

Patent Right	Date	November 16, 2023	Court	Intellectual Property High Court, Fourth Division
	Case number	2021 (Ne) 10084		
<p>- A case in which, with regard to a product of the First-instance Defendants, the court maintained the decision of the prior instance, holding that a part of the product fulfills the constituent features of the Invention, rejecting all invalidity defenses raised by the First-instance Defendants, awarding damages to the plaintiff by applying Article 102 paragraph (2) of the Patent Act, and rejecting the defense of extinctive prescription.</p>				

Case type: Appeal against a judgment in the case seeking injunction against patent infringement

Result: Appeals by the First-instance Plaintiff and the First-instance Defendants both dismissed

References: Article 102, paragraph (2) of the Patent Act

Judgment of the prior instance: Tokyo District Court, 2018 (Wa) 1130

#### Summary of the Judgment

1. In this case, compensation for damages was sought by the First-instance Plaintiff, a patentee of the Patent (Patent No. 4466883) for an invention titled "Retroreflecting sheet having printed layer," based on an allegation that the manufacturing and sale of a retroreflecting sheet product by the First-instance Defendants infringes the patent right.

The court of prior instance found that only the First-instance Defendants' Product 1 falls within the technical scope of the Patent (but not the First-instance Defendants' Products 2 and 3), and rendered a judgment partially granting the First-instance Plaintiff's claims to the extent of ordering the First-instance Defendants to jointly or severally pay damages in amount of 1,553,444,548 yen with respect to the First-instance Defendants' Product 1 (Article 102, paragraph (2) of the Patent Act), together with delay damages accrued thereon. The court rejected the patent invalidity defenses and defense of extinctive prescription raised by the First-instance Defendant. In response to this, the First-instance Plaintiff reduced the amount of damages claimed and appealed against this judgment with respect to the portion dismissing its claim corresponding to the reduced amount. The First-instance Defendants also appealed against the judgment to the extent of its claim dismissed.

2. With regard to Issue 1 (fulfillment of constituent features), in the same way as the judgement of the prior instance, the court found that the First-instance Defendants'

Product 1 fulfills the constituent feature of the Invention and therefore falls under its technical scope; whereas the First-instance Defendants' Products 2 and 3 do not fall under that technical scope. The factor which gave rise to the different findings between the First-instance Defendants' Product 1 and First-instance Defendants' Products 2 and 3 is the difference in the assessment of whether the size of each of the linear patterns constituting a printing layer of the First-instance Defendants' Products (corresponding to the "independent printed region" of the Invention) can be considered to fall within the range of  $0.15\text{mm}^2$  to  $30\text{mm}^2$  as specified in Constituent Feature 1D (Issues 1 through 3).

3. None of the defenses of invalidity of the Patent raised by the First-instance Defendants (Issue 2; the violations of support requirement, enablement requirement and clarity requirement, and the lack of novelty and an inventive step on the basis of multiple Exhibits Otsu) is admissible. In addition, the defense of lack of novelty and an inventive step with reference to Inventions A through C specified in Exhibit Otsu 6 that was additionally submitted to this instance (the realignment of Exhibit Otsu 6 Invention as alleged in the prior instance) is dismissed as an allegation and evidence presented belatedly.

4. With regard to Issue 3 (damages), in the same way as the judgment of the prior instance, the court awards damages in amount of 1,553,444,548 yen to the First-instance Plaintiff calculated by applying Article 102, paragraph (2) of the Patent Act. With respect to the First-instance Plaintiff's allegation under Article 102, paragraph (3) of the Patent Act, it would be meaningless to apply the presumption of damages under this paragraph to this case as the amount of damages presumed is less than the amount of damages presumed under paragraph (2) of the same Article as mentioned above, even if the royalty rate as alleged by the First-instance Plaintiff is applied without modification. In addition, with regard to the defense of extinctive prescription, the facts found based on the result of examination of witnesses show that it was in or about 2017, when the First-instance Plaintiff conducted an analysis of structure of sample products obtained in 2011, that the First-instance Plaintiff became aware of the infringement of the Patent Right by the First-instance Defendants in relation to the First-instance Defendants' Products. As the First-instance Plaintiff instituted this litigation in January of 2018, which is before the elapse of three years from the time when it became aware of the fact of infringement, the First-instance Defendants' allegation of the expiration of the period for extinctive prescription is groundless.

5. With regard to Issue 4 that relates to the claim for returning unjust enrichment, as this claim is merely a secondary claim in the case where the defense of extinctive

prescription alleged by the First-instance Defendants is allowed, it is no longer necessary to make a determination for this issue as the defense of extinctive prescription was rejected. With regard to Issue 5 (counter-defense of correction) and Issue 6 (defense of patent invalidity with respect to the Corrected Invention raised in response to the counter-defense), it is also unnecessary to make determinations for these issues as the defenses of invalidity of the Patent (Grounds for Invalidation 1 through 7; Issue 2) have been rejected in their entirety. Meanwhile, with respect to the Correction, the First-instance Defendants' Product 1 falls within the technical scope of the Patent even with reference to the Corrected Invention.

6. From the above, the court dismisses the appeals filed by the First-instance Plaintiff and the First-instance Defendants, as both of these appeals are groundless.

Judgment rendered on November 16, 2023

2021(Ne)10084, Case of appeal for seeking an injunction against patent infringement

(Court of prior instance: Tokyo District Court, 2018 (Wa) 1130)

Date of conclusion of oral argument: August 24, 2023

### Judgment

Appellant and Appellee:

Nippon Carbide Industries, Co., Inc.

(hereinafter referred to as the "First-instance Plaintiff")

Appellee and Appellant:

3M Japan Innovation Limited

(hereinafter referred to as "First-instance Defendant 3M Japan")

Appellee and Appellant:

3M Japan Products Limited

(hereinafter referred to as "First-instance Defendant 3M Japan Products")

### Main text

1. The Appeal by the First-instance Plaintiff shall be dismissed.
2. The Appeals by the First-instance Defendants shall be dismissed.
3. The court costs for the part related to the appeal by the First-instance Plaintiff shall be borne by the First-instance Plaintiff and for the part related to the appeal by the First-instance Defendants shall be borne by the First-instance Defendants, respectively.

### Facts and reasons

(Abbreviations are the same as those used in the judgment in prior instance unless otherwise specified separately.)

#### No. 1. Summary of the case

In this case, compensation for damages was sought by the First-instance Plaintiff, a patentee of the Patent (Patent No. 4466883) for an invention titled "Retroreflecting sheet having a printed layer," based on an allegation that the manufacturing and sale of a retroreflecting sheet product by the First-instance Defendants infringes the patent right.

#### No. 2 Judgment sought by parties

1. Claims of the First-instance Plaintiff in the court of prior instance

(1) Principal claim (It is narrowed in this instance as stated below.)

