

Patent Right	Date	October 20, 2022	Court	Intellectual Property High Court, Special Division
	Case number	2020 (Ne) 10024		

- If there are any circumstances suggesting that the patentee could have gained profits if no patent infringement had been made by the infringer, Article 102, paragraph (2) of the Patent Act should be applied by deeming that the patentee has incurred damage due to that infringement. On such basis, if the patentee was exporting or selling a product which is of the same type as the infringing product, targeting the same consumers, and which is in such a competitive relationship in the market that it could have been exported or sold if no patent infringement had been made by the infringer, it can be evaluated that the sales of the patentee's product decreased due to the infringement; therefore, Article 102, paragraph (2) of the Patent Act is applied by regarding that the abovementioned circumstances exist.

- Even where the presumption under Article 102, paragraph (2) of the Patent Act is partially rebutted, if the patentee is found to have been able to grant a license for the rebutted portion of the presumption, paragraph (3) of that Article is applied.

- A case in which, from among the grounds for rebuttal of the presumption under Article 102, paragraph (2) of the Patent Act, the court denied application of paragraph (3) of that Article for the rebutted portion of the presumption relating to the grounds for rebuttal due to the reason that the patented inventions are worked only in a part of the infringing product, but affirmed application of that paragraph for the rebutted portion of the presumption relating to the grounds for rebuttal due to the non-identity of the markets.

Case type: Injunction

Result: Modification of the prior instance judgment

References: Article 102, paragraphs (2) and (3) of the Patent Act, Article 709 of the Civil Code

Related rights, etc.: Patent No. 4504690, Patent No. 4866978

Summary of the Judgment

1. Outline of the case

In this case, the Appellant, which is the patentee of Patent No. 4504690 (Patent A) for an invention titled "Chair-type treatment apparatus" and of Patent No. 5162718 (Patent B) and Patent No. 4866978 (Patent C) for inventions both titled "Chair-type massage machine," alleged that the Appellee's manufacture, sale, etc. of massage

machines (a total of 12 products: Defendant's Products 1 through 12) constitute infringement of the respective patent rights for Patents A through C (Patent Rights A through C), and claimed an injunction against the Appellee's manufacture, sale, etc. of the products specified in the list of articles (Defendant's Products 1 through 12) based on Article 100, paragraphs (1) and (2) of the Patent Act, and also claimed 1.5 billion yen as part of a claim for compensation of damage in tort due to patent infringement, with delay damages accrued thereon.

The court of prior instance held that Defendant's Products 1 through 12 do not fall within the technical scope of the inventions relating to Patents A through C, and dismissed all of the the Appellant's claims without making determinations on the other points.

The Appellant filed this appeal against the part of the judgment in prior instance which dismissed the claims relating to Patent Rights A and C for Defendant's Products 1 through 8 to the extent of the object of the appeal (however, including the portion of the claim for delay damages that was expanded in this instance).

The issues in this case include whether Defendant's Products 1 through 8 fall within the technical scope of the inventions relating to Patents A and C, whether invalidity defenses are established for the inventions relating to Patents A and C, and the value of the damage incurred by the Appellant. The Appellant has claimed the value of damage based on Article 102, paragraph (2) or (3) of the Patent Act.

2. Outline of this judgment

(1) With regard to the claims relating to Patent Right A, the court found that Defendant's Products 1 through 3, 5, and 8 fall within the technical scope of the invention relating to Patent A. However, the court indicated that the invalidity defense is established for Patent Right A, due to the existence of grounds for invalidation to the effect that the invention relating to Patent A is identical to a publicly worked invention (Article 29, paragraph (1), item (ii) of the Patent Act), and therefore the Appellant cannot exercise its rights against the Appellee based on Patent Right A (Article 104-3, paragraph (1) of that Act). Due to the above, the court determined that all of the the Appellant's claims should be dismissed without having to make determinations on the other points.

(2) With regard to the claims relating to Patent Right C, the court determined that the Appellee's export or sale of Defendant's Products 1 and 2 constitutes infringement of Patent Right C, and affirmed the Appellant's claim for an injunction against the sale, etc. of Defendant's Products 1 and 2. The court also partially affirmed the Appellant's claim for compensation of damage relating to Defendant's Products 1 and 2 to the extent of ordering payment of 391,549,273 yen and delay damages accrued thereon, and

determined that the other claims should be dismissed.

(3) In this judgment, the court held as outlined below with regard to the value of damage relating to Defendant's Product 1.

A. (A) If a patentee claims compensation for damage in tort under Article 709 of the Civil Code due to patent infringement, the patentee needs to prove the infringer's intention or negligence, the occurrence of damage to the patentee, the causal relationship between the infringement and the damage, and the value of the damage. Under such circumstances, Article 102, paragraph (2) of the Patent Act provides that, if a patentee files a claim for compensation for damage that the patentee personally incurs due to infringement, against a person that, intentionally or due to negligence, infringes the patent, and the infringer has profited from the infringement, the amount of that profit is presumed to be the value of damage incurred by the patentee.

Given that it is difficult for the patentee to prove the value of damage, and that this could result in causing an inconvenience that reasonable damage compensation would not be achieved, the purport of this provision is to reduce the patentee's difficulty of proof by presuming the amount of profit gained by the infringer from the infringement to be the value of the damage, if the infringer has gained such profit. Thus, if there are any circumstances suggesting that the patentee could have gained profits if no patent infringement had been made by the infringer, it should be construed that the application of Article 102, paragraph (2) of the Patent Act would be allowed by deeming that the patentee has incurred damage due to that infringement (see the judgment of the Special Division of the Intellectual Property High Court rendered on February 1, 2013 and the judgment of the Special Division of the Intellectual Property High Court rendered on June 7, 2019). In light of the purport of that paragraph, if the patentee was exporting or selling a product which is of the same type as the infringing product, targeting the same consumers, and which is in such a competitive relationship (a competing product) in the market that it could have been exported or sold if no patent infringement had been made by the infringer, it can be evaluated that the sales of the patentee's competing product decreased due to the infringement; therefore, it is reasonable to construe that there are circumstances suggesting that the patentee could have gained profits if no patent infringement had been made by the infringer. Moreover, it should be construed that the patentee's product does not necessarily need to be a product working the patented invention or need to demonstrate the same function and effect as the patented invention in order for such circumstances to exist.

(B) The Appellant is found to have exported Appellant's Product 1 to the same destination countries as those of Defendant's Product 1 in the same period as when

Defendant's Product 1 was exported. Appellant's Product 1 is the same type of product as Defendant's Product 1, targeting the same consumers, in that it is "a chair-type massage machine having armrest portions each provided with a forearm treatment mechanism for massaging the forearm of a person to be treated." In light of the commonality in the function of being capable of massaging the forearm of a person to be treated, Appellant's Product 1 is found to be a product in such a competitive relationship (a competing product) in the respective markets of the common destination countries mentioned above that it could have been exported if Defendant's Product 1 had not been exported. Therefore, it is found that, regarding Appellant's Product 1, there are circumstances suggesting that the Appellant could have gained profits if no infringement of Patent Right C had been made by the Appellee.

Accordingly, Article 102, paragraph (2) of the Patent Act is applied to the calculation of the value of the damage incurred by the Appellant in relation to the export of Defendant's Product 1.

B. The amount of profit gained by the Appellee from the export of Defendant's Product 1 (the amount of marginal profit) is presumed to be the value of the damage incurred by the Appellant, pursuant to Article 102, paragraph (2) of the Patent Act (hereinafter this presumption is referred to as the "Presumption").

The Appellee alleges that [i] the fact that the patented inventions are worked only in a part of Defendant's Product 1, [ii] the existence of competing products in the markets, [iii] the non-identity of the markets, [iv] the Appellee's marketing efforts (the brand power and advertising), and [v] the performance (functions, design, etc.) of Defendant's Product 1 constitute grounds for rebutting the Presumption. While [i] and [iii] are found to constitute grounds for rebuttal, [ii], [iv], and [v] cannot be found to constitute grounds for rebuttal.

By comprehensively considering the contents of the grounds for rebuttal referred to in [i] and [iii] above, the technical significance of the inventions relating to Patent C, and other factors, the contribution rate of the inventions relating to Patent C to formation of motivation to purchase Defendant's Product 1 is found to be a specific rate, and it is found that there is no reasonable causal relationship between the amount of marginal profit of Defendant's Product 1 and the value of the damage incurred by the Appellant with regard to the portion exceeding this rate.

Therefore, because the Presumption is rebutted to the abovementioned extent, the value of damage under Article 102, paragraph (2) of the Patent Act incurred by the Appellant is found to be the amount of marginal profit of Defendant's Product 1 which is equivalent to the abovementioned rate.

C. (A) Article 102, paragraph (3) of the Patent Act provides that the patentee may fix the value of the damages that the patentee has personally incurred as being equivalent to the amount of money the patentee would have been entitled to receive for the working of the patented invention, and may claim compensation for this against a person that, intentionally or due to negligence, infringes the patent. Meanwhile, the main clause of paragraph (5) of that Article (the main clause of paragraph (4) of that Article before the 2019 amendment of the Patent Act) provides that the provisions of paragraph (3) do not preclude any claim to compensation for damages in excess of the amount provided for therein. Given that a patent right has an effect to prohibit a third party's act of working the patented invention in the course of trade without obtaining a license from the patentee, and to eliminate that working (see Article 68 of the Patent Act), it is regarded that provisions of Article 102, paragraph (3) of the Patent Act allow the patentee to claim compensation for damage against the infringer by deeming the amount equivalent to the license fee for the patented invention as the minimum value of damage incurred by the patentee, regardless of whether or not the patentee is working or is capable of working the patented invention, and that the value of the damage referred to in that paragraph is equivalent to the lost profit as the minimum guarantee for the loss of a licensing opportunity.

On the other hand, in light of the fact that the amount of "profit" gained by the infringer from the infringement (the amount of marginal profit) referred to in Article 102, paragraph (2) of the Patent Act is calculated by multiplying the price of the infringing product by the quantity sold or otherwise worked so as to obtain the sales amount, and deducting expenses from that amount, the value of the damage incurred by the patentee as presumed pursuant to the provisions of that paragraph is regarded to be equivalent to the lost profit resulting from a decrease in the sales of the product working the invention or the competing product which the patentee could have sold or otherwise worked if no patent infringement had been made by the infringer.

Given that the patentee can gain profits not only by directly working the patented invention, but also by granting a license for the patented invention to a third party, it is regarded that the damage incurred by the patentee due to the infringement by the infringer can be considered to be the lost profit resulting from a decrease in the sales of the product working the invention or the competing product which the patentee could have sold or otherwise worked if no patent infringement had been made by the infringer and the lost profit resulting from the loss of a licensing opportunity.

It follows that, even where the presumption under Article 102, paragraph (2) of the Patent Act is partially rebutted, if the patentee is found to have been able to grant a

license for the rebutted portion of the presumption, it should be regarded that application of paragraph (3) of that Article would be allowed.

Grounds for rebuttal of the presumption under Article 102, paragraph (2) of the Patent Act are regarded to include, as in the case of paragraph (1) of that Article, grounds for rebuttal due to the quantity of sales, etc. of the infringing product exceeding the patentee's ability to sell or otherwise work the patented invention, and grounds for rebuttal due to circumstances under which the patentee could not sell or otherwise work the patented invention for any other reason. It is construed that, with regard to the rebutted portion of the presumption relating to the abovementioned grounds for rebuttal due to the quantity exceeding the patentee's ability to work the patented invention, the patentee is found to have been able to grant a license unless there are special circumstances, but with regard to the rebutted portion of the presumption relating to the abovementioned grounds for rebuttal due to circumstances under which the patentee could not sell or otherwise work the patented invention for any other reason, whether or not the patentee could have granted a license under the facts of those circumstances should be determined individually.

