

Patent Right	Date	December 11, 2019	Court	Intellectual Property High Court, Third Division
	Case number	2019 (Gyo-ke) 10049		
<p>- A case in which, with regard to the JPO decision which invalidated the patent of the invention titled "METHOD AND DEVICE FOR FORMING AND DISTRIBUTING REAL TIME INTERACTIVE CONTENTS ON WIRELESS COMMUNICATION NETWORK AND INTERNET", the JPO decision was rescinded by stating that the judgment on whether the Different Feature could have been easily conceived of has an error.</p>				

Case type: Rescission of Trial Decision of Invalidation

Result: Granted

References: Article 29, paragraph (2) of the Patent Act

Number of related rights, etc.: Invalidation Trial No. 2017-800069, Patent No. 5033756

Summary of the Judgment

1. This case is a case in which, when Defendant made a request for a patent invalidation trial for Plaintiff's patent, the JPO made a trial decision that the present patent was invalidated and thus, Plaintiff claimed for rescission thereof.

1. This judgment determined as follows in brief for the determination of this JPO decision that the grounds for invalidation of lack of inventive step with Exhibit Ko 1 (International Publication No. 00/72303) as a primarily cited reference has a reason and rescinded the JPO decision, since the determination on whether the Different Feature between Present Invention and the invention described in Exhibit Ko 1 (hereinafter, referred to as "Cited Invention") could have been easily conceived of has an error.

(1) The JPO decision determined that the configuration of Present Invention according to following Different Feature could have been easily conceived of by a person ordinarily skilled in the art.

With regard to "‘expression of the second content is sent to a remote server spatially separated from the handheld device through the transmitter’ which is Common Feature between Present Invention and Cited Invention", Present Invention sends "at least an identifier of a single receiver" in addition to the "expression of the second content", whereas Cited Invention does not have such specification.

Along with that, with regard to Common Feature that "causes the second content temporally overlapped with presentation of the first content to be received from an operator through the input device in accordance with a relation determined by the

operator", Present Invention "causes at least an identifier of a single receiver to be received from the operator through the input device" in addition to the "second content", while Cited Invention does not describe to "cause at least the identifier of a single receiver to be received from the operator through the input device."

(2) However, the configuration of Present Invention according to the aforementioned Different Feature is not found to be easily conceived of by a person ordinarily skilled in the art as described below.

It is understood that the "at least an identifier of a single receiver" in Present Invention is information for identifying a person who receives "further expression ... determined by the operator" transmitted by the "remote server" and has a function of specifying a specific person identified by the identifier as a person who receives the further expression by the operator of the handheld device to input the identifier into the device.

On the other hand, it is understood from the description in Exhibit Ko 1, that in the Humband™... musical instrument in Cited Invention, in order to be an "audience" of the "performance", it is necessary to log in the Humjam.com website by using a name and a password and to become a member of an online group at a predetermined rank.

Then, even if it is disclosed as alleged by Defendant that in Exhibit Ko 1, the "performer" can select a "rank" in which the performer will participate by inputting the "rank" of a "performance group" (online group) in "HumBand™ musical instrument", it is understood from the description in Exhibit Ko 1 that the person ranked with the "rank" is not naturally designated as an "audience" of the "performance" by such selection, but it is necessary to become a member of the online group at the predetermined rank by a method as above in order to become the "audience".

According to the above, the "rank" described in Exhibit Ko 1 does not perform the function realized by the "at least an identifier of a single receiver" of Present Invention and thus does not correspond to that.

Therefore, the determination of the JPO decision that to call the "rank" the "at least an identifier of a single receiver" is optional and that a person ordinarily skilled in the art could have easily conceived of the configuration of Present Invention according to the Different Feature on the premise that the two are substantially identical has an error in the premise.