The First-instance Defendants shall pay jointly and severally to the First-instance

Plaintiff 10,678,746,000 yen, and the amounts accrued at the rate of 5% per annum on 100 million yen of said amount for the period from February 3, 2018, on 10,576,746,000 yen of said amount for the period from October 29, 2019, and on 2,000,000 yen of said amount for the period from January 21, 2020, until the completion of payment, respectively.

(2) Alternative claim

A. First-instance Defendant 3M Japan shall pay to the First-instance Plaintiff 1,502,000,000 yen and the amount accrued thereon at the rate of 5% per annum for the period from January 21, 2020, until the completion of the payment.

B. First-instance Defendant 3M Japan Products shall pay to the First-instance Plaintiff 1,502,000,000 yen and the amount accrued thereon at the rate of 5% per annum for the period from January 21, 2020, until the completion of the payment.

[Legal basis for claims]

(1) Principal claim

- Main claim: A request for compensation for damages based on torts

- Incidental claim: A request for delay damages (the start date for calculation, February 3, 2018, is the day following the day on which the complaint was served; other start dates for calculation, October 29, 2019 and January 21, 2020, are both the day following the day on which the written petition for amendment of the claim was served; the interest rate is what is provided for by the Civil Code before the amendment)

(2) Alternative claim

- Main claim: A request to return unjust enrichment

- Incidental claim: A request for delay damages (the start date for calculation is the day on which the written petition for amendment of the claim was served; the interest rate is what is provided for by the Civil Code before the amendment)

2. Determination of the court of prior instance and filing of appeals

The court of prior instance found that only the First-instance Defendants' Product (1) falls within the technical scope of the Patent (but not the First-instance Defendants' Products (2) and (3)), rejected the patent invalidity defense, and rendered a judgment partially granting the First-instance Plaintiff's claims to the extent of ordering the First-instance Defendants to jointly or severally pay damages in the amount of 1,553,444,548 yen with respect to the First-instance Defendants' Product (1), together with delay damages accrued thereon. In response to this, the First-instance Plaintiff narrowed the claim as stated in (1) B. below, and filed an appeal as stated in (1) below, being dissatisfied with the part of the judgment against the First-instance Plaintiff to that extent. The First-instance Defendants also filed an appeal as stated in (2) below, being

dissatisfied with the part of the judgment against the First-instance Defendants.

[Object of the appeals]

(1) Object of the appeal of the First-instance Plaintiff

A. The judgment in prior instance shall be changed as follows.

B. The First-instance Defendants shall pay jointly and severally to the First-instance Plaintiff 6,655,444,548 yen and the amounts accrued at the rate of 5% per annum on 100,000,000 yen of said amount for the period from February 3, 2018, and on 6,555,444,548 yen of said amount for the period from October 29, 2019, until the completion of payment, respectively.

(2) Object of the appeal of the First-instance Defendants

A. The part against the First-instance Defendants in the judgment in prior instance shall be rescinded.

B. Concerning the aforementioned part, all the claims of the First-instance Plaintiff shall be dismissed.

No. 3. Basic facts and outline of the Invention

1. The basic facts are as stated in No. 2, 1. "Facts and reasons" section of the judgment in prior instance (from page 3 and after), and therefore, they are cited. However, the following is added as a new line after the paragraph of No. 2, 1. (4) E. (the end of the paragraph is on page 8, line 12).

"F. First-instance Defendant 3M Japan and another person requested a trial for invalidation of the Patent on February 13, 2020 (Invalidation Trial No. 2020-800013). In response to this, on February 5, 2021, the First-instance Plaintiff filed a request for a correction to correct Claims 1 through 4 of the Patent (hereinafter the correction is referred to as the "Correction" and the invention after the Correction is referred to as the "Corrected Invention"). (Exhibits Ko 95-1 through Ko 95-3 and Exhibit Otsu 79)

G. On June 16, 2021, the Japan Patent Office (hereinafter referred to as the "JPO") approved the Correction and rendered a decision to the effect that the patent for the invention after the Correction related to Claims 1 and 2 shall be invalidated. The First-instance Plaintiff filed an appeal to seek revocation of said trial decision with the Intellectual Property High Court (JPO 2021 (Gyo-Ke) 10085). The Intellectual Property High Court rendered a judgment to revoke the trial decision on October 31, 2022. Dissatisfied with the judgment, the First-instance Defendants filed a petition for acceptance of final appeal with the Supreme Court, but the refusal of receipt was determined on June 8, 2023. As a result, the aforementioned case of trial for invalidation is pending at the JPO again (first sentence of Article 181, paragraph (2) of the Patent Act) and the final consequence of the Correction has not been determined. (Exhibit Otsu

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## 2. Outline of the Invention

### (1) The statements in the claims related to the Invention

#### A. Claim 1 (Invention 1)

"A printed retroreflective sheet, which is a retroreflective sheet consisting of at least a reflective element layer, which consists of many reflective elements and a holder layer, and a surface protective layer, which is installed on the upper layer of the reflective element layer, and is characterized by the following: wherein the printing layer is installed on the reflective side of the reflective elements or between the holder layer and the surface protective layer; wherein the printing area of the printing layer forms an independent area and is arranged in a repeating pattern, and does not form continuous layers; wherein the planar dimension of the independent printing area is  $0.15 \text{ mm}^2$  to  $30 \text{ mm}^2$ ; and wherein the printing layer contains one or more coloring agents from among white organic pigments, white or yellow inorganic pigments, fluorescent dyes, and fluorescent brighteners."

#### B. Claim 2 (Invention 2)

"A printed retroreflective sheet that is stated in Claim 1, wherein the aforementioned reflective elements are triangular pyramidal cube-corner retroreflective elements."

### (2) Division of constituent features of the Invention

#### A. Claim 1 (Invention 1)

1A. and 1F. A printed retroreflective sheet, which is a retroreflective sheet consisting of at least a reflective element layer, which consists of many reflective elements and a holder layer, and a surface protective layer, which is installed on the upper layer of the reflective element layer, and is characterized by the following;

1B. wherein the printing layer is installed on the reflective side of reflective elements or between the holder layer and the surface protective layer;

1C. wherein the printing area of the printing layer forms an independent area and is arranged in a repeating pattern, and does not form continuous layers;

1D. wherein the planar dimension of the independent printing area is  $0.15 \text{ mm}^2$  to  $30 \text{ mm}^2$ ; and

1E. wherein the printing layer contains one or more coloring agents from among white organic pigments, white or yellow inorganic pigments, fluorescent dyes, and fluorescent brighteners.

#### B. Claim 2 (Invention 2)

2A. and 2B. A printed retroreflective sheet that is stated in Claim 1, wherein the aforementioned reflective elements are triangular pyramidal cube-corner retroreflective

elements.

(3) The statements in the claims related to the Corrected Invention (the underlined parts are corrected parts.)