(B) The grounds for rebutting the Presumption are those due to the reason that the patented inventions are worked only in a part of Defendant's Product 1 and due to the non-identity of the markets, and not due to the quantity exceeding the patentee's ability to work the patented inventions.

However, the rebutted portion of the presumption relating to the grounds for rebuttal due to the non-identity of the markets is based on the finding that, in the period when the Appellee exported Defendant's Product 1 to the respective destination countries, Appellant's Product 1 was not exported to those destination countries, and therefore, Appellant's Product 1 is not found to be in such a competitive relationship in the respective markets of those destination countries that it could have been exported if Defendant's Product 1 had not been exported. Although it can be said that the Appellant had circumstances under which it could not directly export the number of machines exported relating to that rebutted portion of the presumption, the Appellant is found to have been able to grant a license for such export.

On the other hand, with regard to the rebutted portion of the presumption relating to the grounds for rebuttal due to the reason that the inventions relating to Patent C are only worked in a part of the infringing product, the Presumption is rebutted because the inventions relating to Patent C do not contribute to each individual Defendant's Product 1 for the entire number of machines exported relating to the rebutted portion of the presumption. It cannot be found that the Appellant could have granted a license for such

part to which the inventions relating to Patent C have not contributed.

It follows that, in this case, it is reasonable to allow application of Article 102, paragraph (3) of the Patent Act only for the rebutted portion of the presumption relating to grounds for rebuttal due to the non-identity of the markets.

D. The value of damage relating to Defendant's Product 1 incurred by the Appellant is the total amount of the value of the damage under Article 102, paragraph (2) of the Patent Act and the value of the damage under paragraph (3) of that Article relating to the rebutted portion of the presumption under paragraph (2) of that Article due to the non-identity of the markets.

(4) In this judgment, the court held that, with regard to the value of the damage relating to Defendant's Product 2, the amount of expenses to be deducted is larger than the sales amount of Defendant's Product 2, which means that the amount of profit (the amount of marginal profit) does not exist and Article 102, paragraph (2) of the Patent Act would not be applied, and found the value of the damage under paragraph (3) of that Article.

On such basis, the court found that the value of the damage incurred by the Appellant to be compensated by the Appellee is the value of damage relating to Defendant's Products 1 and 2 and the amount equivalent to attorneys' fees totaling 391,549,273 yen.

Judgment rendered on October 20, 2022

2020 (Ne)10024, Case of appeal for injunction against patent infringement

(Court of prior instance: Osaka District Court, 2018 (Wa) 3226)

Date of conclusion of oral argument: September 8, 2022

Judgment

Appellant: Fuji Medical Instruments Mfg. Co., Ltd.

Appellant's counsel, attorney at law: SHIGETOMI Takamitsu

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Appellee: Family Inada Co., Ltd.

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Appellee's counsel, patent attorney: KITAMURA Shuichiro

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Appellee's subagent, attorney at law: NISHIKAWA Yunosuke

Main text

1. The judgment in prior instance shall be modified as follows.

(1) The Appellee shall not manufacture, sell, export, or offer to sell the massage machine stated in 1 of Attachment "List of Articles."

(2) The Appellee shall not manufacture, sell, or offer to sell the massage machine stated in 2 of Attachment "List of Articles."

(3) The Appellee shall dispose of the massage machines stated in 1 and 2 of Attachment "List of Articles."

(4) The Appellee shall pay to the Appellant 391,549,273 yen and the amount accrued

on the amounts stated in the column of "Amount found by the court" of Attachment "List of Amounts Found by the Court" at the rate stated in the column of "Delay damage rate (per annum)" of said Attachment for the period from the dates stated in the column of "Start date of delay damages" of said Attachment until the completion of the payment.

(5) The remaining claims of the Appellant shall be dismissed.

2. Court costs in the first and second instances shall be divided into five and the Appellant shall bear four-fifths of the costs and the Appellee shall bear the rest.

3. This judgment may be enforced provisionally for Paragraph 1. (1), (2), and (4).

Facts and reasons

No. 1 Object of the appeal

1. The judgment in prior instance shall be modified as follows.

2. Same as Paragraph 1. (1) through (3) of the main text.

3. The Appellee shall not manufacture, sell, or offer to sell the massage machines stated in 3 through 8 of Attachment "List of Articles."

4. The Appellee shall dispose of the massage machines stated in 3 through 8 of Attachment "List of Articles."

5. The Appellee shall pay to the Appellant 1.5 billion yen and the amount accrued on the amounts stated in the column of "Claimed amount" in Table 1 of Attachment "List of Claimed Amounts" at the rate stated in the column of "Delay damage rate (per annum)" of said Attachment for the period from the dates stated in the column of "Start date of delay damages" of said Attachment until the completion of the payment.

No. 2 Outline, etc. of the case (Unless particularly noted, the same abbreviations used in the judgment in prior instance shall be used herein.)

1. Summary of the case

In this case, the Appellant, who is the patentee of Patent No. 4504690 (hereinafter referred to as "Patent A"; the patent right related to Patent A is referred to as "Patent Right A") for an invention titled "Chair-type treatment apparatus," and Patent No. 5162718 (hereinafter referred to as "Patent B"; the patent right related to Patent B is referred to as "Patent Right B") and Patent No. 4866978 (hereinafter referred to as "Patent C"; the patent right related to Patent C is referred to as "Patent Right C") for inventions both titled "Chair-type massage machine," alleged that the Appellee's manufacture, sale, etc. of massage machines stated in 1 through 12 of Attachment "List of Articles" (hereinafter these massage machines are collectively referred to as products of the defendant in the first instance (the Appellee) (the "Defendant's Products"); each massage machine is referred to as "Defendant's Product 1," etc. based on the number of said list) constituted infringement of Patent Rights A through C, and claimed against

the Appellee an injunction against the Appellee's manufacture, sale, etc. of the Defendant's Products and disposal thereof based on Article 100, paragraphs (1) and (2) of the Patent Act, and also demanded that the Appellee pay 1.5 billion yen and delay damages from the day following the day on which the complaint was served until completion of the payment as part of a claim for compensation of damages in tort due to the patent infringement.

The court of prior instance determined that the Defendant's Products do not fall within the technical scope of the inventions related to Patents A through C and dismissed all claims of the Appellant without making determinations on the remaining issues.

Dissatisfied with the judgment in prior instance, the Appellant filed this appeal against the part of the judgment that dismissed the claims relating to Patent Rights A and C for Defendant's Products 1 through 8 to the extent of the object of the appeal (however, including the portion of the claim for delay damages that was expanded in this instance). In addition, the Appellant changed the appeal to add a claim to return unjust enrichment as an alternative claim for the part related to the damages that arose before April 12, 2015.

2. Basic facts (The facts for which evidence is not presented are the facts that are not disputed between the parties and the facts that are found based on the entire import of oral arguments.)

(1) Parties

A. The Appellant is a stock company whose purpose is the manufacture, sale, etc. of medical devices, healthcare devices, and electric machines and devices for domestic use, etc.

B. The Appellee is a stock company whose purpose is the manufacture, sale, etc. of electric massage devices, beauty and healthcare devices, and electric appliances, etc.

(2) Patent A

A. Toshiba Tec Corporation filed a patent application (Patent Application No. 2004-7782; hereinafter referred to as "Application A") related to Patent A on January 15, 2004 (Exhibit Otsu A1).

Subsequently, the Appellant received the transfer of the right to obtain a patent related to Application A and submitted a notice of change of the applicant's name to that effect on October 11, 2006 (Exhibit Otsu A2).

The Appellant obtained a registration establishing Patent Right A (number of claims: 1) on April 30, 2010 (Exhibits Ko 1 and 2).

B. Statements in Claim 1 of the claims of Patent A are shown below (hereinafter the

invention related to Claim 1 is referred to as "Invention A").

[Claim 1]

A chair-type treatment apparatus, which includes a seat unit and a backrest attached to the rear part of the seat unit;

wherein, the seat unit has at least a hip airbag among a thigh airbag for massaging the thighs and a hip airbag for massaging the hips;

wherein the backrest has at least a waist treatment element; and

a chair-type treatment apparatus that is characterized by including a control means that activates the waist treatment element when giving treatment to a user's waist, by inflating the hip airbag while gradually raising the height of a user's waist.

C. The constituent features of Invention A are divided as follows.

[Invention A]

A. and D. A chair-type treatment apparatus, which includes a seat unit and a backrest attached to the rear part of the seat unit;

B. wherein, the seat unit has at least a hip airbag among a thigh airbag for massaging the thighs and a hip airbag for massaging the hips;

C. wherein the backrest has at least a waist treatment element; and

E. and F. a chair-type treatment apparatus that is characterized by including a control means that activates the waist treatment element when giving treatment to a user's waist, by inflating the hip airbag while gradually raising the height of a user's waist.

(3) Patent C

A. The Appellant and Shigeru Tec Co., Ltd. (former trade name is "Kyowa Sobi Kabushiki Kaisha"; hereinafter referred to as "Shigeru Tec") divided part of the patent application filed on August 11, 2006 (Patent Application No. 2006-220454; hereinafter referred to as the "Parent Application" or "Original Application"; Exhibit Otsu C8), and filed a patent application related to Patent C (Patent Application No. 2008-276064; hereinafter referred to as "Application C") on October 27, 2008 (Exhibit Otsu C9).

The Appellant and Shigeru Tec received a notice of grounds for refusal dated February 8, 2011 (hereinafter referred to as the "Notice of Grounds for Refusal"; Exhibit Otsu C11), and therefore, amended the claims and description as of May 9, 2011 (hereinafter referred to as the "Amendment"; Exhibit Otsu C13) and obtained the examiner's decision to the effect that a patent is to be granted on June 1, 2011 (Exhibit Otsu C14).

Subsequently, the Appellant received the transfer of the right to obtain a patent related to Application C and submitted a notice of change of the applicant's name to that effect as of July 28, 2011 (Exhibits Ko C68 and C69 (if there are branch numbers,

including the branch numbers; unless particularly noted, the same applies hereinafter.)).

The Appellant obtained a registration establishing Patent Right C (number of claims: 5) on November 25, 2011 (Exhibits Ko 5 and 6).

B. Statements in Claims 1 through 5 of the claims after the Amendment are shown below (hereinafter the inventions related to Claim 1 are referred to as the "Invention C-1," etc. based on the number of the claim.).

[Claim 1]

A chair-type massage machine that has a chair body including a seat unit and a backrest unit and an armrest unit on both sides of the chair body and that is characterized by the following structures:

wherein the armrest unit has a forearm insertion opening unit to insert the forearm of a massage recipient from the inner rear side and a hollow unit that is extended from the forearm insertion opening unit to insert and hold the forearm, including the hand, of a massage recipient in the inside of the armrest unit;

wherein the hollow unit is formed with an outer rising wall and an inner rising wall respectively provided on the left and right sides in the width direction of the armrest unit, as well as with a bottom unit;

wherein a hand-rest unit is provided at the upper front-end of the aforementioned outer rising wall and inner rising wall in the form of closing the upper end of the hollow unit;

wherein the aforementioned armrest unit has

a treatment unit, wherein the front part is surrounded by the bottom unit, the outer rising wall, the inner rising wall, and the hand-rest unit and which is placed at the hollow unit, and

a treatment unit, wherein the rear part is formed in an L-shape by the bottom unit and the outer rising wall and which is placed at the forearm insertion opening unit; and

wherein an expansion/contraction bag is provided at each treatment unit, respectively.

