

Patent Right	Date	January 30, 2020	Court	Intellectual Property High Court, Third Division
	Case number	2018 (Gyo-Ke) 10157		
- A case in which the court rescinded the JPO decision by finding error concerning patentability of the invention with the decision, which dismissed a request for a trial for patent invalidation of an invention titled "LIQUID CRYSTAL COMPOSITION CONTAINING POLYMERIZABLE COMPOUND AND LIQUID CRYSTAL DISPLAY ELEMENT UTILIZING SAME."				

Case type: Rescission of Trial Decision to Maintain

Result: Granted

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

Related rights, etc.: Invalidation Trial No. 2014-800103, Patent No. 5196073

Summary of the Judgment

1. The present case is a lawsuit filed by Plaintiff seeking rescission of the JPO decision which dismissed the Plaintiff's request for a trial for patent invalidation of the Defendant's patent.
2. In the judgment of the present case, the court rescinded the JPO decision, which was made to the effect that the lack of novelty and inventive step as asserted by Plaintiff as the grounds for invalidation based on the primary reference of Exhibit Ko 1 (International Publication No. WO 2010/084823) is groundless as summarized below.

- (1) If an invention for a patent (Invention) is covered by an invention indicated in publicly known document as a subordinate concept of the prior art invention, it is reasonable to interpret that the Invention does not have patentability unless the Invention has an effect which is not specifically disclosed in the publicly known document, in addition to having a remarkable and particular effect as compared to the invention indicated in the publicly known document, or in other words, that the Invention has a different kind of effect as the one derived from the invention indicated in the prior known art, or the same kind of effect but that which achieves an outstanding and excellent effect.

In view of the above, the Invention does not have patentability unless the Invention has an effect that is not specifically disclosed in Exhibit Ko 1 in addition to achieving a remarkable and particular effect as compared to the invention indicated in Exhibit Ko 1 (Invention of Exhibit Ko 1). Meanwhile, it cannot be acknowledged that Exhibit Ko 1 specifically discloses any aspect

which is applicable to the Invention.

Next, whether or not the Invention has a remarkable and particular effect as compared to the Invention of Exhibit Ko 1 shall be considered below.

- (2) According to the Description, the "Invention" achieves the following effects: [i] the Invention does not precipitate and maintains a nematic state even when left in a low temperature environment for a long time, and [ii] because the Invention has low viscosity, the response speed is high when used for a liquid crystal display element, and the Invention can also be applied to a 3D display and the like, and [iii] a uniform and stable orientation control is obtained, whereby causing little or no burn-in and display irregularities, and it can be understood that this is where the technical significance of the Invention 1 lies.

On the other hand, the Invention of Exhibit Ko 1 is a liquid display composition that achieves the following effects simultaneously; namely, [i] no precipitation even in an environment of a wide temperature range, and [ii] low viscosity that manages high-speed response, and [iii] causing no display irregularities, so that the Invention and the Invention of Exhibit Ko 1 are the same in that they are liquid crystal compositions having the aforementioned three characteristics.

Next, since it cannot be acknowledged that the Invention shows effects that are absolutely impossible to achieve by the liquid crystal composition as shown by the examples of Exhibit Ko 1 (improved storage stability in a low-temperature environment, low viscosity of a liquid crystal composition, and little or no burn-in or display irregularities, etc.), it cannot be acknowledged that the Invention achieves any special remarkable effect, as compared to the Invention of Exhibit Ko 1.

- (3) As described above, it is reasonable to interpret that the Invention does not achieve any remarkable and particular effect, as compared to the Invention of Exhibit Ko 1, and thus does not have patentability, so that the decision to the contrary as rendered by the JPO is erroneous.