A. Claim 1

" A printed retroreflective sheet, which is a retroreflective sheet consisting of at least a reflective element layer, which consists of many reflective elements and a holder layer, and a surface protective layer, which is installed on the upper layer of the reflective element layer, and is characterized by the following: wherein polycarbonate resin is used for the reflective element layer; wherein (meth)acrylic resin is used for the surface protective layer; wherein the printing layer is installed between the holder layer and the surface protective layer in a manner that it makes contact with the holder layer and the surface protective layer; wherein the printing area of the printing layer forms an independent area and is arranged in a repeating pattern, and does not form continuous layers; wherein the planar dimension of the independent printing area is 0.15 mm<sup>2</sup> to 30 mm<sup>2</sup>; and wherein the printing layer contains titanium oxide as white inorganic pigments."

B. Claim 2

"A printed retroreflective sheet, which is a retroreflective sheet consisting of at least a reflective element layer, which consists of many reflective elements and a holder layer, and a surface protective layer, which is installed on the upper layer of the reflective element layer, wherein the reflective elements are triangular pyramidal cube-corner retroreflective elements, and is characterized by the following; wherein polycarbonate resin is used for the reflective element layer; wherein (meth)acrylic resin is used for the surface protective layer; wherein the printing layer is installed between the holder layer and the surface protective layer in a manner that it makes contact with the holder layer and the surface protective layer; wherein the printing area of the printing layer forms an independent area and is arranged in a repeating pattern, and does not form continuous layers; wherein the planar dimension of the independent printing area is 0.15 mm<sup>2</sup> to 30 mm<sup>2</sup>; wherein the printing layer thickness is 0.5 μm to 10 μm; and wherein the printing layer contains white titanium oxide."

(4) The statement in the description of the Invention is as stated in No. 3 of the judgment in prior instance (from page 66 and after) and the technical features of the Invention are as stated below (it is the same effect as the judgment in prior instance; however, it is stated again.).

In other words, the Invention relates to a cube-corner type retroreflective sheet, which is comprised of triangular pyramidal cube-corner retroreflective elements that



are useful for signs, such as road signs, construction signs, etc., for license plates for vehicles and automobiles, and other reflector plates, and which is characterized by a new structure, in particular, the provision of a printing layer for improving the color tone on part of the sheet.

Conventionally, retroreflective sheets that reflect incident light towards the light source have been broadly used in the aforementioned field of use. Among them, a cube-corner retroreflective sheet using the principle of retroreflection of the cube-corner retroreflective element, such as a triangular pyramidal reflective element, etc., has dramatically excellent light retroreflective efficiency compared to conventional retroreflective sheets that use micro glass spheres, and the use of retroreflective sheets is expanding year by year.

On the other hand, the "vapor deposition-type" triangular pyramidal cube-corner retroreflective sheet that has a vapor deposition layer on the reflection side of reflective elements, from among triangular pyramidal cube-corner retroreflective sheets, has a defect that it is affected by the metal color and its appearance becomes dark due to the nature of the retroreflective element. Then, in order to improve the color tone of a triangular pyramidal cube-corner retroreflective sheet, continuous layers were provided on the part thereof on a trial basis. However, the printing layer has slightly poor adhesion with both the reflective element and surface protective layer and has defects, such as that the layer itself is less weatherable and it may cause a blister in the weatherability test, or it easily absorbs water. It also has the defect that if continuous printing layers are provided on a triangular pyramidal cube-corner retroreflective sheet, adhesion around the printing layer decreases, and therefore, it is inferior in weatherability and water resistance.

Therefore, in the Invention, in order to solve the problem of improving the color tone of a triangular pyramidal cube-corner retroreflective sheet, a printing layer that contains coloring agents, such as white inorganic pigments (titanium oxide), etc., which can brighten the color tone and have concealing properties, on a reflective element layer or a surface protective layer, and moreover, in order to solve the problem of a blister or water absorption caused by the inferiority in adhesion between the printing layer and the two layers binding it and the inferiority in weatherability of the printing layer itself, the printing area of the printing layer is made independent so that continuous layers are not formed, the planar dimension of the printing area is set to be  $0.15 \text{ mm}^2$  or more in order to facilitate improvement of the color tone, and said area is set to be  $30 \text{ mm}^2$  or less to strengthen interlayer adhesion strength. In these regards, technical features are found.

#### No. 4. Issues and arguments of the parties on the issues

##### 1. Issues

The major issues in this case are as stated below. The Grounds for Invalidation 4-2 in Issue 2, and Issues 5 and 6 are newly argued in this instance.

(1) Issue 1: Whether the First-instance Defendants' Products fall within the technical scope of the Invention

(2) Issue 2: Invalidity defense with respect to the Patent

A. Grounds for Invalidation 1: Violation of support requirements

B. Grounds for Invalidation 2: Violation of enablement requirements

C. Grounds for Invalidation 3: Violation of clarity requirements

D. Grounds for Invalidation 4-1: Lack of novelty and an inventive step based on Exhibit Otsu 6 Invention (argued in the court of prior instance)

E. Grounds for Invalidation 4-2: Lack of novelty and an inventive step based on Exhibit Otsu 6 Inventions A through C (newly argued in this instance)

F. Grounds for Invalidation 5-1: Lack of novelty and an inventive step based on Exhibit Otsu 16 Invention 1

G. Grounds for Invalidation 5-2: Lack of novelty and an inventive step based on Exhibit Otsu 16 Invention 2

H. Grounds for Invalidation 6: Lack of an inventive step based on Exhibit Otsu 17 Invention

I. Grounds for Invalidation 7: Lack of an inventive step based on Exhibit Otsu 17 invention

(3) Issue 3-1: Logic on damages (application of Article 102, paragraph (2) of the Patent Act)

(4) Issue 3-2: Logic on damages (application of Article 102, paragraph (3) of the Patent Act)

(5) Issue 3-3: Defense of extinctive prescription

(6) Issue 4: The right to claim the return of unjust enrichment

(7) Issue 5: Counter-defense of correction

(8) Issue 6: Defense of patent invalidity with respect to the Corrected Invention raised in response to the counter-defense (Grounds for Invalidation 8 through 16)

#### No. 5 Judgment of this court

1. Issue 1 (Whether the First-instance Defendants' Products fall within the technical scope of the Invention)

In the same way as the judgment of the prior instance, this court also found that the

First-instance Defendants' Product (1) fulfills the constituent features of the Invention, and therefore falls within its technical scope; whereas the First-instance Defendants' Products (2) and (3) do not fall within that technical scope.

The factor which gave rise to the different findings between the First-instance Defendants' Product (1) and the First-instance Defendants' Products (2) and (3) is the difference in the assessment of whether the planar dimension of each of the linear patterns, which constitutes the printing layer of the First-instance Defendants' Products (corresponding to the "independent printing area" of the Invention), can be considered to fall within the range of  $0.15 \text{ mm}^2$  to  $30 \text{ mm}^2$  as specified in Constituent Feature 1D (Issues 1-3). Concerning the details of the grounds, including in this regard, the determination on supplementary arguments of both parties in this instance are added as stated below, and the remaining parts are as stated in No. 3, 2. of the judgment in prior instance (from page 73 and after), and therefore, they are cited.

