

Mock Trial

- SCENE 1

 - 2nd Date for Oral Argument — Explanatory Session

- Procedures thereafter

- SCENE 2

 - 3rd Date for Oral Argument — Rendering of
Judgement

SCENE 1

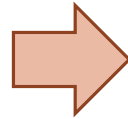
2nd Date for Oral Argument

Sep. 20, 2021

— Explanatory Session —

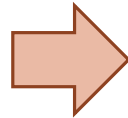
○ Procedures to be conducted on this date

**Statement of the Outcome
of Preparatory Proceedings**



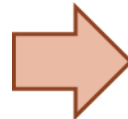
**Confirmation of the clarified
issues in dispute**

Explanatory Session



**Final presentation for
summarizing and orally
explaining allegations of both
parties**

**Participation of Technical
Advisors**



**Explanation on the specialized,
technical matters in dispute**

Confirmation of the clarified issues in dispute (1)

- Whether or not the manufacture and sale of the Defendant's Styluses by the defendant constitute indirect infringement

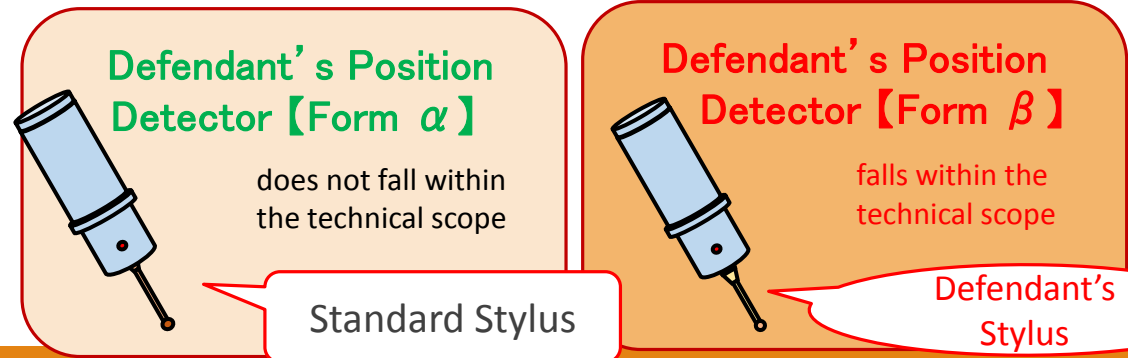
- I. Exclusive use type of indirect infringement (Patent Act 101(i))
- II. Multi-use but indispensable type of indirect infringement (Patent Act 101(ii))



- Whether or not the manufacture and sale of the Defendant's Position Detectors [Form α] by the defendant constitute indirect infringement

