

Patent Right	Date	September 19, 2019	Court	Intellectual Property High Court, Second Division
	Case number	2019 (Gyo-ke) 10005		
- A case in which there is no violation of the requirement for independent patentability (lack of inventive step) for the patent application related to the invention titled "application generation support system and application generation support program", since motivation for applying the well-known art to the cited invention is not found.				

Case type: Rescission of Appeal Decision of Refusal

Result: Granted

References: Article 17-2, paragraph (6), Article 126, paragraph (7), Article 29, paragraph (2) of the Patent Act

Number of related rights, etc.: Patent Application No. 2017-124385, Appeal against Examiner's Decision of Refusal No. 2018-3406

Summary of the Judgment

1. This case is a lawsuit against an appeal decision made by the JPO which judged non-establishment of the appeal against the examiner's decision of refusal for the present application invention titled "application generation support system and application generation support program", and the issue is presence/absence of violation of the requirement for independent patentability (lack of inventive step).
2. This judgment rescinded the JPO decision, which denied the inventive step of this Amended Invention, judging as follows.
 - (1) There is a different feature (Different Feature 1) between this amended invention and the cited invention that the "parameter for setting a setting file is the 'parameter for causing a native function specific to a mobile communication terminal to be executed' in this Amended Invention, while it is the parameter for causing the function of the mobile communication terminal to be executed in the Cited Invention, but the fact that it is the parameter for causing the native function specific to the mobile communication terminal to be executed is not specified therein", and since the JPO decision judged that this Amended Invention could have been conceived of by applying to the Cited Invention the arts described in Cited Documents 2 to 5 and Reference Document 1 (the arts and the art described in the Exhibit Otsu 3 are collectively referred to as the "well-known arts alleged by Defendant"), presence/absence of motivation for applying the well-known arts alleged by Defendant to the Cited Invention will be examined.

(2)A. The Cited Invention had a problem of easy generation of a native application capable of a search in an application server and solved the problem by enabling generation of the native application only by inputting information such as an address of an existing web application, capable of displaying information displayed by the web application and thus, when the native application displaying display contents of the web application not executing an operation following movement of a mobile communication terminal, such as a blog, is to be generated, there is no need to cause the native application to be generated to perform the operation following the movement of the mobile communication terminal and thus, the parameter for setting the setting file does not have to be made the "parameter for executing the native function specific to the mobile communication terminal". However, paragraph [0024] in Cited Document 1 raises a "game site" as well as the blog and the like and describes that in the game, there is a case in which control is needed so that a lateral screen and a vertical screen are not switched by an acceleration sensor (see Cited Document 5), but the game provided as the web application [i] does not always need to fix the display screen of the mobile communication terminal; [ii] the function for controlling screen rotation display corresponding to an attitude of the mobile communication terminal is included on the mobile communication terminal side by an acceleration sensor, and the display screen can be fixed by an operation on the terminal side and such operation is performed in general; [iii] the "game site" in paragraph [0024] in Cited Document 1 is described as well as the blog, a fan site, and a shopping site not requiring fixation of the display screen of the mobile communication terminal, and Cited Document 1 has no description on the acceleration sensor and thus, it should be considered that a person ordinarily skilled in the art would recognize a need to make the "parameter for executing the native function specific to the mobile communication terminal" as the parameter from the description of the aforementioned "game site".

Moreover, the native application generated by the Cited Invention can display a web page described in HTML or JavaScript and thus, even when the native application displaying the display contents of the web application performing the operation following the movement of the mobile communication terminal using Geolocation of HTML5 API described in Exhibit Otsu 4 is to be generated, the native application to be generated can obtain the web page corresponding to the web application on the basis of the

address of the web application included in setting information and can display the contents of the web application on the basis of the description of the HTML or JavaScript on the obtained web page and thus, there is no need to make the "parameter for causing the native function specific to the mobile communication terminal to be executed" as the parameter for setting the setting file in generation of the native application.

Furthermore, various documents related to the well-known arts alleged by Defendant have no description on the necessity or the like to set the setting file in accordance with the "parameter for causing the native function specific to the mobile communication terminal to be executed " in the art with the aforementioned configuration in the Cited Invention (Exhibits Ko 2 to 5, 7, 8, Exhibits Otsu 1 to 3).

B. The Cited Invention had a problem of easily generating a native application and enabled generation of the native application displaying the information displayed by the web application only by inputting information such as an address of the existing web application, and if the native application is to be generated by PhoneGap, it is found that a source code (program) needs to be written or the like by using HTML, JavaScript, and the like and thus, there is disincentive in applying to the Cited Invention the art related to the PhoneGap requiring an act of newly writing the source code and the like as described above.

C. As described above, it should be considered that motivation is not found in applying the well-known arts alleged by Defendant to the Cited Invention.