(1) Related to the First-instance Defendants' Products (2) and (3)

A. Supplementary argument of the First-instance Plaintiff

The judgment in prior instance determined concerning the First-instance Defendants' Product (2) that the planar dimension of the printing area of the inner printing area, excluding that of the printing area at the end of the sheet does not fall within the range of " $0.15 \text{ mm}^2$  to  $30 \text{ mm}^2$ ," and therefore, it does not fulfill Constituent Feature 1D. The First-instance Plaintiff does not dispute concerning the planar dimension of the inner printing area, excluding that of the printing area at the end of the sheet, but argued that the planar dimension of the "printing area at the end of the sheet" of the First-instance Defendants' Product (2) is " $0.15 \text{ mm}^2$  to  $30 \text{ mm}^2$ ," and therefore that it fulfills Constituent Features 1D and 2B' of the Invention. In the Figure (on page 134 of the judgment in prior instance) that is presented as an example of the First-instance Defendants' Product (2) as stated in the Attachment to the Judgment in Prior Instance "Configuration of the Defendants' Products," the printing area at the left end of the sheet is ●●●●●●● and is within in the range of " $0.15 \text{ mm}^2$  to  $30 \text{ mm}^2$ ."

B. Determination of this court on the aforementioned argument

The planar dimension of the liner patterns of the First-instance Defendants' Product (2) is designed to be ●●●●●●● (see Constituent Feature 2d stated in the Attachment to the Judgment in Prior Instance "Configuration of the Defendants' Products"). As a result of cutting the sheet in the required length when actually using it, the printing area is also partially cut. Even if the printing area at the edge of said cut part is ●●●●●●●, which is smaller than the planar dimension of the original design, it cannot be deemed that the First-instance Defendants' Product (2) fulfills

Constituent Feature 1D and falls within the technical scope of the Invention. It cannot also be deemed that the retroreflective sheet that is excellent in weatherability and water resistance and for which the color tone is improved, as intended by the Invention, can be achieved only based on the fact that the planar dimension of the printing area at the edge of the aforementioned cut part is in the range as mentioned above.

(2) Related to the First-instance Defendants' Product (1)

A. Supplementary argument of the First-instance Defendants

(A) For the First-instance Defendants' Products, it is possible to freely set any scope of planar dimension of the printing area, from ●●●● (the First-instance Defendants' Product (1)) to ●●●●●●● (the First-instance Defendants' Products (2) and (3)). Regarding the First-instance Defendants' Product (1), the planar dimension of the printing layer can exceed the upper limit of 30 mm<sup>2</sup>, within which the interlayer adhesion strength specified by Constituent Feature 1D can be increased, and therefore, the relevant constituent feature is not fulfilled.

(B) As stated in [0012] in the Description as well, since the Invention has a "printing layer," it is considered to solve the following problems: [i] the inferiority in adhesion with both the reflective element and surface protective layer; and [ii] the inferiority in weatherability. On the other hand, in the First-instance Defendants' Product (1), an ink containing ●●●●●●●●, which has excellent adhesion and weatherability, is used as a printing layer (Exhibits Otsu 49, Otsu 82, and Otsu 83). There are no circumstances where the installation of the "printing layer" decreases adhesion or weatherability (Exhibit Otsu 45). Therefore, the First-instance Defendants' Product (1) fulfills neither [i] nor [ii] above and the ink does not correspond to the "printing layer" of the Invention.

B. Determination of this court on the aforementioned argument

First, concerning (A) above, even if "it is possible to freely set any scope of the planar dimension of the printing area," the actual printing area of the First-instance Defendants' Product (1) remains to be ●●●●●, and therefore, the argument of the First-instance Defendants cannot be accepted.

In addition, concerning (B) above, the result of the weatherability test that the First-instance Defendants invoke does not make it clear that the First-instance Defendants' Product (1) does not cause deterioration over time in comparison with the case where continuous printing layers are installed in a product. Based on the above, it is construed that the First-instance Defendants' Product (1) as well has the problems regarding adhesion and weatherability due to a printing layer that is installed on the reflection side of the reflective elements or between the holder layer and surface protective layer.

In order to solve these problems, even if a means to use an ink containing ●●●●●●●●, which has excellent adhesion and weatherability, is adopted, the significance to use a means for solution of the Invention, that is, to set the planar dimension of the independent printing area within a certain scope, has not been lost.

All the aforementioned arguments of the First-instance Defendants cannot be accepted.

## 2. Issue 2 (Invalidity defense with respect to the Patent)

(1) This court also determines in the same way as the judgment in prior instance that all the invalidity defense with respect to the Patent cannot be accepted. The grounds for the determination are as stated in No. 3, 3. of the judgment in prior instance (from page 83 and after), and therefore, they are cited except for adding the determination on the supplementary argument of the First-instance Defendants in this instance as stated below.

### (2) Grounds for Invalidation 1 (Violation of supporting requirements)

A. Supplementary argument of the First-instance Defendants (The first-instance Plaintiff argued that this argument is different from the one in the court of prior instance and was submitted belatedly; however, it is not found that the argument will delay the completion of the lawsuit.).

(A) Various modes can be considered for patterns where the printing layer forms continuous layers and where the printing layer does not form continuous layers. Intervals, etc. of the printing area also have an impact on the interlayer adhesion strength, and therefore, only based on the fact that the printing area does not form continuous layers, it cannot be determined that the sheet has higher adhesion than in the case where the printing layer forms continuous layers. Therefore, the determination of the judgment in prior instance stating as if the provision of a "sheet with higher adhesion" than "in the case where the printing area forms continuous layers" is a problem, has an error in finding a problem, which is the premise for making a determination concerning supporting requirements.

(B) The printing layer of the Invention does not exclude a printing layer that is not inferior in adhesion with the surface protective layer and does not have the problem of causing a blister in the printing layer. In cases of a printing layer where the problems to be solved by the Invention do not occur, it is not that the problem of preventing a blister in the printing layer is solved by the Invention. The Invention, which does not exclude such a printing layer, violates the support requirements.

### B. Determination of this court on the aforementioned argument

First, concerning (A) above, in consideration of the statements of the Description

([0002] through [0004], [0008], [0009], and [0012] through [0015]), the problem to be solved by the Invention is to provide a retroreflective sheet with improved color tone by solving the defect of prior art, that is, the inferiority in weatherability and water resistance in the case where continuous printing layers are installed on a triangular pyramidal cube-corner retroreflective sheet or a vapor deposition-type triangular pyramidal cube-corner retroreflective sheet in order to improve the color tone of these sheets, by employing a very simple and inexpensive method. It cannot be denied that conditions other than the difference whether the printing area is designed to be continuous or independent may have an impact on the solution of the aforementioned problems; however, the supporting requirements do not require to the extent of covering such conditions and impacts. It is construed that a person ordinarily skilled in the art compares the statements in the claims of the Patent and those in the description and can recognize that the Invention is stated as an invention contributing to the solution of the aforementioned problems.