[Claim 2]

The chair-type massage machine stated in Claim 1, which is characterized by the following structures: wherein the armrest unit has a treatment unit at the center part that is formed in a C-shape with the bottom unit, the outer rising wall, and the hand-rest unit;

wherein the bottom unit and the hand-rest unit have different surfaces to place a massage recipient's forearm and the surface of the hand-rest unit is formed in a higher position than the surface of the bottom unit.

[Claim 3]

The chair-type massage machine stated in Claim 1, which is characterized by the following structures: wherein expansion/contraction bags are provided at the corresponding positions of two surfaces, that is, the outer rising wall and the bottom unit of the forearm insertion opening unit, respectively; and

wherein the lower edge of one of the expansion/contraction bags is fixed at the lower part of the outer rising wall and the edge of another expansion/contraction bag on the outer rising wall side is fixed on the outer rising wall side of the bottom unit.

[Claim 4]

The chair-type massage machine stated in Claim 3, which is characterized by the following structures: at the lower part of the outer rising wall of the forearm insertion opening unit, the edge that is formed at the lower part of one of the expansion/contraction bags is fixed; and the edge that is formed at another expansion/contraction bag is fixed on the outer rising wall side at the bottom unit of the forearm insertion opening unit.

[Claim 5]

The chair-type massage machine stated in Claims 1 through 4, which is characterized by the following structures: wherein the armrest unit is provided so as to be movable in the front-rear direction in relation to the chair body; and the armrest unit moves in the front-rear direction in relation to the chair body in conjunction with the reclining movement of the backrest unit while maintaining a predetermined amount of movement, which corresponds to the reclining angle of the backrest unit.

C. The constituent features of Inventions C-1 through C-5 (hereinafter collectively referred to as "Inventions C") are divided as follows.

[Invention C-1]

[A] and [G] A chair-type massage machine that has a chair body including a seat unit and a backrest unit and an armrest unit on both sides of the chair body and that is characterized by the following structures:

[B] wherein the armrest unit has a forearm insertion opening unit to insert the forearm of a massage recipient from the inner rear side and a hollow unit that is extended from the forearm insertion opening unit to insert and hold the forearm, including the hand, of a massage recipient in the inside of the armrest unit;

[C] wherein the hollow unit is formed with an outer rising wall and an inner rising wall respectively provided on the left and right sides in the width direction of the armrest unit, as well as with a bottom unit;

[D] wherein a hand-rest unit is provided at the upper front-end of the aforementioned

outer rising wall and inner rising wall in the form of closing the upper end of the hollow unit;

[E] wherein the aforementioned armrest unit has

[E-1] a treatment unit, wherein the front part is surrounded by the bottom unit, the outer rising wall, the inner rising wall, and the hand-rest unit and which is placed at the hollow unit, and

[E-2] a treatment unit, wherein the rear part is formed in an L-shape by the bottom unit and the outer rising wall and which is placed at the forearm insertion opening unit; and

[F] wherein an expansion/contraction bag is provided at each treatment unit, respectively.

[Invention C-2]

[H] and [J] The chair-type massage machine stated in Claim 1, which is characterized by the following structures: wherein the armrest unit has a treatment unit at the center part that is formed in a C-shape by the bottom unit, the outer rising wall, and the hand-rest unit;

[I] wherein the bottom unit and the hand-rest unit have different surfaces to place a massage recipient's forearm and the surface of the hand-rest unit is formed at a higher position than the surface of the bottom unit.

[Invention C-3]

[K] and [M] The chair-type massage machine stated in Claim 1, which is characterized by the following structures: wherein expansion/contraction bags are provided at the corresponding positions of two surfaces, that is, the outer rising wall and the bottom unit of the forearm insertion opening unit, respectively; and

[L] wherein the lower edge of one of the expansion/contraction bags is fixed at the lower part of the outer rising wall and the edge of another expansion/contraction bag on the outer rising wall side is fixed on the outer rising wall side of the bottom unit.

[Invention C-4]

[N] and [O] The chair-type massage machine stated in Claim 3, which is characterized by the following structures: at the lower part of the outer rising wall of the forearm insertion opening unit, the edge that is formed at the lower part of one of the expansion/contraction bags is fixed; and the edge that is formed at another expansion/contraction bag is fixed on the outer rising wall side at the bottom unit of the forearm insertion opening unit.

[Invention C-5]

[P] and [Q] The chair-type massage machine stated in Claims 1 through 4, which is characterized by the following structures: wherein the armrest unit is provided so as to

be movable in the front-rear direction in relation to the chair body; and the armrest unit moves in the front-rear direction in relation to the chair body in conjunction with the reclining movement of the backrest unit while maintaining a predetermined amount of movement, which corresponds to the reclining angle of the backrest unit.

(4) Acts, etc. of the Appellee

A. The Appellee engaged in the manufacture, sale, and export of Defendant's Product 1 and in the manufacture and sale of Defendant's Products 2 through 8 on and after April 30, 2010.

Among these products, Defendant's Product 1 was for overseas. The export period was from May 2014 through March 2021. Defendant's Product 2 was for Japan and was manufactured from December 2007 through March 2010 and sold continuously even after the discontinuance of manufacturing until October 2016 (Exhibits Otsu C31, C47 through C49).

B. (A) Defendant's Products 1 and 2 are as stated in No. 1, 1. (1) and 2. (1) of Attachment 1 "Descriptions of Defendant's Products 1 through 8" and have structures as defined in No. 1, 1. (2), a. through d., and f., and No. 1, 2. (2), a., d., f., g., i., and p. of Attachment 1.

(B) Defendant's Products 3, 5, and 8 are as stated in No. 2, 1. of Attachment 1 "Descriptions of Defendant's Products 1 through 8" and have structures as defined in No. 2, 2., a. through d., and f. of Attachment 1.

(C) Defendant's Products 4, 6, and 7 are as stated in No. 3, 1. of Attachment 1 "Descriptions of Defendant's Products 1 through 8" and have structures as defined in No. 3, 2., a. through d., and f. of Attachment 1.

C. Defendant's Products 1 through 8 fulfill all Constituent Features [A], [D], and [F] of Invention A.

Defendant's Products 1 and 2 fulfill all Constituent Features [A], [D], [F], and [G] of Invention C-1; Constituent Feature [I] of Invention C-2; and Constituent Feature [P] of Invention C-5, respectively.

3. Issues

(1) Issues related to Patent A

A. Whether Defendant's Products 1 through 8 fall within the technical scope of Invention A (Issue 1-1)

B. Whether the invalidity defense related to Patent A is established (Issue 1-2)

(A) Lack of novelty of Invention A, which uses an invention related to AS-878 (publicly worked invention) as prior art (Grounds for Invalidation 1)

(B) Lack of novelty of Invention A, which uses an invention related to FMC-350

(publicly worked invention) as prior art (Grounds for Invalidation 2)

(C) Violation of clarity requirements (Grounds for Invalidation 3)

(2) Issues related to Patent C

A. Whether Defendant's Products 1 and 2 fall within the technical scope of Inventions C (Issue 2-1)

(A) Whether constituent features are fulfilled (Issue 2-1-1)

a. Whether constituent features of Inventions C-1 and C-2 are fulfilled (Issue 2-1-1-1)

b. Whether constituent features of Inventions C-3 through C-5 are fulfilled (Issue 2-1-1-2)

(B) Doctrine of equivalents (Issue 2-1-2)

B. Whether the invalidity defense related to Patent C is established (Issue 2-2)

(A) Lack of an inventive step of Inventions C, which use Exhibit Otsu C19 as primary prior art (Grounds for Invalidation 1)

(B) Violation of clarity requirements (Grounds for Invalidation 2)

(C) Violation of amendment requirements as defined in Article 17-2, paragraph (3) of the Patent Act (Grounds for Invalidation 3)

(D) Violation of support requirements related to Invention C-2 (Grounds for Invalidation 4)

C. Amount of damages, etc. that should be compensated or returned by the Appellee (Issue 3)

No. 3 Allegations of the parties related to the issues

1. Issue 1-1 (Whether Defendant's Products 1 through 8 fall within the technical scope of Invention A) (Issue related to Patent A)

The judgment in prior instance is corrected as follows and supplementary allegations of the parties to this trial are added. The facts are as stated in No. 2, 1. of Attachment "Facts and Reasons for the Claim Related to Patent Right A" of the judgment in prior instance, and therefore, they are cited.

(1) Correction of the judgment in prior instance

A. Line 3, page 9 of the judgment in prior instance is altered to "1. Issue 1-1 (Whether Defendant's Products 1 through 8 fall within the technical scope of Invention A)" and the section from line 6 through line 16, page 9 is altered as follows.

"The structures of Defendant's Products 1 through 8 are as stated in No. 1, 1. (2), No. 2, 2., and No. 3, 2. of Attachment 1 'Descriptions of Defendant's Products 1 through 8.' As described below, Defendant's Products 1 through 8 fulfill Constituent Features [B], [C], and [E], and therefore, they fall within the technical scope of Invention A."

B. Line 18, page 9 of the judgment in prior instance is altered to "A. Fulfillment of

Constituent Feature [B]"; the term "意義[meaning]" in line 19, page 9 is altered to "「尻用エアバッグ」の意義[meaning of 'hip airbag']"; the term "本件明細書 A [Description A]" in line 23, page 9 is altered to "本件出願 A の願書に添付した明細書（以下、図面を含めて「本件明細書 A」という。甲 2）[description attached to an application form for Application A (hereinafter, including drawings, referred to as 'Description A'; Exhibit Ko 2]"; and the section from line 1 through line 3, page 10 is altered as follows.

"(C) Allegation of the Appellee

The Appellee alleged that the structure of Constituent Feature [B] of having 'at least a hip airbag among a thigh airbag for massaging the thighs and a hip airbag for massaging the hips' is construed that if a 'thigh airbag' is provided, the 'thigh airbag' is required to be controlled simultaneously with the 'hip airbag.'

However, Constituent Feature [B] only mentions that a 'thigh airbag' has a function to massage thighs and there are no statements related to interlocked or simultaneous control between the 'thigh airbag' and the 'hip airbag' in the claims (Claim 1) of Invention A. In addition, looking at the statements in Description A, the 'thigh airbag' is not scheduled to be controlled simultaneously with the 'hip airbag.' Therefore, the aforementioned allegation of the Appellee is groundless.

(D) Summary

As described above, Defendant's Products 1 through 8 have a 'hip airbag' as defined in Invention A, and therefore, they fulfill Constituent Feature [B]."

C. Line 4, page 10 of the judgment in prior instance is altered to "B. Fulfillment of Constituent Feature [C]"; the term "意義[meaning]" in line 5, page 10 is altered to "「腰用施療子」の意義[meaning of 'waist treatment element']"; the phrase "及び E [and E.]" in line 12, page 10 is deleted; and the phrase "「腰用施療子」（構成要件 C 及び E）['waist treatment element' (Constituent Features [C] and [E])]" in line 17, page 10 is altered to "構成要件 C [Constituent Feature [C]]".

D. The phrase "している。[... massage]" in line 15, page 11 of the judgment in prior instance is altered to "している（甲 A 1、A 2、A 17）。[... massage ... (Exhibits Ko A1, A2, and A17).]"; the phrase "されている。[... is massaged]" in line 24, page 11 is altered to "されている（甲 A 7、A 8、A 18）。[... is massaged ... (Exhibits Ko A7, A8, and A18).]"; the phrase "されている。[... is massaged]" in line 5, page 12 is altered to "されている（甲 A 1、A 4、A 19）。[... is massaged ... (Exhibits Ko A1, A4, and A19).]"; the phrase "されている。[... is massaged]" in line 12, page 12 is altered to "されている（甲 A 7、A 9、A 20）。[... is massaged ... (Exhibits Ko A7, A9, and A20).]"; the phrase "されている。[... is massaged]" in line 19,

page 12 is altered to "されている(甲 A 7、A 9、A 2 1)。[... is massaged ... (Exhibits Ko A7, A9, and A21).]"; and the phrase "されている。[... is massaged]" in the last line, page 12 is altered to "されている (甲 A 1、A 6、A 2 2)。[... is massaged ... (Exhibits Ko A1, A6, and A22)]", respectively.