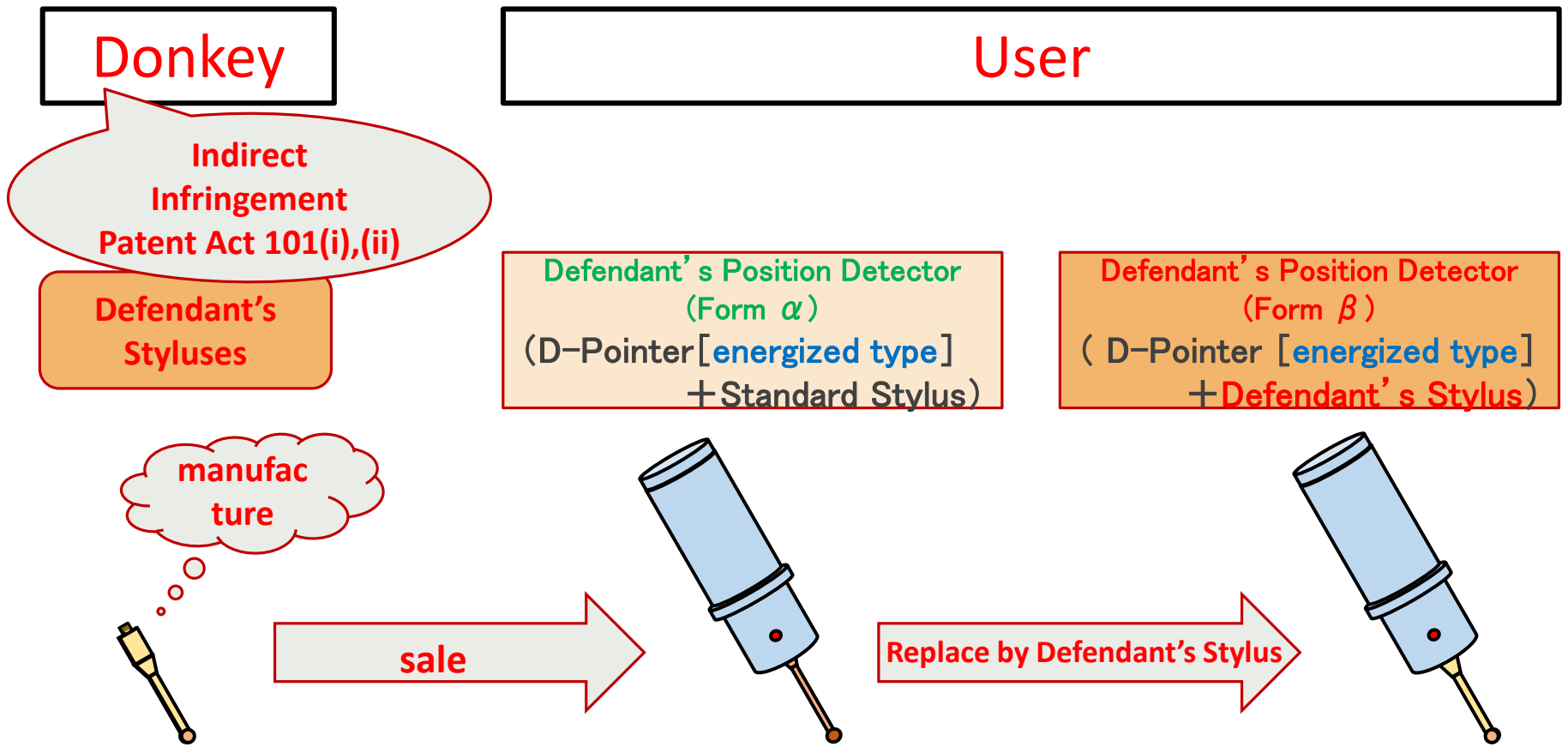
Multi-use but indispensable type of indirect infringement (Patent Act 101(ii))

- Necessity of injunction



Confirmation of the clarified issues in dispute (2)

Plaintiff's allegation \Rightarrow manufacture and sale of **Defendant's Styluses** = **indirect infringement**



Confirmation of the clarified issues in dispute (3)

Plaintiff's allegation \Rightarrow manufacture and sale of Defendant's Position Detectors (Form α)
= indirect infringement

Donkey

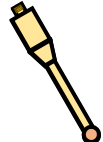
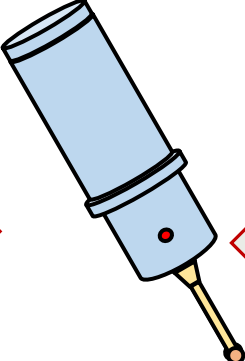
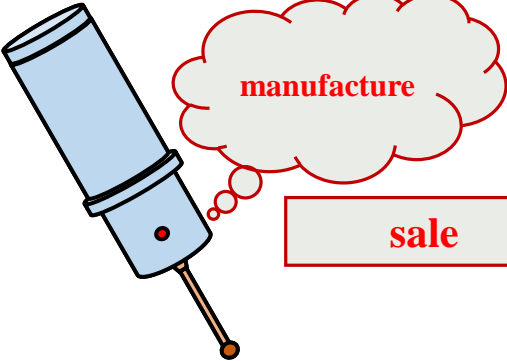
User

Indirect Infringement
Patent Act 101(ii)

Defendant's Position Detector (Form α)
(D-Pointer [energized type] + Standard Stylus)