Next, concerning (B) above, although various levels of adhesion and weatherability of the printing layer installed on a retroreflective sheet can be assumed, there is no evidence to find that forming a printing layer that does not even deteriorate over time was known to the public (as stated above, the results of the aforementioned weatherability test does not prove it either). The aforementioned indication of the First-instance Defendants is based on a printing layer that does not deteriorate over time. If premised on a printing layer that deteriorates over time, the aforementioned problems can be solved. Therefore, it cannot be said that the Invention violates the support requirements.

All of the aforementioned arguments of the First-instance Defendants cannot be accepted.

(3) Grounds for Invalidation 4-2 (Lack of novelty and an inventive step based on Exhibit Otsu 6 Inventions A through C)

As stated in the following, the new argument of the First-instance Defendants in this instance related to Grounds for Invalidation 4-2 falls under an argument and evidence presented belatedly from the time specified in Article 157, paragraph (1) of the Code of Civil Procedure and is dismissed.

In other words, the First-instance Defendants specified Exhibit Otsu 6 Invention as stated in the section from page 27, line 17 through page 28, line 9 of the judgment in prior instance in the court of prior instance and, based on the invention thus specified, the First-instance Defendants argued in detail, such as the common features with and differences from the Invention, whether a person ordinarily skilled in the art could have

easily conceived of the differences, etc. The First-instance Plaintiff added objections to them, and arguments and evidence have been fully presented. However, the First-instance Defendants reconfigured the invention stated in the same literature (Exhibit Otsu 6) and submitted totally new grounds for invalidation in this instance. There are no specific circumstances that caused the First-instance Defendants not to submit the relevant argument in the court of prior instance or that made the submission difficult. It is also obvious that if this point is newly examined in this instance, it would delay the completion of the lawsuit.

Therefore, the petition of the First-instance Plaintiff to seek dismissal of the aforementioned argument of the First-instance Defendants has grounds.

(4) Grounds for Invalidation 5-1 (Lack of novelty and an inventive step based on Exhibit Otsu 16 Invention 1)

A. Supplementary argument of the First-instance Defendants

Concerning Difference 3 between Exhibit Otsu 16 Invention 1 and the Invention (the Invention, wherein the printing area of the printing layer forms an independent area and is arranged in a repeating pattern, and does not form continuous layers, and wherein the planar dimension of the independent printing area is  $0.15 \text{ mm}^2$  to  $30 \text{ mm}^2$ ; on the other hand, Exhibit Otsu 16 Invention 1 does not have said configuration), the judgment in prior instance determined that paragraph [0015] of Exhibit Otsu 16 does not state or suggest the following: the printing pattern is not "linear" but repeating "dots" and the planar dimension of the dot area is set in the specified range, thereby improving the adhesion and weatherability. However, paragraphs [0015] and [0037] of Exhibit Otsu 16 suggest using dots when printing. Based on the above, even if there is no statement on dots in the explanation section in FIG. 9 in Exhibit Otsu 16, it is very easy for a person ordinarily skilled in the art to form the printing pattern in FIG. 9.

In addition, the fact that it is common general technical knowledge to print with intervals when printing as dots was argued by using Exhibits Otsu 26-1 and Otsu 26-2, in addition to Exhibits Otsu 8-1 through Otsu 8-15. Furthermore, the planar dimension of the independent printing area in Invention 1 is a very wide range of " $0.15 \text{ mm}^2$  through  $30 \text{ mm}^2$ ." The diameter of dots in this planar dimension range is in the range from 0.43 mm through 6.18 mm. Using the dots in this range is only a matter of design variation that can be achieved as necessary.

B. Determination of this court on the aforementioned argument

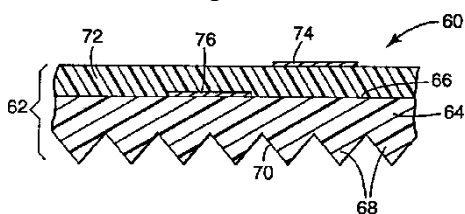
It is not stated that the printing pattern 20 in FIG. 9 in Exhibit Otsu 16 consists of dots, and it is not stated that the printing pattern is provided in "a repeating pattern" either. It may have been technically easy to change the printing pattern from a line

(forming a continuous layer) to dots (independent area) and to select a dot diameter in the appropriate range. However, since there is no motive to make such change, it cannot be said that a person ordinarily skilled in the art could have easily conceived of Configurations 1C and 1D of the Invention.

(5) Grounds for Invalidation 6 (Lack of an inventive step based on Exhibit Otsu 17 Invention)

A. Supplementary argument of the First-instance Defendants

The judgment in prior instance found as Difference 1 between the Invention and Exhibit Otsu 17 Invention that "graphic pattern 76" of Exhibit Otsu 17 Invention (printing area of the printing layer) forms an independent area and is installed in a repeating pattern and it is not clear whether it forms continuous layers. However, in FIG. 3 in Exhibit Otsu 17 as shown below, graphic pattern 76 covers only part of the retroreflection product and it is obvious that it shows a "non-continuous" case.



**FIG. 3**

B. Determination of this court on the aforementioned argument

In FIG. 3 in Exhibit Otsu 17, the fact that graphic pattern 76 covers only part of the retroreflection product is as argued by the First-instance Defendants.

However, it is impossible to recognize the plane configuration of graphic pattern 76 from FIG. 3, which is a cross-sectional view. Whether it is a "repeating pattern" or it "does not form continuous layers" is not clear. In addition, including the other statements in Exhibit Otsu 17, it is not found that there is a motive to set the aforementioned graphic pattern to be a configuration of the Invention related to Difference 1. Based on the above, Difference 1 is found between the Invention and Exhibit Otsu 17 Invention as found by the judgment in prior instance, and it cannot be said that a person ordinarily skilled in the art could have easily conceived of Configuration 1C of the Invention related to Difference 1.

(6) Existence of Grounds for Invalidation 7 (Lack of an inventive step based on Exhibit Otsu 18 Invention)

A. Supplementary argument of the First-instance Defendants

(A) The judgment in prior instance points out as a difference between the Invention and Exhibit Otsu 18 Invention that Exhibit Otsu 18 Invention has a configuration wherein "the printing area forms an independent area and is arranged in a repeating pattern, and