E. The section from line 5 through line 25, page 13 of the judgment in prior instance is deleted.

F. Line 7, page 14 of the judgment in prior instance is altered to "A. Non-fulfillment of Constituent Feature [B]"; the term "意義[meaning]" in line 8, page 14 is altered to "「尻用エアバッグ」の意義[meaning of 'hip airbag']"; and the phrase "及び E [and E.]" in line 20, page 14 is deleted.

G. The section from line 8 through line 10, page 16 of the judgment in prior instance is altered as follows.

"(C) Meaning, etc. of 'wherein, the seat unit has at least a hip airbag among a thigh airbag for massaging the thighs and a hip airbag for massaging the hips'

The structure of Constituent Feature [B] of having 'at least a hip airbag among a thigh airbag for massaging the thighs and a hip airbag for massaging the hips' is literally construed that in cases where a 'thigh airbag' is provided, the 'thigh airbag' is required not only to be inflated, but also to contribute to gradually raising the height of a user's waist along with the 'hip airbag.' In addition, according to the statements in Description A, it is construed that if a 'thigh airbag' is provided, the 'thigh airbag' is required to be controlled simultaneously with the 'hip airbag.'

However, the 'thigh airbag' in Defendant's Products 1 through 8 does not inflate in a manner to contribute to the movement of a user's waist position 'while gradually raising' by way of moving a user's body upward. Therefore, the 'thigh airbag' does not have the aforementioned structure.

(D) Summary

Based on the above, none of Defendant's Products 1 through 8 fulfill Constituent Feature [B]."

H. Line 11, page 16 of the judgment in prior instance is altered to "B. Non-fulfillment of Constituent Feature [C]"; the term "意義[meaning]" in line 12, page 16 is altered to "「腰用施療子」の意義[meaning of 'waist treatment element']"; and the phrase "及び E [and E.]" in the last line, page 16 is deleted.

I. The term "「腰用施療子」(構成要件 C 及び E) ['waist treatment element' (Constituent Features [C] and [E])]" in line 13, page 17 of the judgment in prior instance is altered to "構成要件 C [Constituent Feature [C]]".

J. The section from line 7, page 19 through line 16, page 20 of the judgment in prior

instance is deleted.

(2) Supplementary allegations of the parties to this trial (Fulfillment of Constituent Feature [E])

(Allegation of the Appellant)

The judgment in prior instance determined that Defendant's Products 1 through 8 do not fulfill Constituent Feature [E], and therefore, they do not fall within the technical scope of Invention A. However, as stated below, the determination of the judgment in prior instance contains errors concerning Defendant's Products 1 through 3 and 5 through 8.

A. Error in interpretation of claims for Constituent Feature [E]

The judgment in prior instance stated that, in consideration of the statements in Description A ([0001] through [0007]), if a user's waist position and the waist airbag position of the massage machine do not match due to a small body, etc., the massage machine cannot fully give a massage to a user's waist, and therefore that Invention A intends to fully give a massage to a user's waist by adjusting a user's waist height by inflating the hip airbag to gradually raise a user's waist position; and then, determined that, in consideration of said technical meaning of Invention A, the phrase of Constituent Feature [E] "including a control means that activates the waist treatment element when giving treatment to a user's waist, by inflating the hip airbag while gradually raising the height of a user's waist" (Constituent Feature [E]) is construed to mean that, concerning the "hip airbag," if a user's waist position and the waist airbag position do not match, a control means is provided to "gradually raise the height of a user's waist" to the extent of resolving the mismatch and to fully give a massage to a user's waist.

However, in the claims (Claim 1) of Invention A, there is a statement, "by inflating the hip airbag while gradually raising the height of a user's waist," but there is no statement to stipulate the amount of change in a user's waist height and the degree of the change in addition to the above statement.

Next, in [0001] through [0007] of Description A, there are statements on the technology field and background technology of Invention A, problems to be solved by the invention, means to solve them, and the function and effect of the invention; however, there is no statement concerning the amount of change in a user's waist height due to the hip airbag, and the degree of the change, and no statements or suggestions regarding these are found even looking at the overall Description A. In addition, the statement in [0007] of Description A, "since it can gradually adjust a user's waist height, it can fully give treatment to a user's waist," means that by gradually adjusting a user's

waist height position, full treatment can be given to a user's waist and a better effect can be thus obtained compared to the case of not adjusting a user's waist height position. In consideration of the fact that the amount of change in a user's waist height and the degree of the change is disregarded, the technical meaning of Invention A is to show "the function and effect" where full treatment can be given to a user's waist by including the "structure" to adjust a user's waist height by gradually raising it, in comparison to a chair-type treatment apparatus that does not perform said adjustment.

Moreover, the degree of mismatch between a user's waist position and the waist treatment element position varies and it is impossible to identify the degree of solving the mismatch in a numerical value. Based on this fact, regarding the statement in the judgment in prior instance, "if a user's waist position and the waist airbag position do not match, ... to the extent of resolving the mismatch and to fully give a massage to a user's waist," the specific degree is unclear and it does not appropriately specify the technical scope of Invention A.

Based on the above, the phrase in Constituent Feature [E] "by inflating the hip airbag while gradually raising the height of a user's waist" literally and simply means that the spatial location of a user's waist gradually changes upward by inflating the hip airbag and it is construed that the amount of change in a user's waist height and the degree of the change can be disregarded. Therefore, there is an error in the aforementioned determination by the judgment in prior instance.

B. Fulfillment of Constituent Feature [E] by Defendant's Products 1 through 3 and 5 through 8

The judgment in prior instance determined as follows: Defendant's Products 1 through 3 and 5 through 8 can raise a user's waist height by approximately 16 mm or 32 mm by inflating the "hip airbag"; however, it cannot solve the mismatch between a user's waist position and the waist airbag (waist treatment element) position; and therefore, they do not fulfill Constituent Feature [E].

However, as stated in A. above, the phrase in Constituent Feature [E] "by inflating the hip airbag while gradually raising the height of a user's waist" should be construed as literally and simply meaning that the spatial location of a user's waist gradually changes upward by inflating the hip airbag. However, as the judgment in prior instance found, Defendant's Products 1 through 3 and 5 through 8 can raise a user's waist height by approximately 16 mm or 32 mm by inflating the "hip airbag." Therefore, they can fulfill Constituent Feature [E].

In addition, even on the assumption of the interpretation of the claims of Constituent Feature [E] in the judgment in prior instance, a human body's waist has many points

subject to treatment (Exhibits Ko A14 through A16) and the effects of the massage can be fully obtained by giving pressure treatment correctly to these points subject to treatment. Based on that fact, there are naturally cases where the degree of mismatch between a point subject to treatment in a user's waist and the pressing point of the waist treatment element is 16 mm or 32 mm and where full treatment can be given to a user's waist by the waist treatment element. Therefore, it can be said that if a user's waist position and the waist airbag position do not match, the "hip airbag" in Defendant's Products 1 through 3 and 5 through 8 can also "gradually raise the height of a user's waist" to the extent of resolving the mismatch and to fully give a massage to a user's waist.

Based on the above, Defendant's Products 1 through 3 and 5 through 8 fulfill Constituent Feature [E], and therefore, there is an error in the aforementioned judgment in prior instance.

(Allegation of the Appellee)

There is no error in the judgment in prior instance, which determined that Defendant's Products 1 through 3 and 5 through 8 do not fulfill Constituent Feature [E].
A. Concerning the allegation of error in interpretation of claims for Constituent Feature [E]

Based on the statement of the functional operation mode of Constituent Feature [E], "by inflating the hip airbag while gradually raising the height of a user's waist," the judgment in prior instance considered that its meaning is not unambiguously clear and defined the meaning in consideration of the statements in Description A ([0001] through [0007]). The judgment in prior instance adopted a very general claim interpretation method, and there is no error as alleged by the Appellant in the claim interpretation by the judgment in prior instance.

B. Non-fulfillment of Constituent Feature [E]

(A) The judgment in prior instance determined as follows: according to the test to confirm changes in waist height by inflating the hip airbag related to Defendant's Products 1 through 3 and 5 through 8, the degree of increase in height of a subject's waist height by inflating the hip airbag is 16 mm or 32 mm even by considering it in the most advantageous way to the Appellant; however, in consideration of the general body shape, etc. of a human being, if a user's waist position and the waist airbag position do not match, the degree of mismatch to be solved to fully give a massage to a user's waist is likely to exceed 32 mm. The judgment in prior instance denied the fulfillment of Constituent Feature [E] by Defendant's Products 1 through 3 and 5 through 8 and it is an extremely reasonable finding and determination.

(B) The Appellant alleged as follows: a human body's waist has many points subject to treatment (Exhibits Ko A14 through A16) and the effects of the massage can be fully obtained by giving pressure treatment correctly to these points subject to treatment; based on this fact, it is naturally assumed that there are cases where the degree of mismatch between a user's waist position and the waist airbag position is within the range of 16 mm or 32 mm; if a user's waist position and the waist airbag position do not match, Defendant's Products 1 through 3 and 5 through 8 can "gradually raise the height of a user's waist" by inflating the "hip airbag" to the extent of resolving the mismatch and to fully give a massage to a user's waist; and, therefore, they fulfill Constituent Feature [E].

However, for example, looking at Defendant's Products 1 and 2, the "waist airbag" as indicated by an arrow in FIG. 3 in No. 1 of Attachment 1 "Descriptions of Defendant's Products 1 through 8" is a waist airbag that is fixed on the backrest and does not move. In light of the fact that its vertical and horizontal lengths are 260 mm × 120 mm (Exhibit Otsu A34), the up-and-down movement of only 16 mm or 32 mm cannot always match waist positions of various users having differences in body size and the waist treatment element position and cannot solve the mismatch.

In addition, the allegation that a human body's waist has many points subject to treatment is not based on the statement of Description A and it is inappropriate.

Therefore, the aforementioned allegation of the Appellant is groundless.

2. Issue 1-2 (Whether the invalidity defense related to Patent A is established) (Issue related to Patent A)

(Allegation of the Appellee)

Patent A has the following grounds for invalidation and should be invalidated by a trial for patent invalidation. Therefore, the Appellant cannot exercise Patent Right A against the Appellee pursuant to the provisions of Article 104-3, paragraph (1) of the Patent Act.

(1) Grounds for Invalidation 1 (Lack of novelty of Invention A, which uses an invention related to AS-878 (publicly worked invention) as prior art)

A. Concerning AS-878

(A) The Appellant sold a massage chair (product name "FUJIIRYOKI CYBER-Relax S.O."; product type "AS-878") (hereinafter simply referred to as "AS-878") in July 2003 before filing Application A (Exhibits Otsu A42 and A43).