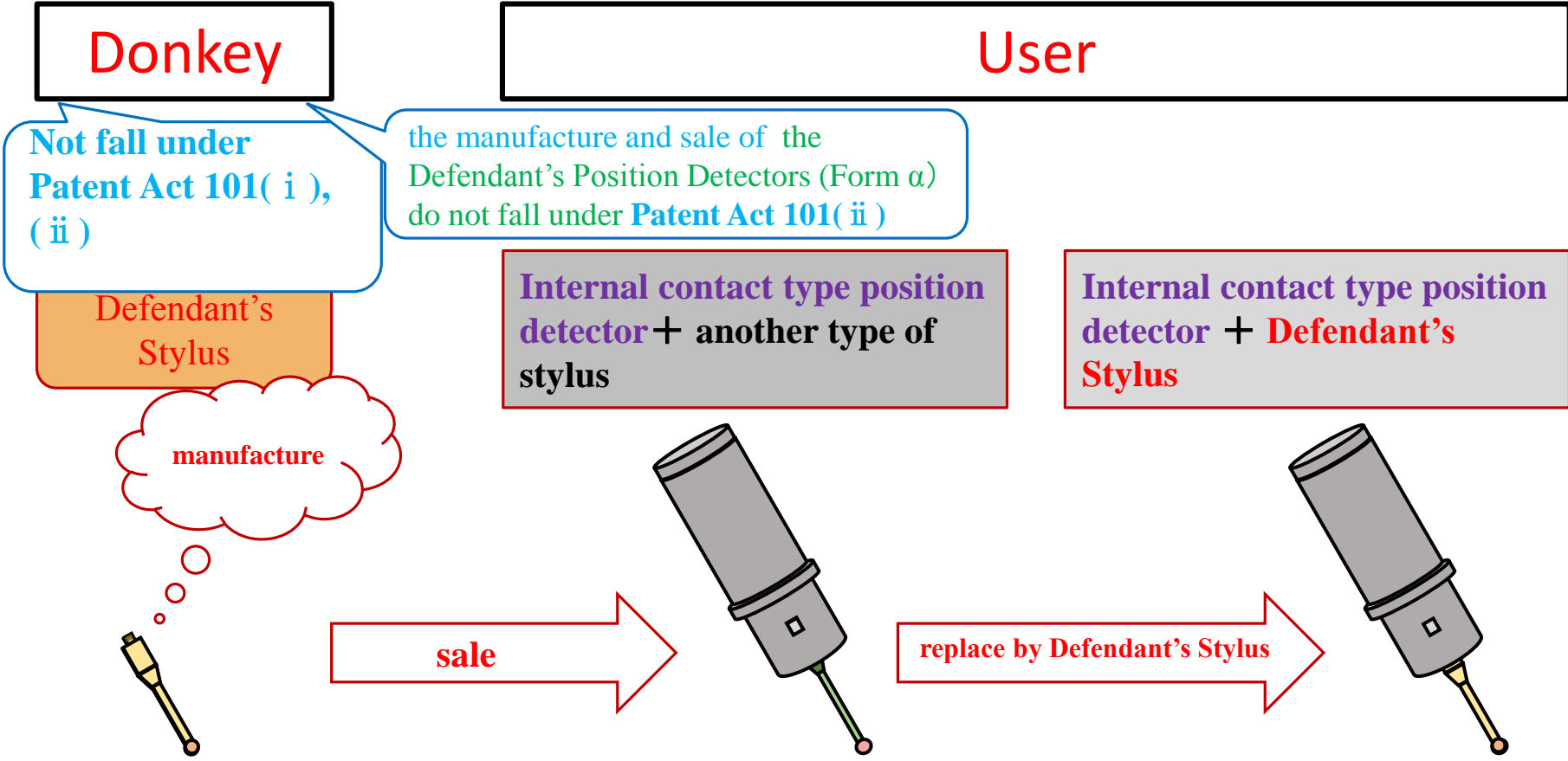
Defendant's Position Detector (Form β)
(D-Pointer [energized type] + Defendant's Stylus)

