not describe clearly and sufficiently enough to such a degree that a person ordinarily skilled in the art could have worked Inventions 1 and 2, thus failing to fulfill the enablement requirement (Article 36, paragraph (4), item (i) of the Patent Act).

However, as taught in the aforementioned (8), from the description in the scope of claim (claim 1) of Invention 1, the timing of the transmission referred to in constituent feature 1C that "the video and the comment information are transmitted to the terminal device" can be understood to be after the server received the first comment and the second comment to the video given by the user who is viewing the video, and even though claims 1 and 2 do not have the description that the terminal device does not display the comment, it does not apply to the case that the invention cannot be grasped from one claim and thus, Invalidation Reason 10 asserted by the

Appellees lacks the premise thereof, and groundless.

(11) Issue 5-11 (Violation of prior application requirement (Invalidation Reason 11))

The Appellees assert that Patent No. 4695583 (Other Litigation Patent 2) on which the request was based in another litigation (Exhibit Otsu 15) was filed (Patent Application No. 2006-333851, date of application: December 11, 2006, Exhibit Otsu 11) before the application of this case, but since Inventions 1 and 2 are identical or substantially identical to the inventions according to claims 1 to 3 of Other Litigation Patent 2, they violate the prior application requirement (Article 39 of the Patent Act) and cannot be granted a patent.

However, Inventions 1 and 2 and the inventions according to claims 1 to 3 of Other Litigation Patent 2 are different at least in [i] all the inventions according to claims 1 to 3 of Other Litigation Patent 2 include the requirement of "each time the comment information is received", while Inventions 1 and 2 do not have such requirement; and [ii] both Inventions 1 and 2 include the requirement that the first and second comments move in the horizontal direction, while the inventions according to claims 1 to 3 of Other Litigation Patent 2 do not include such requirement and thus, the aforementioned assertion by the Appellees cannot be accepted.

Therefore, Invalidation Reason 11 asserted by the Appellees is groundless.

(12) Issue 5-12 (Lack of novelty and of inventive step due to violation of division requirement (Invalidation Reason 12))

The Appellees assert that: [a] this application is a patent application (application [viii]) obtained by further dividing the patent application (applications [i] to [vii]) in which a part of the original patent application (Exhibit Otsu 9) was sequentially divided, claim 1 at the filing of the applications [iv] to [viii] is identical to claim 1 of the application [iii], and claim 1 after amendment according to the applications [v] to [vii] is identical to claim 1 of the application [iv]; [b] the applications [vi] and [vii] are filed with the claim identical to that of the application [iii] and after that, amendment identical to that of the application [iv] was made and then, decision of refusal was rendered on the ground that it is identical to the application [iv]; [c] the applications [iv] to [vii] (particularly, the applications [vi] and [vii]) should be considered to be abusive division of application used to evade restrictions on the time for amendment (Article 17-2, paragraph (1), item (iii) of the Patent Act) and thus, the effect of division of application that the division of application is regarded to be filed at the time of the original application (Article 44, paragraph (2) of the Patent Act) is not produced for these applications; and [d] the

date of application of this application is October 29, 2018, which is the actual date of application and thus, Inventions 1 and 2 do not satisfy the requirements of novelty and inventive step in the relation with the inventions described in the Description and the like of the applications [iv] to [vii] and thus, the Patent has the invalidation reasons of lack of novelty and lack of inventive step.

However, the Application (application [viii]) is found to fall under a "new patent application" divided from "a patent application containing two or more inventions" prescribed in Article 44, paragraph (1) of the Patent Act (Exhibit Ko 2, Exhibits Otsu 1 to 9 (including branch numbers.)) in a relationship with the original application and the applications [i] to [vii] and thus, the date of application of the Application should be considered to be retroactive to the time of the original application (date of application: March 2, 2007) pursuant to the same Article, paragraph (2).

Moreover, pursuant to the revision of the Patent Act by the 2006 Law No. 55 (enforced on April 1, 2007), for the purpose of suppressing abuse of the divisional application system, if the grounds for rejection in the examination of the divisional application are the same as those already noticed in the original application and the like, a notice to that effect should also be issued (Article 50-2 of the Patent Act), and upon receipt of the notice, the same restriction on amendment similar to the receipt of the last notice of reasons for rejection should be imposed (Article 17-2, paragraph (5) of the Patent Act), but in view that there are no provisions which prescribe that the divisional application itself by repeating the same invention is illegal on the Patent Act before and after the revision, the history of application asserted by the Appellees should not be considered to influence the aforementioned finding.

Therefore, Invalidation Reason 12 asserted by the Appellees is groundless.

(13) Issue 5-13 (Lack of inventive step and the like due to violation of requirement of priority claim (Invalidation Reason 13))

The Appellees assert that: [i] the application (Patent Application No. 2006-333850) on the basis of which the priority of the original application is claimed does not satisfy the requirement for amendment, a priority claim based on Article 41, paragraph (1), item (i) of the Patent Act is not allowed for the original application and thus, in view of necessity of reliability and consistent determination on registration information related to patents, the novelty and the inventive step of Inventions 1 and 2 should be determined with the actual date of application of the Application (October 29, 2018) as the base time; and [ii] the Appellant made public the service using the art related to Inventions 1 and 2 with the name "Niconico Video" on December 12, 2006,

NIWANGO, which was an operation company at that time, actively began issuing press releases from January, 2007 after the service was made public, and the art became publicly-known, Other Litigation Patent 2 was made public (Exhibit Otsu 11) at the time of the filing at the latest, and Inventions 1 and 2 had been well-known and thus, Inventions 1 and 2 lack inventive step.

However, whether or not the filing of the Patent Application No. 2006-333850 on the basis of which the domestic priority claim of the original application was made violates the requirement for amendment as asserted by the Appellees does not influence the priority claim of the original application (Article 41, paragraph (1) of the Patent Act). Moreover, illegal amendment was not made in this original application, and the Application is a legal divisional application. Therefore, Invalidation Reason 13 asserted by the Appellees is groundless.

(14) Issue 5-14 (Violation of public order and morality (Invalidation Reason 14))

The Appellees asserted that the judgment of the first court of another litigation (Exhibit Otsu 15) determined that the invention according to Other Litigation Patent 2 does not belong to the technical scopes of Inventions 1 and 2 by stating that the comment information is transmitted to the terminal "each time" the comment information is received from the terminal, while the program of Appellee FC2 does not satisfy this requirement and the like, but the Appellant filed the Application with respect to Inventions 1 and 2 by removing the requirement of the aforementioned "each time" for the purpose of overcoming the result of another litigation and thus, Inventions 1 and 2 fall under the invention which might disrupt "public order" in Article 32 of the Patent Act.

However, in this case, even with the circumstances asserted by the Appellees, it cannot be approved that Inventions 1 and 2 fall under the invention which might disrupt "public order" in Article 32 of the Patent Act.

Therefore, Invalidation Reason 14 asserted by the Appellees is groundless.