(B) As shown in FIG. 1 and FIG. 2 in Attachment 4, AS-878 is [i] a massage chair having a chair body with a seat unit and a backrest unit at the rear part of the seat unit, including an armrest unit at both ends in the right and left directions of the seat unit and

a leg unit at the bottom of the front-end of the seat unit; [ii] wherein kneading balls, which constitute a mechanical treatment element and move in the body length direction (or up-and-down direction), are provided at the backrest unit of the chair body and the kneading balls can move in the body length direction from a user's waist position to neck position, can perform kneading and tapping at specified positions in the movement range in the body length direction, and can perform kneading and tapping while moving in the body length direction; [iii] wherein one hip airbag is provided to give a massage by pressing the bottom of the hip by inflating upward at the top of the seat of the chair body where a user's hip is located, and extends in the right and left direction on the seat surface; and [iv] wherein, at the front of the hip airbag, the thigh airbag to massage a user's thighs is provided, extends in the right and left direction on the seat surface, gives a massage to both right and left thighs using one air cell; and wherein, at the backrest unit, a waist airbag is provided to massage the waist by expanding/contracting forward (Exhibits Otsu A42, A44, and A45).

In addition, when the "Waist Course" is selected from the "Automatic Courses" in AS-878, the inflation of the hip airbag and tapping by kneading balls in the waist position are performed in parallel during the specified time. During this time, a user's waist height is raised at least 15 mm and the "waist is treated by the waist treatment element with the inflation of the hip airbag, while enabling it to directly check that the waist height is raised without special difficulty" (Exhibits Otsu A45 and A48).

(C) According to (A) and (B) above, the invention worked by AS-878 (the invention related to AS-878) was publicly known to be worked before the filing of Application A and has the following structures.

- a. and d. A massage chair, which includes a seat unit and a backrest unit attached to the rear part of the seat unit;
- b. wherein the seat unit has a thigh airbag for massaging the thighs, and a hip airbag for massaging the hips; and
- c. wherein kneading balls that move in the body length direction are provided at the backrest unit and the kneading balls move in the moving range in the body length direction, including a user's waist position; and
- e. and f. a massage chair, which has a control means when massaging a user's waist in the "Waist Course" of the "Automatic Courses" to perform the process to inflate the hip airbag and to cause the operation status (kneading and tapping) of kneading balls located at a user's waist in the moving range in the body length direction, simultaneously.

B. Identicalness between Invention A and the invention related to AS-878

Structures a. through f. of the invention related to AS-878 respectively correspond

to Constituent Features [A] through [F] of Invention A, and the invention related to AS-878 has all of the aforementioned structures of Invention A. Therefore, Invention A is an identical invention to the invention related to AS-878 (publicly worked invention).

Based on the above, Patent A has grounds for invalidation (Article 123, paragraph (1), item (ii) of the Patent Act) for violating Article 29, paragraph (1), item (ii) of said Act.

(2) Grounds for Invalidation 2 (Lack of novelty of Invention A, which uses an invention related to FMC-350 (publicly worked invention) as prior art)

A. Concerning FMC-350

(A) The Appellee sold a massage chair (product name "FAMILY MEDICALCHAIR i. 1"; product type "FMC-350" (hereinafter simply referred to as "FMC-350") around December 2002 before filing Application A (Exhibits Otsu A17, A19 through A24, A27, A28, and A35).

(B) According to (A) above and evidence (Exhibits Otsu A26 and A35 through A41), the invention worked by FMC-350 (the invention related to FMC-350) was publicly known to be worked before the filing of Application A and has the following structures.

a. and d. A massage chair, which includes a seat and a backrest attached to the rear part of the seat;

b. wherein the seat has a thigh air cell for massaging the thighs, and a hip air cell for massaging the hips; and

c. wherein, kneading balls that move in the body length direction are provided in the backrest and the kneading balls move in the moving range in the body length direction, including a user's waist position; and

e. and f. a massage chair, which has a control means when massaging a user's waist in the "Waist and Muscle Fatigue Improvement Course" from among the "Medical Courses" in the "Automatic Courses," to perform the process of inflating a hip air cell by setting a two-position, three-way selector valve in an open position and to cause the operation status (kneading and tapping) of kneading balls located at a user's waist in the moving range in the body length direction, simultaneously.

B. Identicalness between Invention A and the invention related to FMC-350

Structures a. through f. of the invention related to FMC-350 respectively correspond to Constituent Features [A] through [F] of Invention A and the invention related to FMC-350 has all of the aforementioned structures of Invention A. Therefore, Invention A is an identical invention to the invention related to FMC-350 (publicly worked invention).

Based on the above, Patent A has grounds for invalidation (Article 123, paragraph

(1), item (ii) of the Patent Act) for violating Article 29, paragraph (1), item (ii) of said Act.

(3) Grounds for Invalidation 3 (Violation of clarity requirements)

The term "gradually" in the phrase of Constituent Feature [E] of Invention A, "while gradually raising the height of a user's waist," does not clarify how much time is required. Therefore, the extension of Invention A is not clear.

Then, the statement in the claims (Claim 1) of Invention A is not clear and does not conform to the requirements as defined in Article 36, paragraph (6), item (ii) of the Patent Act (clarity requirements). Therefore, Patent A has grounds for invalidation (Article 123, paragraph (1), item (iv) of said Act) for violating Article 36, paragraph (6), item (ii) of said Act.

(Allegation of the Appellant)

(1) Concerning Grounds for Invalidation 1

The fulfillment of Constituent Feature [E] is proved by the following two movements: [i] simultaneous movement of hip and waist; and [ii] waist position raising movement. However, according to the video related to AS-878 submitted by the Appellee (Exhibits Otsu A45 and A48), it is impossible to objectively confirm that the waist treatment element is moving and the waist position is moving upward. In the video, it seems that a user's waist position changes in the up-and-down direction. However, this is merely associated with the change in the angle of the line from a user's shoulder to neck, but not with an upward move of a user's entire body in a near-vertical direction. In addition, videos and photographs of Exhibits Otsu A45 through A47 are those that shot the movement status under conditions where a user was not seated. Therefore, this does not prove that a user's waist position significantly moves upward.

Consequently, it is impossible to say that AS-878 has the structure of Constituent Feature [E] and that Invention A is an identical invention to the invention related to AS-878. Therefore, Grounds for Invalidation 1 are groundless.

(2) Concerning Grounds for Invalidation 2

According to the video related to FMC-350 submitted by the Appellee (Exhibit Otsu A41), it is impossible to objectively confirm that the waist treatment element is moving and the waist position is moving upward.

Consequently, it is impossible to say that FMC-350 has the structure of Constituent Feature [E] and that Invention A is an identical invention to the invention related to FMC-350. Therefore, Grounds for Invalidation 2 are groundless.

(3) Concerning Grounds for Invalidation 3

Invention A is not an invention defined by a numerical limitation and the term

"gradually" in Constituent Feature [E] does not define the extension of the subject-matter of the invention by separating specific seconds. Therefore, Grounds for Invalidation 3 are groundless.

3. Issue 2-1 (Whether Defendant's Products 1 and 2 fall within the technical scope of Inventions C) (Issue related to Patent C)

The judgment in prior instance is corrected as follows and additional allegations of the parties to this trial are added. The facts are as stated in No. 2, 1. of Attachment "Facts and Reasons for the Claim Related to Patent Right C" of the judgment in prior instance, and therefore, they are cited.

(1) Correction of the judgment in prior instance

A. Line 6, page 148 of the judgment in prior instance is altered to "Issue 2-1 (Whether Defendant's Products 1 and 2 fall within the technical scope of Inventions C) (Issue related to Patent C)" and the section from line 8 through line 11, page 148 is altered as follows.

"(1) Structures of Defendant's Products 1 and 2

The structures of Defendant's Products 1 and 2 are as stated in No. 1, 2. (2) of Attachment 1 'Descriptions of Defendant's Products 1 through 8.'

B. Line 14, page 148 of the judgment in prior instance is altered to "(2) Issue 2-1-1-1 (Whether constituent features of Inventions C-1 and C-2 are fulfilled)"; the phrase "存在すること[is provided]" in line 24, page 148 is altered to "備えられていなければならないこと[is required to be provided]"; after the phrase "そうすると、[Then,]" in the last line, page 148, the phrase "構成要件B及びCの記載から読み取れることは、「空洞部」が、施療者の手部を含む前腕部を肘掛部の内部に挿入保持するように外側立上り壁、内側立上り壁及び底面部の3要素から形成されていることだけであるから、[what can be read from the statements in Constituent Features [B] and [C] is only that the 'hollow unit' is formed with three elements, that is, the outer rising wall, the inner rising wall, and the bottom unit, so as to insert and hold the forearm, including the hand, of a massage recipient in the inside of the armrest unit,]" is added.

C. The phrase "本件明細書C [Description C]" in line 3, page 149 of the judgment in prior instance is altered to "本件出願Cの願書に添付した明細書（以下、図面を含めて「本件明細書C」という。甲6）[description attached to an application form for Application C (hereinafter, including drawings, referred to as 'Description C'; Exhibit Ko 6)]"; and after the term "【0046】 [[0046]]" in line 10, page 149, "、【図8】 [, [FIG. 8]]" is added.

D. The section from the phrase "本件[Patent C]" in line 2, page 150 of the judgment in

prior instance to the phrase "という。) [referred to as)]" in line 3, page 150 is altered to "本件親出願 (乙 C 8) [Parent Application (Exhibit Otsu C8)]"; and the following is added, starting as a new line after the end of line 17, page 150.

"e. Error in the determination of the judgment in prior instance

(a) The judgment in prior instance determined as the interpretation based on the statements in the claims (Claim 1) of Invention C-1 as follows: [i] according to the statements in Constituent Feature [C], the unit that is formed by three elements, that is, the 'outer rising wall,' the 'inner rising wall,' and the 'bottom unit' is the 'hollow unit'; it is not construed that the 'hollow unit' may have a part where there is no 'outer rising wall,' 'inner rising wall,' or 'bottom unit'; and it is required that there is an 'inner rising wall' around the entire 'hollow unit'; [ii] according to the statements in Constituent Feature [D], it is obvious that there is the 'front-end of ... the inner rising wall' at the 'end of the hollow unit'; the statement of the 'front-end of ... the inner rising wall' is construed to suggest that there is also an 'inner rising wall' at the rear part of the 'hollow unit' in addition to the 'end of the hollow unit'; [iii] according to the statements in Constituent Feature [B], it is construed that the 'forearm insertion opening unit' is not part of the 'hollow unit,' but a constituent part of the 'armrest unit' that is different from the 'hollow unit' and is also a part provided in connection with the 'hollow unit'; and, concerning the relative positional relationship between the 'forearm insertion opening unit' and the 'hollow unit' in the 'armrest unit,' which consists of the 'forearm insertion opening unit' and the 'hollow unit,' it is construed that the 'hollow unit' is in the front part and the 'forearm insertion opening unit' is in the rear part and the 'hollow unit' is composed 'to insert and hold the forearm'; [iv] according to the statements in Constituent Features [E], [E-1], and [E-2], since the 'forearm insertion opening unit' is the part 'to insert the forearm of a massage recipient from the inner rear side' and the treatment unit, which is provided at the forearm insertion opening unit, is formed in an L-shape with the 'bottom unit' and the 'outer rising wall,' it is construed that there is no 'inner rising wall' in the 'treatment unit'; and the 'hollow unit' that is 'extended from the forearm insertion opening unit' is another constituent part of the 'armrest unit'; based on these facts, it may be found that there is a suggestion that the presence of an 'inner rising wall' segments the 'hollow unit' and the 'forearm insertion opening unit'; and the fact that it is specified that the 'forearm insertion opening unit' is provided 'to insert the forearm of a massage recipient from the inner rear side' in itself is construed to suggest that it is impossible 'to insert the forearm of a massage recipient' into the 'hollow unit' that is 'extended from the forearm insertion opening unit,' from the inner lateral side of the 'hollow unit'; [v] on the other hand, according to the statements in Claim 1, it is

impossible to read a suggestion that there is a part where there is no 'inner rising wall' in the 'hollow unit'; and therefore, the 'hollow unit' (Constituent Features [B] and [C]) of Invention C-1 is construed to have an 'inner rising wall' around the entire 'hollow unit.'