Defendant's Stylus

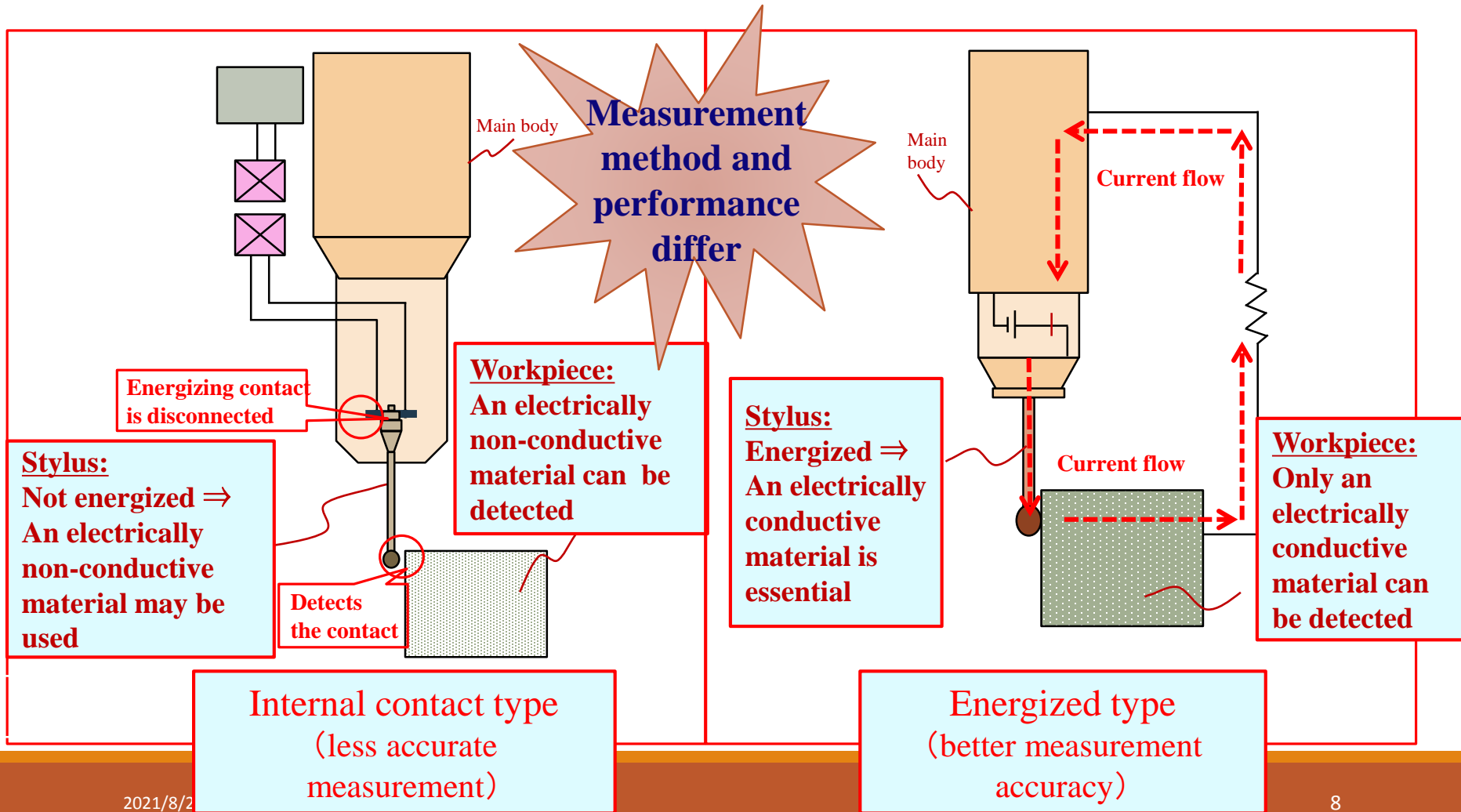


Confirmation of the clarified issues in dispute (4)

Defendant's allegation ⇒ **Defendant's Stylus**, **Defendant's Position Detector (Form α)** =
Not constitute indirect infringement



1. Presence/absence of indirect infringement of stylus (Plaintiff's allegations ①: Patent Act, Article 101 (1))



1. Presence/absence of indirect infringement of stylus (Plaintiff's allegations ①: Patent Act, Article 101 (1))

□ *Present invention and measurement method*

The present invention has adopted a configuration where a contacting portion is made from cemented carbide, which is a non-magnetic material. This is to prevent measurement errors and other problems, which are caused by choosing an “energized type”, for the stylus becomes magnetized over the course of being repeatedly energized.

□ *Economical, commercial and practical application*

When adopting an internal contact type, users would not use the Defendant's Stylus, which has a contacting portion made from costly non-magnetic, cemented carbide, for the problem that the stylus becoming magnetized by being repeatedly energized does not arise. (Contacting portions made of hard material are common. In using an internal contact type, the users would use a stylus having a contact portion made from economical material).

Using the Defendant's Stylus with an internal contact type position detector is not an economical, commercial or practical application.

□ *Conclusion*

The manufacture and sale of the Defendant's Stylus constitutes indirect infringement of a dedicated product type.

1. Presence/absence of indirect infringement of stylus (Plaintiff's allegations ②: Patent Act, Article 101 (2), (i))

□ *“indispensable for the resolution of the problem”*

The problem to be solved by the Present Invention: the prevention of measurement errors arising in a positon detector that adopts the energized type measuring method, due to the stylus becoming magnetic or arising from the wear and deformation of the stylus caused by repeated contact and separation between the stylus and workpieces. (Specification of the Present Patent [006]-[009])

As means to solve this problem, the Present Invention adopts a structure “made of a non-magnetic material containing tungsten carbide and a nickel binder” in Feature B.