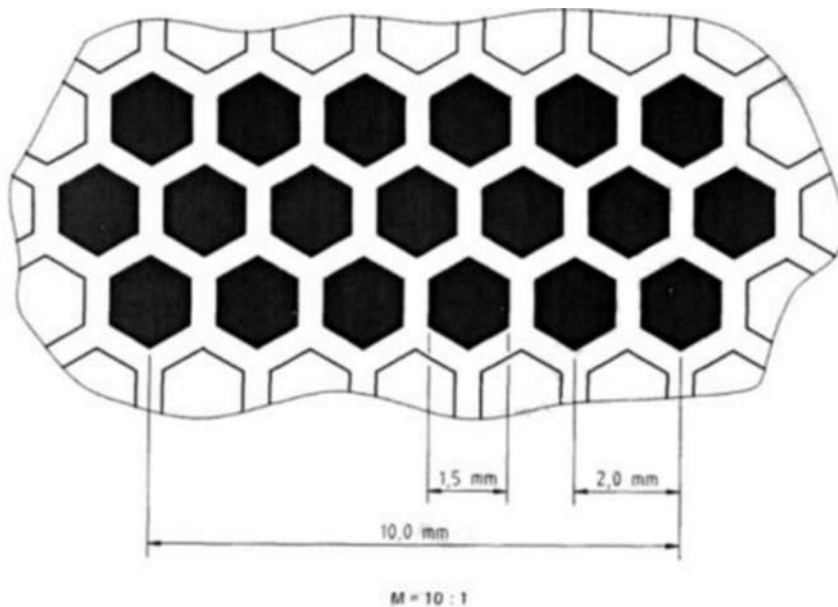


does not form continuous layers, ... the printing layer contains one or more coloring agents from among ... white organic pigments, white inorganic pigments, ...." However, Exhibit Otsu 23 discloses the technical idea of using the configuration related to the aforementioned difference to give the retroreflective material in Exhibit Otsu 18 Invention a white appearance in daylight. In addition, setting the planar dimension of the independent printing area in the range of the Invention when using this configuration is only a matter of design variation or well-known art.

(B) The judgment in prior instance determined concerning a combination of Exhibit Otsu 18 Invention and Exhibit Otsu 15 Invention that since it is stated in Exhibit Otsu 15 to provide a printing layer where black hexagons are provided in a repeating pattern in order to make the traffic sign surface Gray A, there is no motive to contain white pigment, etc.

However, it is required for the retroreflective material in Exhibit Otsu 18 Invention to have a white appearance in daylight, and it is a universal challenge. If the whole surface of the retroreflective material is colored, light does not reach the reflective element and will not retroreflect. Therefore, as shown in Exhibits Otsu 6, Otsu 23, Otsu 24 and Otsu 70, it is known as common general technical knowledge that when printing a white color on the surface of the retroreflective material, it is necessary to leave an unprinted part that passes the light at a certain percentage.

In addition, as the German specifications (Exhibit Otsu 15), it is well known to use a "Raster," which is a hexagon with a coating rate of 60%. A person ordinarily skilled in the art naturally understands that it is a configuration to achieve enough retroreflection. Therefore, it is easy for a person ordinarily skilled in the art to conceive of using the "Raster," which is a hexagon with a coating rate of 60%, that was disclosed in Exhibit Otsu 15 in order to achieve enough retroreflection when coloring a retroreflective material in white so that it has a white appearance in daylight, and at that time, to apply printing using white organic pigment or inorganic pigment coloring agent (Well-known Art 3) to the black part (white part refers to the part that is not printed so that the light can pass through) in the following figure.



#### B. Determination of this court on the aforementioned argument

First, Exhibit Otsu 23, which is invoked in A. (A) above, is evidence that was submitted in the court of prior instance. The argument by combining Exhibit Otsu 23 with Exhibit Otsu 18 Invention as a new ground for invalidation must be dismissed since it is an argument and evidence presented belatedly.

Next, concerning A. (B) above, there is not enough evidence to find that seeking retroreflective material that has a white appearance in daylight is a "universal challenge" as alleged by the First-instance Defendants. In addition, Exhibit Otsu 15 discloses, at least, printing to make the printing layer Gray A (a white part exists around a hexagon that is printed in black screen ink and the cover rate of the black part is 60%). Therefore, there is no motive to add white pigment, etc. to black screen ink.

All of the aforementioned arguments of the First-instance Defendants cannot be accepted.

#### 3. Issue 3-1 (Logic on damages and application of Article 102, paragraph (2) of the Patent Act)

This court also finds that the amount of damage to the First-instance Plaintiff that is calculated by applying Article 102, paragraph (2) of the Patent Act is 1,553,444,548 yen (see the following calculation formula) in the same way as the judgment in prior instance. The grounds for determination are as stated in No. 3, 4. of the judgment in prior instance (from page 115 and after) and in the Attachments to the Judgment in Prior Instance "List of Sales Amount and Expenses" and "List of the Amount of Damages," and therefore, they are cited in addition to the determination on both parties' supplementary arguments in this instance as stated below.



that the calculation appraisal results are different from the sales amount and other data in the Investigation Report (Exhibit Otsu 58) or Product Leaflet (Exhibit Otsu 1) submitted by the First-instance Defendants. However, calculation experts calculated them under their duties from a neutral standpoint. Even if part of the data is different from the materials submitted by the First-instance Defendants, reliability is not lost due to such a fact.

In addition, the First-instance Plaintiff submitted Exhibit Ko 88, which is a trend survey of competing companies by a credit survey company, and made a unique argument concerning the sales amount, etc. of the First-instance Defendants. However, they are only the results of a survey by an external survey company and there is no appropriate evidence to find that the reliability of the survey results is high.

B. The First-instance Plaintiff pointed out that the sales prices of the First-instance Plaintiff's Products include ●●●● of the First-instance Defendants' Product (1) and argued that the premise of the determination of the judgment in prior instance contains an error and grounds for rebuttal of presumption cannot be found. However, the existence of products at such a sales price would only reduce the possibility of sale of the First-instance Plaintiff's Products if the First-instance Defendants' Product (1) were not sold, and it is only a circumstance to affirm rebuttal of presumption.

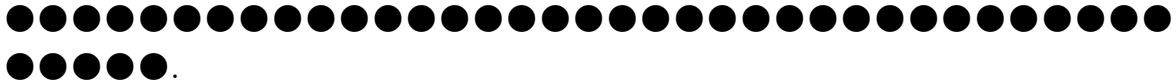
(2) Supplementary argument of the First-instance Defendants

A. The First-instance Defendants argued that when calculating marginal profit, 6 through 8 and 11 through 14 of the Attachment to the Judgment in Prior Instance "List of Sales Amount and Expenses" should be deducted since they are expenses additionally required directly related to the manufacturing and selling of the First-instance Defendants' Product (1). However, personnel costs, transportation and telecommunication costs, etc. of the management division do not usually fall under expenses that are additionally required directly related to the manufacturing and selling of the infringing products. Therefore, it is not reasonable to include the aforementioned expenses as subject to deduction.

B. The First-instance Defendants argued that rebuttal of presumption should be approved for 90% or at least 77% of the amount of profit of the First-instance Defendants. However, concerning the grounds indicated as the basis (the facts that the function and effect of the Invention, such as weatherability, etc., cannot be found with the First-instance Defendants' Product (1), and that the design can be changed easily, as well as marketing efforts, branding force, market share in sales, etc. of the First-instance Defendants), these facts are not found based on the evidence in this case, or even if they are found, they are not enough to rebut the presumption set forth in Article 102,







Meanwhile, on January 19, 2012, when the aforementioned cases in Germany were still pending, the First-instance Plaintiff sent an email in English through an agent to 3M USA as a response to a letter from 3M USA by stating that selling the products by 3M USA falls under patent infringement and the First-instance Plaintiff demanded that 3M USA pay license fees of 100 million US dollars, while attaching a file stating the patent numbers of the Patent as a list of the First-instance Plaintiff's patents (Exhibits Otsu 41 and Otsu 43). However, the First-instance Plaintiff did not have the idea of expanding the conflict into courts in other countries unless the German infringement case and German patent invalidation case ended or reached a state where they passed the peak.

