

Patent Right	Date	March 17, 2020	Court	Intellectual Property High Court, First Division
	Case number	2019 (Gyo-Ke) 10072		
- A case in which the court held that an invention having the title, "METHOD AND DEVICE FOR SOLICITING CUSTOMERS TO HOST CLUBS", is not easily conceivable from the cited invention.				

Case type: Rescission of Appeal Decision of Refusal

Result: Granted

References: Article 29, paragraph (1), item (iii), and paragraph (2) of the Patent Act

Related rights, etc.: Patent Application No. 2017-79818

Decision of JPO: Appeal against Examiner's Decision of Refusal No. 2018-3578

Summary of the Judgment

1. The present case is one in which Plaintiff sought rescission of the JPO decision dismissing the case of appeal against the examiner's decision of refusal for an invention with the title, "METHOD AND DEVICE FOR SOLICITING CUSTOMERS TO HOST CLUBS".

Plaintiff asserted error in judgment on inventive step as reasons for rescission of the JPO decision.

2. In the judgment of the present case, the court rescinded the JPO decision by ruling as outlined below concerning the error in judgment on inventive step.

(1) Regarding Difference 1'

It is interpreted that the cited invention broadly covers the provision of simulation experiences of services, through virtual reality videos, which prompts customers to want to have such experiences in reality and leading them to actually pay visits to a park or a venue. It is obvious that the cited invention also covers "solicitation" for "payment of visits".

Next, given that the services provided by Cited Document 1 include the following; namely, the experience of driving a newly released car, a preview of an apartment building, a preliminary experience of a theme park, an aquarium, driving while looking up at the stars, and ice cream cups, it is interpreted that the coverage of sales promotion by the cited invention is limitless and that the coverage can be anything so long as simulation experiences can be offered through virtual reality videos, and since there are no indications or suggestions to exclude specific business types, a "host club" is also covered.

Accordingly, designating the coverage of sales promotion by the cited

invention as "host club" services and using said invention for "solicitation" for "payment of visits" was easily conceivable by a person ordinarily skilled in the art.

(2) Regarding Differences 2' and 4'

A. Meaning of "virtual reality video files of multiple different host clubs which offer different kinds of mental care to potential customers depending on the selections made based on each customer's psychological state"

According to the statement of the Description, "virtual reality video files of multiple different host clubs which offer different kinds of mental care to potential customers depending on the selections made based on each customer's psychological state" of the Amended Invention refer to the files of "multiple different virtual reality videos" which were taken respectively of the "settings starting with a customer entering a host club and being catered to by hosts, and ending with the customer leaving the store", where different kinds of "mental care" that is compatible with the "psychological state", which prompted the "potential customer" to come to a host club, is provided by means such as "making the customer feel relaxed through conversing with hosts", "making the customer relieve stress", and "healing the customer".

B. Whether or not Difference 2' is easily conceivable

It is interpreted that if the coverage of sales promotion by the cited invention is targeted to "host club" services, and if the cited invention is used for the purpose of "solicitation" for "payment of visits" to a host club, there is likelihood of "virtual reality videos" becoming videos that are targeted toward potential customers and that provide simulation experiences of the services offered by a host club.

However, Cited Document 1 has neither any indications nor suggestions as to "virtual reality videos" being such that they provide "mental care" or that they consist of virtual reality video files of "multiple different host clubs which offer different kinds of mental care to potential customers depending on the selections made based on each potential customer's psychological state", and there is also no evidence to acknowledge that such matter was well-known.

In that case, it cannot be said that the structure of "virtual reality video files of multiple different host clubs which offer different kinds of mental care to potential customers depending on the selections made based on each

potential customer's psychological state", which pertains to Difference 2', was easily conceivable by a person ordinarily skilled in the art based on the cited invention.

Accordingly, the structure of the Amended Invention pertaining to Difference 2' is not such that it was easily conceivable by a person ordinarily skilled in the art.

C. Whether or not Difference 4' is easily conceivable

If it cannot be said that the structure of Difference 2' was not easily conceivable by a person ordinarily skilled in the art, then it cannot be said that a person ordinarily skilled in the art were able to easily conceive of making the "multiple command buttons on which different psychological states are written and which are selected according to the psychological states of potential customers" "correspond" to "virtual reality video files of the host clubs".

Accordingly, the structure of the Amended Invention pertaining to Difference 4' is not such that it was easily conceivable by a person ordinarily skilled in the art.

- (3) From what is described above, it cannot be said that the Amended Invention was easily conceivable by a person ordinarily skilled in the art based on the cited invention and well-known art.