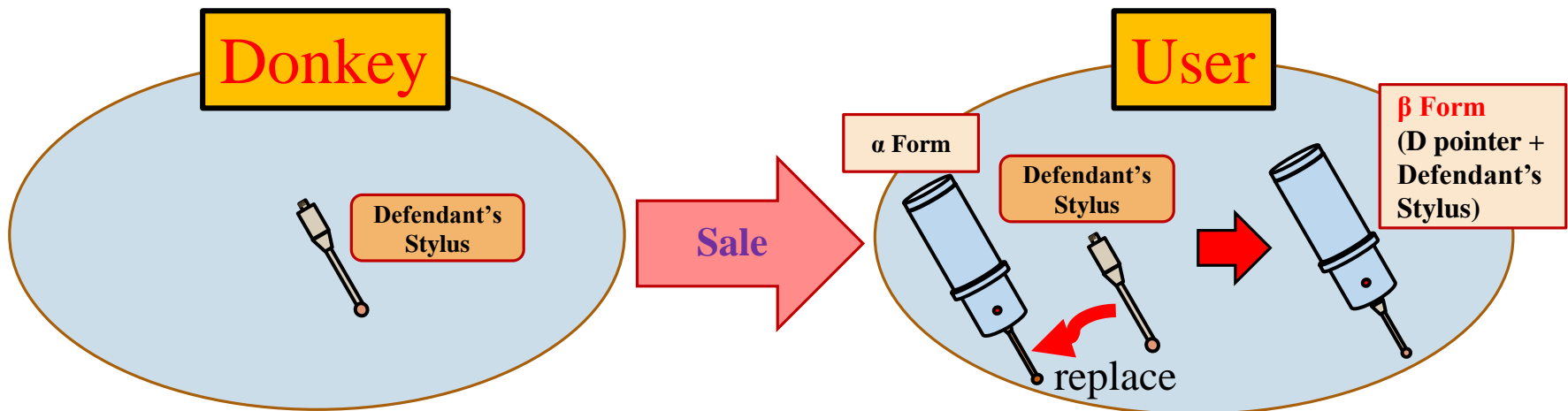
The Defendant's Stylus, containing non-magnetic material A, which has the material stipulated in Feature B, should be considered as being “indispensable for the resolution of the problem”.

1. Presence/absence of indirect infringement of stylus (Plaintiff's allegations ②: Patent Act, Article 101 (2), (ii))

■ Defendant's subjective

The Defendant's Stylus is used with the Defendant's Position Detector, and the users who purchase the Defendant's Stylus attach it to the Defendant's Position Detector.

Although recognizing the users' manner of use and receiving the Demand Letter, the Defendant continues to manufacture and sell the Defendant's Stylus. The Defendant is aware that "this invention is a patented invention" and the Defendant's Stylus is "used for the working of the invention."



1. Presence/absence of indirect infringement of stylus (Plaintiff's allegations ②: Patent Act, Article 101 (2), (ii))

■ *“a product widely distributed within Japan”*

The Stylus manufactured by the Defendant is a “custom-made product”, which can only be attached to the position detector manufactured by the Defendant.