F. As stated above, the First-instance Plaintiff focused on cases in Germany in principle; however, the Japanese agent gave advice that it would be better to prepare an additional means in order to add pressure on 3M USA. Under such situations, the First-instance Plaintiff was incidentally able to get samples of products handled by the First-instance Defendants from a business agent of 3M USA. Therefore, the First-instance Plaintiff got samples of the First-instance Defendants' Product (1), product number 2930 series and product number 3930 series, from the market in Japan by October 26, 2021 for the purpose of preservation of evidence that might be used in the future, and prepared a "notarial instrument on testing, recording, and notation related to sampling" based on those samples (Exhibits Ko 15 and Ko 16). The First-instance Plaintiff confirmed the boxes and appearance and number of components, determined sampling position by random number selection, and conducted sampling (cutting) and sealing, but did not analyze the configuration of samples.

In addition, both the product number 3930 series and German infringing products, from among the First-instance Defendants' Product (1), were manufactured using base rolls imported from the U.S.A. and the country of production and producer were the same (Exhibits Otsu 40 and Otsu 42). The product, for which the product number is "HIP2930" that was notarized in Exhibit Ko 16, from among the First-instance Defendants' Product (1), has a different product number from the product number (3930) of the suspected German infringing product. The First-instance Defendants' Product (1) with the product number "3930" that was notarized in Exhibit Ko 15 had a different product name from the product name of the suspected German infringing product.

Around that time, the First-instance Defendants switched their products from the

former First-instance Defendants' products to the new First-instance Defendants' Products and the planar dimension of the printing area in the printing layer came to exceed the planar dimension specified in Constituent Feature 1D of the Invention (Exhibits Otsu 39, Otsu 58, and Otsu 69).

G. Details of the subsequent German infringement case and German patent invalidation case are as stated in No. 2, 1. (4) of the judgment in prior instance [from page 7 and after] as cited. Concerning the German infringement case, after the rendition of the judgment of the first instance that found patent infringement (in January 2012) and the judgment of the second instance that affirmed the determination on infringement in February 2017, these judgments became final and binding by the decision of the German Supreme Court made in March 2018. Concerning the German patent invalidation case, the judgment of the first instance that invalidated the European Patent was rendered (in September 2012); however, the judgment of the Supreme Court that found the validity of said patent and changed the judgment of the first instance was rendered in April 2015, and the maintenance of the validity of the patent became final and binding.

H. Based on the aforementioned developments, the German patent invalidation case was settled. Around 2017, when the German infringement case passed the peak, the First-instance Plaintiff faced a state where the filing of new cases for patent infringement in countries other than Germany became a realistic option. Therefore, the First-instance Plaintiff analyzed the configuration of samples described in F. above, and around that time, the First-instance Plaintiff recognized that the configurations of said product and German infringing products are identical (Exhibits Ko 17, Ko 18, and Ko 28).

(3) Examining this case in consideration of the aforementioned facts found in this case, the First-instance Plaintiff got samples in the market in Japan in order to preserve evidence of patent infringement, and prepared a "notarial instrument on testing, recording, and notation related to sampling" by October 26, 2011. Based on these facts, it is deemed to be difficult to consider, based on a general rule of thumb, that the First-instance Plaintiff had left the samples without analyzing their configuration. However, in this case, the First-instance Plaintiff had to focus on the German infringement case and the German patent invalidation case as the defendant in the first instance. Based on the First-instance Plaintiff's experience of having held patent cases that were prolonged and approaching chaos in many countries wherein the court costs had an adverse impact on business management, it is found that the First-instance Plaintiff virtually did not have the option to file a new lawsuit, etc. in countries other than Germany. Under the



aforementioned situation, the First-instance Plaintiff only preserved evidence that might be used in the future and did not dare to analyze their configuration. Such behavior of the First-instance Plaintiff is not at all unnatural. The testimony of Witness A stating the aforementioned details can be trusted.

(4) Both the product number 3930 series and the retroreflective sheet, which is the German infringing product, from among the First-instance Defendants' Product (1), were manufactured using base rolls imported from 3M USA and their appearances are identical ((2) F. above). However, there is the fact that the First-instance Defendants changed the configuration of the First-instance Defendants' Product (1) without changing its product number ((2) F. above, Witness A on page 8). Although the producer, country of production, and product number of the base rolls were the same, it was impossible to determine immediately that the configurations of those products were identical. Based on the above, it cannot be presumed based only on the identicalness in appearance of samples for which the configuration had not been analyzed, that the First-instance Plaintiff recognized that the aforementioned samples are infringing products that infringe the Patent.

In addition, the First-instance Defendants pointed out that the First-instance Plaintiff sent an email to 3M USA to request royalties on January 19, 2012 ((2) E. above) and argued that it fell under a letter of warning that demands compensation for past damages. However, said email did not clarify specific facts of patent infringement by identifying a specific place (country), time, etc. of the infringing act, and it is rather natural to consider that it just offered a comprehensive license only from the perspective of fundamental resolution of the conflict on a global scale, based on a recognition to the level that the same type of products sold in all the countries in the world might be infringing the First-instance Plaintiff's patent as well against the background of the German infringement case that had still been pending at that time. The relevant email is insufficient as an indirect fact that leads to a presumption that the First-instance Plaintiff recognized the fact of patent infringement in Japan by the First-instance Defendants at that time.

Meanwhile, it is found that the First-instance Plaintiff entrusted a credit survey company to survey the trends of competing companies, including the First-instance Defendants, in the market and the credit survey company submitted a survey report dated March 6, 2015 (Exhibit Ko 88). However, it cannot be said that this fact supports the argument of the First-instance Defendants related to the starting date of extinctive prescription.

(5) Based on the aforementioned findings and determination, the time when the First-

instance Plaintiff recognized the infringement of the Patent Right by the First-instance Defendants related to the First-instance Defendants' Products was found to be around 2017, when the First-instance Plaintiff conducted an analysis of the configuration of samples that were obtained in 2011. It is obvious that this case was filed in January 2018, which is before three years had subsequently elapsed.

The argument of the First-instance Defendants stating completion of extinctive prescription is groundless.

#### 6. Other issues

(1) With regard to the claim for returning unjust enrichment related to Issue 4, as this claim is merely a secondary claim in the case where the defense of extinctive prescription argued by the First-instance Defendants is upheld, it is no longer necessary to make a determination for this issue as the defense of extinctive prescription was rejected.