However, concerning [i] and [v], what can be read from Constituent Features [B] and [C] is that the 'hollow unit' that is extended from the forearm insertion opening unit to insert and hold the forearm, including the hand, of a massage recipient in the inside of the armrest unit' is formed with three elements, that is, the 'outer rising wall,' the 'inner rising wall,' and the 'bottom unit'; on the other hand, however, there is no statement in Claim 1 concerning the part of the 'hollow unit' at which the 'outer rising wall,' the 'inner rising wall,' and the 'bottom unit' should be provided. The fact that the 'hollow unit' is formed with the aforementioned three elements and how to form them are different issues. Therefore, there is a leap of logic in the determination of the judgment in prior instance to the effect that it cannot be construed that the 'hollow unit' may have a part where there is no 'outer rising wall,' 'inner rising wall,' or 'bottom unit.'

Concerning [ii], there is no statement or suggestion in Constituent Feature [D] regarding the range of the 'inner rising wall' at the rear part other than the 'end of the hollow unit.' The statements in Constituent Feature [D] are consistent with the idea that the structure formed at the 'end of the hollow unit' and at a part of its rear part also falls under the 'hollow unit' in Invention C-1; and therefore, it is impossible to read from Constituent Feature [D] that the 'inner rising wall' should be provided around the entire 'hollow unit.'

Concerning [iii], according to the statements in Constituent Feature [B], the 'forearm insertion opening unit' is defined as a component of the 'armrest unit' 'to insert the forearm of a massage recipient from the inner rear side' and the 'hollow unit' is defined as a component 'to insert and hold the forearm, including the hand, of a massage recipient in the inside of the armrest unit.' Based on the fact that both units have in common that they are components to achieve the function to 'insert' the 'forearm,' it is suggested that the 'forearm insertion opening unit' and the 'hollow unit' overlap in terms of the 'part to insert the forearm.' Therefore, there is no reason to strictly segment them. In addition, even on the assumption of the interpretation of the judgment in prior instance concerning the statements in Constituent Feature [B], even if the 'inner rising wall' is formed at part of the 'hollow unit,' it can be structured so that the 'hollow unit' and the 'forearm insertion opening unit' are provided at the 'armrest unit' as separate structures and the 'hollow unit' is placed at the front part and the 'forearm insertion opening unit' is placed at the rear part in the 'armrest unit.' Therefore, the conclusion

that the 'hollow unit' in Invention C-1 must have the 'inner rising wall' around the entire 'hollow unit' is not necessarily derived logically.

Concerning [iv], Constituent Features [E], [E-1], and [E-2] do not directly stipulate the positional relationship, etc. between the 'forearm insertion opening unit' and the 'hollow unit' in the 'armrest unit.' What can be read from Constituent Feature [E-2] is only that the treatment unit in the 'forearm insertion opening unit' is formed in an L-shape with the bottom unit and the outer rising wall. It cannot be understood directly from the aforementioned facts that the presence of the 'inner rising wall' segments the 'hollow unit' and the 'forearm insertion opening unit.'

Therefore, [i] through [v] listed by the judgment in prior instance do not serve as a basis for construing that the 'hollow unit' (Constituent Features [B] and [C]) in Invention C-1 has the 'inner rising wall' around the entirety thereof, and consequently, there is an error in the aforementioned determination of the judgment in prior instance. (b) Next, the judgment in prior instance stated that the statements in Description C and the developments of filing an application for Patent C support the construction that the 'hollow unit' (Constituent Features [B] and [C]) in Invention C-1 has the 'inner rising wall' around the entirety thereof; and stated in concrete terms as follows: [i] In consideration of the technical meaning of Invention C-1 as stated in Description C, on the assumption of a chair-type massage machine wherein the 'outer rising wall' and the 'inner rising wall' are formed around the entire area in the length direction of the armrest unit, it is found that Invention C-1 has the 'forearm insertion opening unit' where the 'inner rising wall' is not provided so that the forearm of a massage recipient can be inserted from the inner rear side of the armrest unit; therefore, the 'forearm insertion opening unit to insert the forearm of a massage recipient from the inner rear side' of the armrest unit and the 'hollow unit' that is 'extended from the forearm insertion opening unit ... in the inside of the armrest unit' are construed to be segmented by the presence of the 'inner rising wall'; the reason why the 'hand-rest unit' is provided is based on the fact that the 'inner rising wall' is extended to the front-end of the armrest unit in order to massage a wide range, including hands and forearms, simultaneously; and therefore, it can be said that the 'inner rising wall' of the 'hollow unit' that 'is formed with an outer rising wall and an inner rising wall respectively provided on the left and right sides in the width direction of the armrest unit, as well as with a bottom unit' in Invention C-1 is assumed to be provided around the entire 'hollow unit' so that massages can be given to a wide range, including hands and forearms, simultaneously; [ii] [0046], [0047], and FIG. 14 of the description of the Parent Application (Exhibit Otsu C8) are the statements related to embodiments where the 'inner rising wall' is not formed at the center part of

the forearm treatment mechanism, in the same way as [0046], [0047], and FIG. 14 of Description C; however, when Application C was filed, they were not listed as the basis for the change from the claim in the Parent Application; in the written opinion dated May 9, 2011 that was submitted at the time of the Amendment (hereinafter referred to as the 'Written Opinion'; Exhibit Otsu C12), the Appellant alleged that Inventions C are inventions related to 'a chair-type massage machine wherein a pair of rising walls is formed as the forearm treatment mechanism around the entire area in the length direction of the armrest unit' and that the inventions 'provide a massage machine to solve discomfort from the pressure on the area around the elbow joint of a massage recipient due to the presence of a pair of rising walls that is extended to around the elbow joint of a massage recipient and, further, to enable a massage recipient to stand up and sit comfortably even if the machine has the forearm treatment mechanism'; and the Appellant provided an explanation about the 'hand-rest unit' that is provided at the 'end of the hollow unit' based on the assumption that there is an 'inner rising wall' in the 'hand-rest unit,' but at the same time, the Appellant explained that the 'forearm insertion opening unit' is formed without an 'inner rising wall'; on the other hand, the Appellant also provided an explanation about Claim 2, that is, providing 'a treatment unit' at the center part of the armrest unit 'that is formed in a C-shape with the bottom unit, the outer rising wall, and the hand-rest unit'; however, it is only [0046] that has a relationship from among statements in Description C that were referred to in the explanation; concerning the difference between 'Cited Document 2' (Exhibit Otsu C19) that is indicated in the Notice of Grounds for Refusal and the inventions after the Amendment (Inventions C-1 and C-2), the Appellant explained that the forearm treatment unit disclosed in 'Cited Document 2' is a 'concave groove for inserting an elbow' whose cross-section is nearly a laterally facing 'U'-shape, while in the inventions after the Amendment, the treatment unit placed at the forearm insertion opening unit is formed with the 'bottom unit' and the 'outer rising wall' and its cross-section is nearly an 'L-shape' and the treatment unit in the hollow unit, where the hand-rest unit is formed, is formed in a shape surrounded by the 'bottom unit,' the 'outer rising wall,' the 'inner rising wall,' and the 'hand-rest unit' (actual shape is a 'square'), and therefore that they are different in structure; the Appellant also indicated, as a problem of the forearm treatment unit whose cross-section is nearly a 'C' shape, that the part on the top surface of the forearm insertion opening unit hinders the smooth insertion and removal of arms and since there is no 'inner rising wall' in the hand-rest unit, there is a concern as to whether it can bear body weight of a massage recipient; in addition to the aforementioned explanations, the Appellant added Claim 2, that is, 'providing a

treatment unit that is formed in a C-shape with the bottom unit, the outer rising wall, and the hand-rest unit,' (Invention C-2) by Amendment as a subsequent claim of Claim 1; however, there is no explanation related to the presence, etc. of problem with the aforementioned nearly 'C'-shaped forearm treatment unit in the inventions; in consideration of the above, regardless of the addition of Claim 2, the Appellant's explanation in the Amendment is construed to be based on the structure wherein the 'inner rising wall' is provided around the entire 'hollow unit' in Invention C-1; [iii] concerning the point that statements of [0046] and FIG. 14 in Description C consistently remain even through the divisional application (Application C) and amendment (Amendment) from the Parent Application, in light of the fact that it is construed that the 'hollow unit' has a structure wherein the 'inner rising wall' is provided around the entirety thereof based on the statements in Claim 1 of the claims related to Invention C-1, the judgment in prior instance determined that it is only because these statements were not amended, etc. in accordance with the changes to the details of the inventions of Patent C resulting from the divisional application and amendment.

However, concerning [i], Description C has a statement, as an embodiment of Invention C-1 (working example of Invention C-2), regarding a massage machine which has a treatment unit formed in a C-shape with the outer rising wall, the hand-rest unit, and the bottom unit at the center part of the armrest unit ([0046], FIG. 14); and, in FIG. 14, the treatment unit formed in a C-shape, which is the part where there is no inner rising wall, is indicated as the hollow unit (62a); and in FIG. 8, which indicates another embodiment, the part where there is no inner rising wall is indicated as the hollow unit (62a). In consideration of these statements, the 'hollow unit' in Invention C-1 is not limited to the part where there is the inner rising wall in the armrest unit, but it is obvious that it is not required to have the "inner rising wall" at all over the hollow unit.

In addition, Invention C-1 has the problems to solve the inconvenience (such as [a] pressing the area around the elbow joint inside the upper arm and giving discomfort, [b] hindering insertion and removal of the arms, and [c] hindering standing up and sitting comfortably, etc.) from providing rising walls around the entire area in the length direction of the armrest unit ([0005] through [0008]). Problems [a] and [b] were solved by eliminating the inner rising wall in the forearm insertion opening unit and problem [c] was solved by providing the hand-rest unit at the armrest unit. It is impossible to derive the structure of the 'hollow unit,' exceeding the aforementioned understanding, wherein the presence of the 'inner rising wall' segments the 'hollow unit' and the 'forearm insertion opening unit' and the inner rising wall exists around the entire hollow unit.

Moreover, in light of the statement in [0016] of Description C that when expansion/contraction bags are provided on two surfaces, that is, the bottom unit and the outer rising wall, a massage to the forearm can be given, it is enough to have two surfaces, the 'bottom unit' and the 'outer rising wall,' in order to massage a wide range, including hands and forearms, simultaneously, and it is not assumed that the 'inner rising wall' is provided around the entire 'hollow unit.'

Next, concerning [ii] and [iii], although when Application C was filed as a divisional application of the Parent Application, [0046], [0047], and FIG. 14 of the description of the Parent Application (Exhibit Otsu C8) were not indicated as a basis for fulfillment of the requirements for divisional application, it cannot be said that the intention of the Appellant to limit the 'hollow unit' in Invention C-1 to the structure wherein the 'inner rising wall' is provided around the entire 'hollow unit' was objectively indicated in the process of filing the application for Patent C. Rather, based on the fact that, in the Written Opinion, the Appellant clearly cited [0046] of the description that was attached initially to the application form for Application C (hereinafter referred to the "Original Description for Application C; Exhibit Otsu C9) as basis for the Amendment related to Claims 1 and 2, and that said paragraph is the same as [0046] in Description C and explains the structure of 'FIG. 14' that indicated the part where there is no 'inner rising wall' as the 'hollow unit (62a),' it is obvious that the application was filed on the assumption that the 'inner rising wall' does not have to be provided around the entire 'hollow unit.' Therefore, there is an error in the determination on [iii] of the judgment in prior instance that the existence of the statements of [0046] and FIG. 14 of Description C is only the result of the fact that these statements were not amended, etc. in accordance with the changes to the details of the explanation of Patent C.