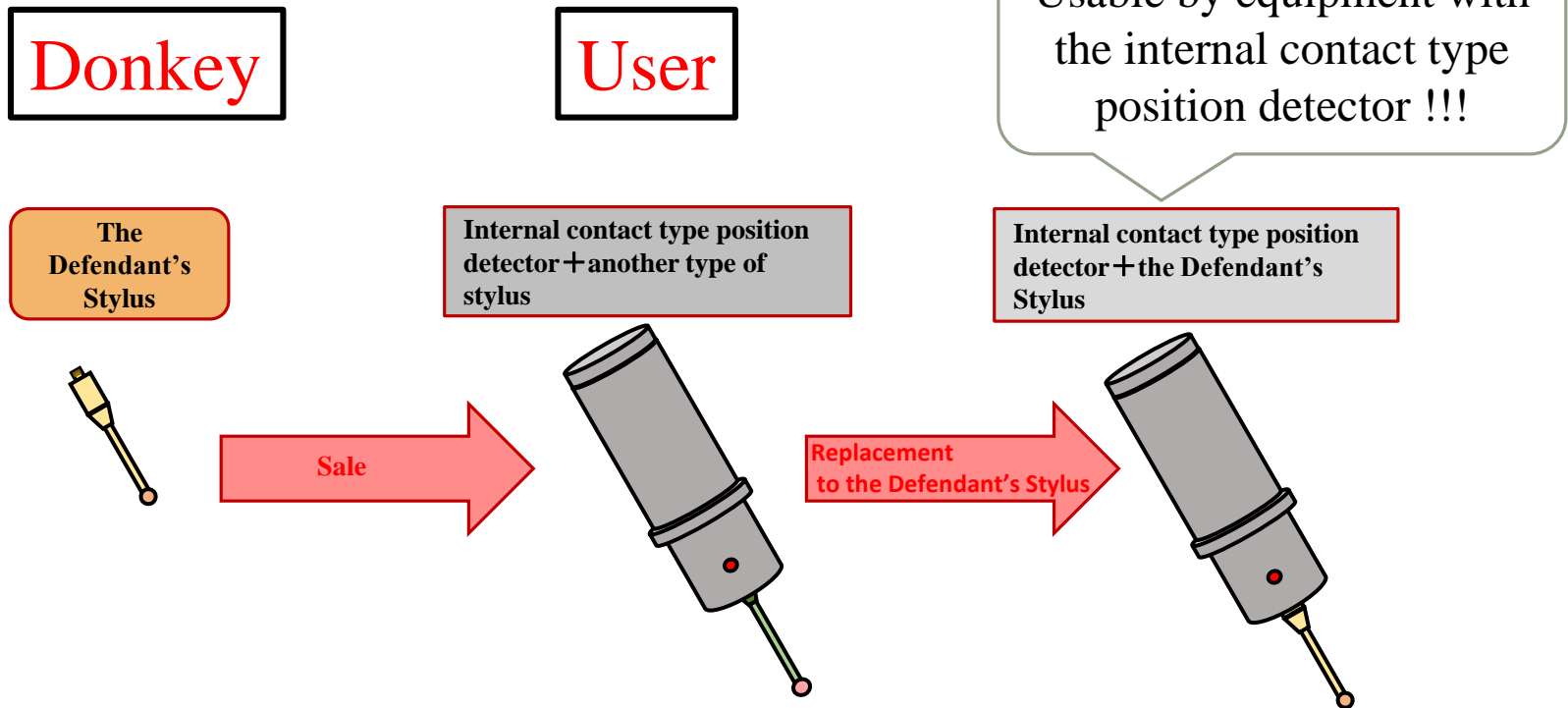
■ *Conclusion*

Manufacture and sale of the Defendant's Stylus constitutes indirect infringement of a non-dedicated product type.

1. Presence/absence of indirect infringement of stylus (Defendant's allegations ①: Patent Act, Article 101 (1))

■ *Economical, commercial and practical application*

- ✓ The Defendant's Stylus is **compatible with the internal contact type position detector** manufactured by the defendant



1. Presence/absence of indirect infringement of stylus (Defendant's allegations ①: Patent Act, Article 101 (1))

- ✓ The **cemented carbide** as raw material of the Defendant's stylus has excellent abrasion resistance and corrosion resistance. **There is a necessity to use a stylus made of cemented carbide even in the internal contact type position detector** because it has the advantage of **preventing measurement errors resulting from wear and deformation** caused by repeated contact with a workpiece that is very hard.
- ✓ The Defendant's Stylus has an **economical, commercial or practical use application** as a stylus for an internal contact type position detector
- ✓ The Defendant's stylus does not fall under a "product to be used exclusively for the producing of" the Defendant's Position Detector (item (i), Article 101 of the Patent Act)

1. Presence/absence of indirect infringement of stylus (Defendant's allegations ②: Patent Act, Article 101 (2))

■ *“a product widely distributed within Japan”*

- ✓ The Defendant's Stylus is a standard product and a popular product *“widely distributed within Japan”* (quotation from item (ii), Article 101 of the Patent Act).



【Reasons】

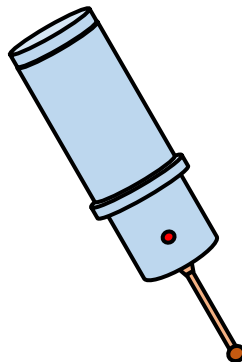
- ✓ *A stylus* is a tool with a tip that comes into contact with an object, and *has been widely used by attaching it to a position detector in the field of detecting the position of an object.*
- ✓ Like any other styluses, *the Defendant's Stylus is not different from the conventional ones* in that it is a product that is attached to a position detector and has the function of contacting an object for position detection.

1. Presence/absence of indirect infringement of stylus (Defendant's allegations ②: Patent Act, Article 101 (2))

■ Defendant's subjective

- ✓ It cannot be said that the defendant manufactured and sold the Defendant's Styluses knowing that they were "used for the working of the invention."
- ✓ The defendant is selling the Defendant's Position Detectors, with the SUS styluses (the Standard Styluses) attached as the standard equipment to the Defendant's Position Detectors.