(2) With regard to Issue 5 (counter-defense of correction) and Issue 6 (defense of patent invalidity with respect to the Corrected Invention raised in response to the counter-defense), it is also unnecessary to make determinations for these issues as the invalidity defense with respect to the Patent in Issue 2 (Grounds for Invalidation 1 through 7) has been rejected in its entirety.

(3) Since the Correction may be approved in the near future to a considerable extent, it is explained just in case that the First-instance Defendants' Product (1) falls within the technical scope of the Patent even on the premise of the Corrected Invention.

The following is added to the Corrected Invention (Claim 1) in addition to the configuration of Invention 1: [i] configuration using polycarbonate resin for a reflective element layer; [ii] configuration using (meth)acrylic resin for a surface protective layer; [iii] configuration where a printing layer is installed in contact with a holder layer and a surface protective layer; and [iv] configuration where a printing layer contains titanium oxide as a white inorganic pigment. Concerning the Corrected Invention (Claim 2), [v] configuration where a printing layer thickness is 0.5  $\mu\text{m}$  to 10  $\mu\text{m}$ , in addition to [i] through [iv] above.

According to the evidence (Exhibits Ko 17, Ko 18, and Ko 28 and Exhibits Otsu 1, Otsu 46, and Otsu 49) and the entire import of oral arguments, the First-instance Defendants' Product (1) has configurations [i] through [v] above. Even in the plea or objection against the counter-defense of the correction argued by the First-instance Plaintiff, the First-instance Defendants did not argue that the First-instance Defendants' Products no longer fall within the technical scope of the Patent due to the aforementioned configurations added by the Correction.

Therefore, even if the trial decision to approve the Correction becomes final and binding, it does not have an impact on the determination in this case (without waiting for the application of the limitation of assertions set forth in Article 104-4, item (iii) of the Patent Act).

No. 6 Conclusion

Based on the above, the court dismisses the appeals filed by the First-instance Plaintiff and the First-instance Defendants, as both of these appeals are groundless, and the judgment shall be rendered in the form of the main text.

Intellectual Property High Court, Fourth Division

Presiding judge: MIYASAKA Masatoshi

Judge: IWAI Naoyuki

Judge: RAI Shinichi

(Attachment)

New arguments in this case

1. Grounds for Invalidation 4-2 (Lack of novelty and an inventive step based on Exhibit Otsu 6 Inventions A through C) under Issue 2 (Invalidity defense with respect to the Patent)

[Argument by the First-instance Defendants]

In response to the determination of the judgment in prior instance, inventions that can be recognized based on Exhibit Otsu 6 are sorted. The following Exhibit Otsu 6 Inventions A through C are stated in Exhibit Otsu 6 as "a reflector plate that is used as a license plate." Invention 1 and Invention 2 are identical to the inventions stated in Exhibits Otsu 6 or those that a person ordinarily skilled in the art could have easily made based on these inventions and well-known art. Therefore, the Patent should be invalidated by a patent invalidation case since it violates the provisions of Article 29, paragraph (1) or paragraph (2) of the Patent Act.

(1) Exhibit Otsu 6 Invention A

"A reflector plate that is used as a license plate;

wherein the reflector plate has a main plate; wherein the front surface is generally flat and smooth; wherein the back side has multiple reflective elements that are formed as a triangular pyramid and is coated with a reflective layer; wherein characters, numbers, or other codes are stamped, embossed onto the surface, or provided on the front surface of the reflector plate; wherein the reflective elements formed as a triangular pyramid have the form of an upturned triangular pyramid;

wherein the codes are in a color different from that of the front surface on which the codes are not included; and

wherein multiple white dots are printed with a white pigment in a grid pattern or screen pattern on the front surface of the main plate so that the front surface on which the codes are not included looks white in daylight; and wherein a grid is created so that the reflected light passes through at the specified percentage."

(2) Exhibit Otsu 6 Invention B

"A reflector plate that is used as a license plate;

wherein the reflector plate has a main plate; wherein the front surface is generally flat and smooth; wherein the back side has multiple reflective elements that are formed as a triangular pyramid and is coated with a reflective layer; wherein the reflective elements formed as a triangular pyramid have the form of an upturned triangular pyramid;

and wherein the entire front surface of the main plate is covered by adhering or bonding a printed transparent film."

(3) Exhibit Otsu 6 Invention C

"A reflector plate that is used as a license plate;

wherein the reflector plate has a main plate; wherein the front surface is generally flat and smooth; wherein the back side has multiple reflective elements that are formed as a triangular pyramid and is coated with a reflective layer; wherein the reflective elements formed as a triangular pyramid have the form of an upturned triangular pyramid;

wherein multiple white dots are printed with a white pigment in a grid pattern or screen pattern on the front surface of the main plate so that it looks white in daylight; and wherein the grid is created so that the reflected light passes through at the specified percentage;

and wherein the entire front surface of the main plate is covered by layer 16."

[Argument by the First-instance Plaintiff]

The aforementioned argument of the First-instance Defendants falls under an argument and evidence presented belatedly, and therefore, should be dismissed.

2. Issue 5 (Counter-defense of correction)

[Argument by the First-instance Plaintiff]

(1) The First-instance Plaintiff requested a correction to seek correction of the claims of the Invention (the Correction) as stated in No. 3, 1. (cited and corrected part of the judgment in prior instance) and 2. (3) above.

(2) It became more obvious by the Correction that the Grounds for Invalidation 1 through 7 in the argument of the First-instance Defendants are not found.

(3) The First-instance Defendants' Products fall within the technical scope of the Corrected Invention.

[Argument by the First-instance Defendants]

Argument by the First-instance Plaintiff (1) is found but Arguments by the First-instance Plaintiff (2) and (3) are disputed. The grounds for the First-instance Defendants' Products not falling within the technical scope of the Corrected Inventions are the same as those stated concerning the Invention.

3. Issue 6 (Defense of patent invalidity with respect to the Corrected Invention raised in response to the counter-defense [Grounds for Invalidation 8 through 16])

[Argument by the First-instance Defendants]

Even on the premise of the Corrected Invention, the Patent has the following grounds for invalidation.

- (1) Grounds for Invalidation 8: Violation of support requirements
- (2) Grounds for Invalidation 9: Violation of enablement requirements
- (3) Grounds for Invalidation 10: Violation of clarity requirements
- (4) Grounds for Invalidation 11: Lack of novelty and an inventive step based on Exhibit Otsu 6 Inventions A through C
- (5) Grounds for Invalidation 12: Lack of an inventive step based on Exhibit Otsu 16 Invention
- (6) Grounds for Invalidation 13: Lack of an inventive step based on Exhibit Otsu 17 Invention
- (7) Grounds for Invalidation 14: Lack of an inventive step based on Exhibit Otsu 18 Invention
- (8) Grounds for Invalidation 15: Lack of an inventive step based on Exhibit Otsu 23 Invention
- (9) Grounds for Invalidation 16: Lack of an inventive step based on Exhibit Otsu 70 Invention

[Argument by the First-instance Plaintiff]

They are disputed.