In addition, the explanation in the Written Opinion that the Appellee indicated in [ii] does not refer to the relationship between the 'hollow unit' and the 'inner rising wall,' and therefore, it cannot be said that the Appellant objectively presented its intention to limit the hollow unit to the structure wherein the 'inner rising wall' is provided around the entire hollow unit.

Therefore, [i] through [iii] listed by the judgment in prior instance do not serve as a basis for construing that the 'hollow unit' (Constituent Features [B] and [C]) in Invention C-1 has the 'inner rising wall' around the entirety thereof, and consequently, there is an error in the aforementioned determination of the judgment in prior instance." E. After the phrase "以下の図[the following Figure]" in line 19, page 150 of the judgment in prior instance, the phrase "(「別紙 5 「主張図面 (被告製品 1 及び 2)」記載 1 参照) [(See Statement 1 in Attachment 5 'Figures for Allegation (Defendant's

Products 1 and 2)"] is added; the term "外側側面部[outer lateral part]" in line 23 to line 24, page 150 is altered to "外側壁面部[outer wall unit]"; the term "内側側面部[inner lateral part]" in line 24, page 150 is altered to "内側壁面部[inner wall unit]"; and the following is added, starting as a new line after the end of the last line, page 150. "In Statement 1 in Attachment 5 'Figures for Allegation (Defendant's Products 1 and 2),' the part specified as the 'hollow unit' of the Defendant's Products 1 and 2 corresponds to the 'hollow unit' (Constituent Features [B] and [C]) in Invention C-1.

Even if it is construed that the 'forearm insertion opening unit' and the 'hollow unit' in Invention C-1 do not overlap and constitute separate structures, the 'armrest unit,' which is the arm unit of Defendant's Products 1 and 2, has the 'opening' at the 'rear part' of the 'armrest unit' to insert the forearm of a massage recipient from the inner rear of the armrest unit, as stated in Statement 1 of said Attachment. The 'opening' of Defendant's Products 1 and 2 corresponds to the 'forearm insertion opening unit' (Constituent Feature [B]) in Invention C-1. In addition, from the 'front part' to the 'center part' of the 'armrest unit' of Defendant's Products 1 and 2, there is the 'hollow unit' that is extended from the 'opening unit' to insert and hold the forearm, including the hand, of a massage recipient in the inside of the armrest unit. The 'hollow unit' is formed with the 'outer wall unit,' the 'inner wall unit,' and the 'bottom unit.' Therefore, the 'hollow unit' of Defendant's Products 1 and 2 corresponds to the 'hollow unit' (Constituent Features [B] and [C]) in Invention C-1."

F. The phrase "腕ユニットの中部には[at the center part of the arm unit]" in line 13, page 154 of the judgment in prior instance is altered to "腕ユニットは、別紙5「主張図面（被告製品1及び2）」記載1のとおり、前部・中部・後部に分けることができ、その中部には[as stated in Statement 1 of Attachment 5 'Figures for Allegation (Defendant's Products 1 and 2),' the arm unit can be divided into front part, center part, and rear part, and at the center part]"; and the following is added, starting as a new line after the end of line 21, page 154.

"F. Summary

As described above, Defendant's Products 1 and 2 fulfill Constituent Features [B], [C], [E], [E-1], and [E-2], and therefore, they fall within the technical scope of Invention C-1, and also fulfill Constituent Feature [H], and therefore, they fall within the technical scope of Invention C-2."

G. The section from line 23, page 154 through line 9, page 155 of the judgment in prior instance is altered as follows:

"(1) Concerning the allegation of the structures of Defendant's Products 1 and 2

It is denied that Defendant's Products 1 and 2 have structures b, c, e, e-1, e-2, h, j

through o, and q as alleged by the Appellant."

H. Line 10, page 155 of the judgment in prior instance is altered to "(2) Concerning the allegation on the fulfillment of constituent features of Inventions C-1 and C-2"; and the term "本件各発明 C [Inventions C]" in the last line, page 155 is altered to "本件発明 C - 1 [Invention C-1]".

I. The term "本件各発明 C [Inventions C]" in line 4, page 156 of the judgment in prior instance is altered to "本件発明 C - 1 [Invention C-1]"; the phrase "分割出願時の補正[amendment when filing the divisional application]" in line 7, page 156 is altered to "本件補正[the Amendment]"; and the following is added, starting as a new line after the end of line 14, page 156.

"e. Allegation of the Appellant

All of the allegations of the Appellant pointing out an error in the determination of the judgment in prior instance related to the claim interpretation for the 'hollow unit' (Constituent Features [B] and [C]) in Invention C-1 are groundless.

As the judgment in prior instance held, it is obvious based on the statements in the claims (Claim 1) of Invention C-1 that the 'hollow unit' in Invention C-1 must be extended from and adjacent to the 'insertion opening unit,' which is provided at the back of the 'hollow unit,' to insert 'the forearm, including the hand' and to be 'formed with the outer rising wall, the inner rising wall, and the bottom unit.'

(a) Based on the statement in [0016] of Description C that by providing expansion/contraction bags on two surfaces, that is, the bottom unit and the outer rising wall, a massage can be given to the forearm, the Appellant alleged that it is not assumed that there is no 'inner rising wall' around the entire 'hollow unit.' However, [0016] is a statement concerning the 'forearm insertion opening unit' and not concerning the 'hollow unit.'

(b) As the judgment in prior instance held, the presence of [0046] and FIG. 14 in Description C is only a result of the fact that these statements were not amended, etc. in accordance with the changes to the details of inventions of Patent C resulting from Application C, which is a divisional application of the Parent Application, and the Amendment.

The Appellant did not give any reasonable explanation in the written statement that was submitted when filing Application C (hereinafter the statement is referred to as the 'Written Statement'; Exhibit Otsu C10) that [0046] and FIG. 14 of Description C are not used as a basis for the changes from Claim1 of the Parent Application.

In addition, the statements in the Written Opinion (Exhibit Otsu C12) as indicated by the Appellant do not present a basis related to additional changes to Constituent

Feature [C], but [0046] of Description C is used only as a basis for the Amendment 'wherein the armrest unit has a treatment unit, wherein the front part is surrounded by the bottom unit, the outer rising wall, the inner rising wall, and the hand-rest unit and which is located at the hollow unit, and a treatment unit, wherein the rear part is formed in an L-shape with the bottom unit and the outer rising wall and which is located at the forearm insertion opening unit' (Constituent Features [E], [E-1], and [E-2]). Therefore, the statement related to 'C-shape treatment unit 69a' from among the statements in [0046] does not function as the 'basis' for the Amendment.

Moreover, FIG. 8, which is used as the basis for the argument by the Appellant, is a cross-section explanatory drawing where the layout of the expansion/contraction bag in the position corresponding to the forearm insertion opening unit is indicated. The statement of '62a' in FIG. 8 only indicated 'hollow unit 62a' using a virtual line when indicating the 'forearm insertion opening unit' that is 'at the rear back' of 'hollow unit 62a.' Therefore, it does not indicate that there is a part where the 'inner rising wall' is not provided at the 'hollow unit' as alleged by the Appellant."

J. The section from line 16 through line 17, page 156 of the judgment in prior instance is altered as follows.

"As shown in Statement 2 of Attachment 5 'Figures for Allegation (Defendant's Products 1 and 2),' Defendant's Products 1 and 2 have the inner rising wall in the hand unit or in part of the hand unit, but since there is no inner rising wall in the forearm unit, it does not have the 'hollow unit' wherein the 'inner rising wall' also covers part of the forearm unit (Constituent Features [B] and [C])."

K. The section from the phrase "（以下[(hereinafter)]" in line 16 to the end of line 17, page 158 of the judgment in prior instance is altered to "（乙 C 1 9）[(Exhibit Otsu C19)]"; and the phrase "乙 C 1 9 発明[Exhibit Otsu C19 Invention]" in line 18, page 158 is altered to "乙 C 1 9 記載の発明[an invention stated in Exhibit Otsu C19]".

L. The following is added, starting as a new line after the end of line 11, page 160 of the judgment in prior instance.

"F. Summary

As described above, Defendant's Products 1 and 2 do not fulfill Constituent Features [B], [C], [E], [E-1], [E-2], and [H], and therefore, they do not fall within the technical scope of Inventions C-1 and C-2."

(2) Additional allegation of the parties in this instance

A. Issue 2-1-1-2 (Whether constituent features of Inventions C-3 through C-5 are fulfilled)

(Allegation of the Appellant)

(A) The "outer rising wall" (Constituent Feature [K]) in Invention C-3 is construed to be a wall provided on the outside of the armrest unit in the width direction. In addition, according to the statements ([0017] and FIG. 8) in Description C, it is construed that the massage that is achieved by Invention C-3 is to apply pressure from obliquely above by the expansion/contraction bag that falls inside by the presence of the outer rising wall. Based on this understanding, the "lower part of the outer rising wall" (Constituent Feature [L]) is construed to be the lower position to the extent that when the expansion/contraction bag expands, it can massage the arm of a massage recipient from nearly obliquely above by the presence of the outer rising wall.

Concerning Defendant's Product 1, as indicated in Statement 3 of Attachment 5 "Figures for Allegation (Defendant's Products 1 and 2)," outer wall airbag 1 is fixed at the protrusion and, concerning Defendant's Product 2, as indicated in Statement 5 of said Attachment, outer wall airbags 1 and 2 are fixed at the protrusion respectively. The protrusions are provided inside the outer wall unit, form part of the outer wall unit, and correspond to the "outer rising wall" (Constituent Feature [K]).

In addition, outer wall airbag 1 of Defendant's Product 1 and outer wall airbags 1 and 2 of Defendant's Product 2 give massages to the arm of a massage recipient nearly from obliquely above due to the presence of the outer wall unit. Therefore, it can be said that the airbags are fixed at the "lower part" of the outer wall unit.

Consequently, Defendant's Products 1 and 2 have the structure corresponding to "the lower edge of one of the expansion/contraction bags is fixed at the lower part of the outer rising wall" (Constituent Feature [L]), and therefore, they fulfill Constituent Features [K] and [L].

In addition, as described above, Defendant's Products 1 and 2 fulfill all constituent features of Invention C-1, and therefore, they also fulfill Constituent Feature [M].

Based on the above, Defendant's Products 1 and 2 fulfill all constituent features of Invention C-3.

(B) Based on the same reasons as (A) above, Defendant's Products 1 and 2 fulfill Constituent Features [N] and [O], and therefore, they fulfill all constituent features of Invention C-4.

(C) As described above, Defendant's Products 1 and 2 fulfill all constituent features of Invention C-1, and therefore, they also fulfill Constituent Feature [Q].

Based on the above, Defendant's Products 1 and 2 fulfill all constituent features of Invention C-5.

(Allegation of the Appellee)

(A) a. According to the statements in the claims (Claim 3) of Invention C-3 and the

statements in Description C ([0044] and FIG. 8), the "outer rising wall" (Constituent Feature [K]) in Invention C-3 is formed with the outer wall unit and the inner wall unit. In addition, the term "lower part" refers to the "part at the bottom" (Exhibit Otsu C29); "bottom" is "a proportionally lower direction or position than the standard point" (Exhibit Otsu C30); and the standard point of the "outer rising wall" is the central part of the outer rising wall in the height direction. Based on the above, it is reasonable to construe that the term "lower part" as used in Constituent Feature [L] "the lower edge of one of the expansion/contraction bags is fixed at the lower part of the outer rising wall" means that "the lower edge of one of the expansion/contraction bags is fixed at a proportionally lower position than the central part of the outer rising wall." This interpretation conforms to the statements in FIG. 8.