**【Form α】
(D-Pointer + the
Standard Stylus)**



The Defendant does not
sell the Defendant's
Stylus in a way that it
attaches to the
Defendant's Position
Detectors!!!

1. Presence/absence of indirect infringement of stylus (Defendant's allegations ②: Patent Act, Article 101 (2))

- ✓ The defendant does not know exactly in how many cases, or to what extent, the Defendant's Styluses are attached to and used with the Defendant's Position Detectors.
- ✓ The Defendant does not sell the Defendant's Styluses "knowing" that they were used for the working of the invention.

2. Presence/absence of indirect infringement of position detector (Plaintiff's allegations)

□ *“indispensable for the resolution of the problem”*

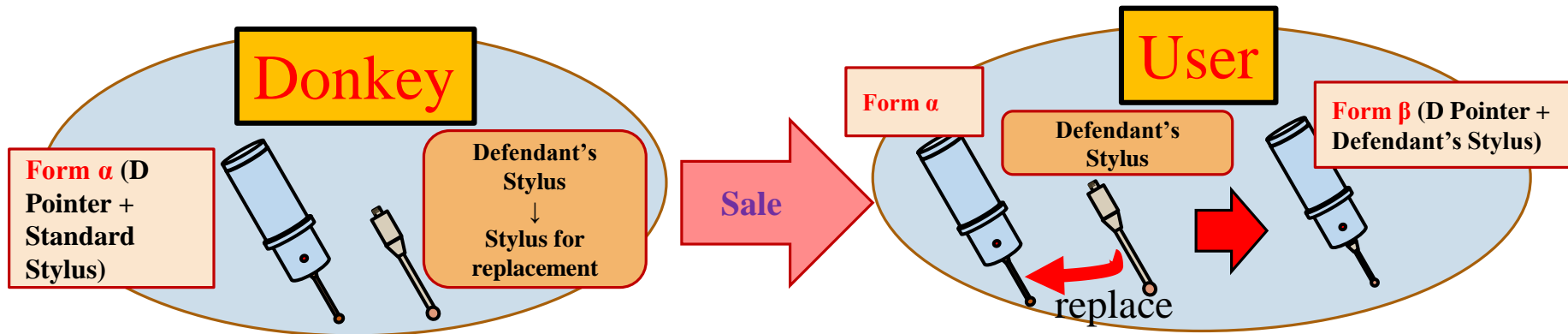
To solve the problem by the Present Invention, **both** adopting the energized type measurement method of the position detector and making the stylus of a non-magnetic material **are indispensable**.

In Form β , the Defendant's Position Detector, which is a part of the energized type measurement method, is also an article that is “indispensable for the resolution of the problem” by the Present Invention.

2. Presence/absence of indirect infringement of position detector (**Plaintiff's allegations**)

■ *Defendant's subjective*

The Defendant's Stylus is sold as “a replacement stylus” for the Defendant's Position Detector. The Defendant manufactures and sells the Defendant's Position Detector being aware that the said position detector is used in Form β , in other words, “used for the working of the invention”.



■ *Conclusion*

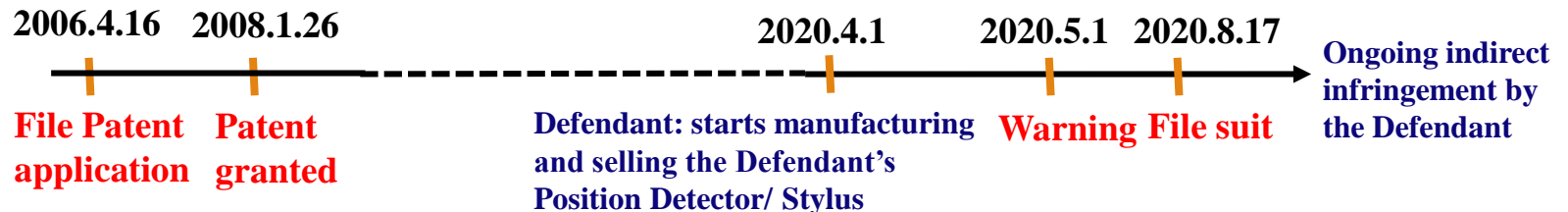
The manufacture and sale of the Defendant's Position Detector constitutes indirect infringement of a non-dedicated product type.

3. Necessity of injunction (Plaintiff's allegations)

■ *Necessity of injunction*

The Defendant started selling the Defendant's Stylus and Position Detector at the same time long after the registration of the patent, and still continues indirect infringement even after receiving a warning from the Plaintiff.

Injunction against the Defendant's manufacture and sale is necessary in order to stop and prevent infringement of the Plaintiff's Patent Right.



2. Presence/absence of indirect infringement of position detector (Defendant's allegations)

■ *“indispensable for the resolution of the problem”*

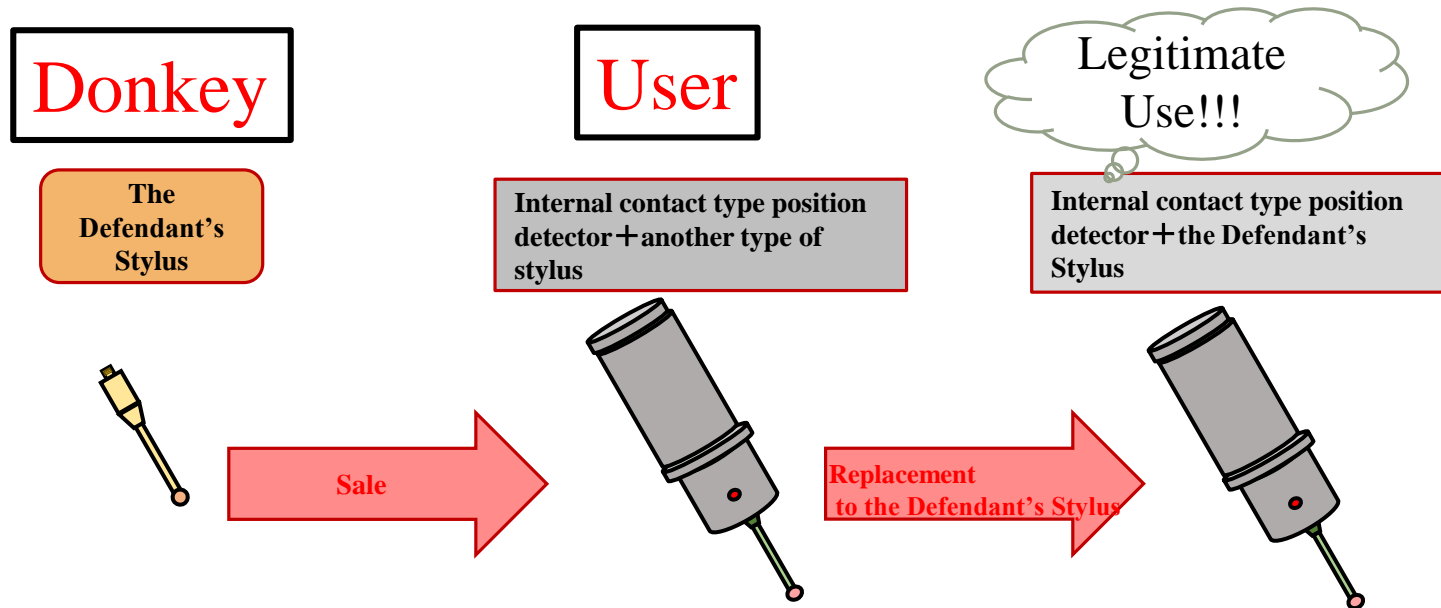
The Defendant's Position Detector is not an article “indispensable for the resolution of the problem” by the Present Invention (item (ii), Article 101 of the Patent Act).

【Reasons】

- ✓ The Defendant's Position Detectors themselves do not prevent measurement error caused due to the stylus wear, deformation, or magnetization caused by repeated contact with and separation from workpieces and the like.
- ✓ The characteristic component that directly brings about the unique structure that characterizes the characteristic technical means of the Present Invention is the Defendant's Stylus, and not the Defendant's Position Detectors.

3. Necessity of injunction (Defendant's allegations)

- (If, indirect infringement is found) Plaintiff's demand for injunction against the manufacture and sale of the Defendant's Styluses and the Defendant's Position Detectors should not be granted.
- There is the legitimate use that the Defendant's Styluses are attached to internal contact type position detectors



- There is no reason to restrict the manufacture and sale of the Defendant's Position Detectors that merely have a publicly-known structure.

○ Q and A Session

- **Question 1 — Using the Defendant's Stylus for an internal contact type position detector**

○ Q and A Session

- **Question 1— Using the Defendant’s Stylus for an internal contact type position detector**
- **Question 2— Relationship between an energized type position detector and demagnetization of a stylus**