Based on the above, in Defendant's Product 1, as shown in Statement 3 of Attachment 5 "Figures for Allegation (Defendant's Products 1 and 2)," the edge of the bottom wall airbag and the edge of outer wall airbag 2 are fixed at the outer wall unit side of the bottom unit and outer wall airbag 1 is fixed at the top surface of the protrusion, but not fixed on the outer wall unit itself. In addition, the protrusion is not formed with the outer wall unit and the inner wall unit, and therefore, it is not included in the "outer rising wall" (Constituent Feature [K]) in Invention C-3.

Next, the top surface of the protrusion is, as indicated in Statement 4 of the Attachment, located near the "central part" of the outer wall from among the outer wall and the top wall that comprise the outer wall unit. Therefore, outer wall airbag 1 does not have the structure of Constituent Feature [L] wherein "the lower edge of one of the expansion/contraction bags is fixed at the lower part of the outer rising wall." Outer wall airbag 2 is also fixed on the bottom unit, and therefore, does not have the aforementioned structure.

b. In Defendant's Product 2, as shown in Statements 5 and 6 of Attachment 5 "Figures for Allegation (Defendant's Products 1 and 2)," outer wall airbags 1 and 2 are fixed at the top surface of the protrusion; however, based on the same reasons as a. above, the protrusion is not included in the "outer rising wall" (Constituent Feature [K]) in Invention C-3. The top surface of the protrusion is, as indicated in Statement 6 of the Attachment, located near the "central part" of the outer wall from among the outer wall and the top wall that comprise the outer wall unit. Therefore, outer wall airbags 1 and 2 do not have the structure of Constituent Feature [L] wherein "the lower edge of one of the expansion/contraction bags is fixed at the lower part of the outer rising wall."

c. As described above, Defendant's Products 1 and 2 do not fulfill Constituent Features [B], [C], [E], [E-1], and [E-2] of Invention C-1, and therefore, Defendant's Products 1

and 2 do not fulfill constituent features of Invention C-3.

(B) Based on the same reasons as (A) above, Defendant's Products 1 and 2 do not fulfill Constituent Features [N] and [O] of Invention C-4.

(C) As described above, Defendant's Products 1 and 2 do not fulfill Constituent Features [B], [C], [E], [E-1], and [E-2] of Invention C-1, and therefore, Defendant's Products 1 and 2 do not fulfill Constituent Feature [Q] of Invention C-5.

B. Issue 2-1-2 (Doctrine of equivalents)

(Allegation of the Appellant)

If it is construed that the "hollow unit" (Constituent Features [B] and [C]) in Invention C-1 has the structure to have an "inner rising wall" around the entirety thereof, the "hollow unit" of Defendant's Product 1 has the "inner wall unit" in the "front part"; however, the part alleged to be the "center part" does not have an "inner wall unit" and the "inner wall unit" is not provided around the entire hollow unit. In this regard, it is different from Invention C-1 (hereinafter the difference is referred to as the "Difference"). As described below, Defendant's Products 1 and 2 fulfill the first requirement through the third requirement for equivalents, and therefore, they fall within the technical scope of Invention C-1 as equivalents to the structures stated in the claims of Invention C-1.

In addition, Defendant's Products 1 and 2 fulfill Constituent Features [H], [I], [K], [L], [N], and [P] as described in A. (Allegation of the Appellant) above, and therefore, they fall within the technical scope of Inventions C-2 through C-5.

(A) The first requirement (The different part is not the essential part.)

The conventional technology, where a pair of rising walls is provided as the forearm treatment mechanism around the entire armrest unit in the length direction, had the following problems since the rising wall is formed to cover the area close to the elbow joint of a massage recipient: [i] the inner rising wall applies compressions near the elbow joint of the upper arm inside and gives discomfort to a massage recipient; [ii] it hinders insertion and removal of the arm in the forearm treatment mechanism; and [iii] the top of the front-end of the armrest unit is opened, and therefore, it is difficult to apply body weight when standing up and sitting. Therefore, Invention C-1 is composed with the aim of solving said problems so that "the arm can be inserted and removed smoothly in the forearm treatment mechanism, and a massage recipient can stand up and sit comfortably even though there is the forearm treatment mechanism" ([0005] through [0008] of Description C).

Based on the above, the Difference has no relationship with the problems and aim of Invention C-1 and is not the essential part of Invention C-1. Therefore, Defendant's

Products 1 and 2 fulfill the first requirement.

(B) Second requirement (Whether it can be replaced)

Invention C-1 shows the function and effect that "when standing up or sitting down, a massage recipient can apply body weight to the hand-rest unit while avoiding rubbing of the inner side of the forearm against the inner rising wall" ([0014] of Description C). Even if the structure of Invention C-1 related to the Difference is replaced with the structures of Defendant's Products 1 and 2, it shows the same function and effect as the aforementioned function and effect of Invention C-1.

Therefore, Defendant's Products 1 and 2 fulfill the second requirement.

(C) Third requirement (Whether it can be replaced easily)

The Difference is that the inner rising wall is provided at only part of the hollow unit. The length of the inner rising wall is merely a matter of design variation, and therefore, replacing the structure of Invention C-1 related to the Difference with the structures of Defendant's Products 1 and 2 could have been easily conceived of by a person skilled in the art.

Therefore, Defendant's Products 1 and 2 fulfill the third requirement.

(D) Allegation of the Appellee related to the fourth requirement and the fifth requirement

The allegation of the Appellee will be disputed.

(Allegation of the Appellee)

Defendant's Products 1 and 2 do not fulfill the first through the fifth requirements of equivalents, and therefore, they cannot be considered to be equivalents to the structures stated in the claims of Invention C-1.

(A) Concerning the allegation related to the first requirement

The essential part of Invention C-1 is having the characteristics and structures wherein "the forearm insertion opening unit is formed in an L-shape with the bottom part and the outer rising wall at around the elbow joint of a massage recipient; the inner rising wall in said part is eliminated (Constituent Feature [E-2]); and the hollow unit that is extended from (or provided in connection with) the forearm insertion opening unit is formed with the outer rising wall, the inner rising wall, and the bottom unit (Constituent Feature [C])" in order to solve the discomfort from the pressure to the area around the elbow joint of a massage recipient. In other words, it means to "have a structure wherein there is an inner rising wall that extends in the length direction of the armrest unit in the range from the hand to around the elbow joint of the forearm of a massage recipient and wherein there is no internal rising wall around the elbow joint of a massage recipient (around the treatment unit located at the forearm insertion opening

unit)."

Based on the above, Defendant's Products 1 and 2 have a structure wherein "the hollow unit does not have the inner rising wall at the part to insert and hold the forearm, excluding the hand" and the Difference is the difference in the essential part of Invention C-1.

Therefore, Defendant's Products 1 and 2 do not fulfill the first requirement.

(B) Concerning the allegation related to the second requirement

In Defendant's Products 1 and 2, the "inner rising wall" is not provided at the part corresponding to the forearm, excluding the hand, which is a structure of the forearm treatment mechanism necessary for showing the function and effect of Invention C-1, and therefore, it is impossible to give a massage to the forearm, excluding the hand, by using a pair of rising walls that are formed in the length direction of the armrest unit.

Therefore, Defendant's Products 1 and 2 cannot achieve the purpose of Invention C-1. It cannot be said that they show the same function and effect, and therefore, they do not fulfill the second requirement.

(C) Concerning the allegation related to the third requirement

The Difference is not limited to the matter of design variation. Therefore, Defendant's Products 1 and 2 do not fulfill the third requirement.

(D) The fourth requirements (Whether it could have been easily conceived of by a person skilled in the art)

Defendant's Products 1 and 2 could have been easily conceived of by a person skilled in the art based on the invention stated in Exhibit Otsu C19 (Unexamined Patent Application Publication No. 2005-287831) and Exhibit Otsu C20 (Unexamined Patent Application Publication No. 2005-28045) that were publications distributed before the filing of Application C. Therefore, they do not fulfill the fourth requirement.

(E) The fifth requirement (Special circumstances, such as intentional elimination, etc.)

The structure wherein the "hollow unit" is "formed with an outer rising wall and an inner rising wall respectively provided on the left and right sides in the width direction of the armrest unit, as well as with a bottom unit" (Constituent Feature [C]) was added when Application C was filed. It is obvious from the external and objective perspectives that the structure wherein the "hollow unit" has a part where there is no "inner rising wall" was intentionally eliminated by the aforementioned addition of Constituent Feature [C].

Therefore, Defendant's Products 1 and 2 were intentionally eliminated from the claims of Invention C-1 in the procedures for Application C. There are special circumstances that their structures are not considered to be equivalents to the structures

stated in the claims of Invention C-1. Therefore, Defendant's Products 1 and 2 do not fulfill the fifth requirement.

4. Issue 2-2 (Whether the invalidity defense related to Patent C is established) (Issue related to Patent C)

(Allegation of the Appellee)

Patent C has the following grounds for invalidation and should be invalidated by a trial for patent invalidation. Therefore, the Appellant cannot exercise Patent Right C against the Appellee pursuant to the provisions of Article 104-3, paragraph (1) of the Patent Act.

(1) Grounds for Invalidation 1 (Lack of an inventive step of Inventions C, which use Exhibit Otsu C19 as primary prior art)

A. Invention indicated in Exhibit Otsu C19

According to the statements in Exhibit Otsu C19 that was a publication distributed before the filing of Application C ([0021] through [0023], [0070] through [0073], [0077], [0078], FIG. 16, 17, 20, 22, and 28), the following invention (hereinafter referred to as "Exhibit Otsu C19 Invention") is stated in Exhibit Otsu C19.

[Exhibit Otsu C19 Invention]

a. and g. A treatment machine 1a that has chair body 2a including seat unit 3a and backrest unit 5a, and armrest unit 6a on both sides of chair body 2a, which is characterized by the following structures:

b. wherein armrest unit 6a has a forearm insertion opening unit, wherein elbow insertion concave groove 61a is opened in response to elbow treatment unit 623a, to insert the forearm of a massage recipient; and elbow insertion concave groove 61a that is extended from the forearm insertion opening unit to insert and hold the forearm, including the hand, of a massage recipient in the inside of armrest unit 6a;

c. wherein elbow insertion concave groove 61a is formed with the outer rising unit, bottom unit, and top surface unit;

d. wherein the top surface unit is provided in the form of closing the top of the edge of elbow insertion concave groove 61a at the upper front-end of the outer rising unit;

e. wherein armrest unit 6a has;

e-1 the part at the front part that is surrounded by the bottom unit, outer rising unit, and top surface unit, and which corresponds to hand treatment unit 621a that is located at elbow insertion concave groove 61a; and

e-2 the part at the rear part that is formed in an L-shape with the bottom unit and the outer rising unit, and which corresponds to elbow treatment unit 623a that is located at the forearm insertion opening unit; and

f. expansion/contraction bags are provided respectively at hand treatment unit 621a, forearm treatment unit 622a, and elbow treatment unit 623a.

B. Whether Invention C-1 could have been easily conceived of by a person skilled in the art

(A) Comparison between Invention C-1 and Exhibit Otsu C19 Invention

Common features and differences between Invention C-1 and Exhibit Otsu C19 Invention are stated below.

[Common features]

"a. and g. A treatment machine that has a chair body including a seat unit and a backrest unit, and an armrest unit on both sides of the chair body, which is characterized by the following structures:

b. wherein the armrest unit has a forearm insertion opening unit, wherein an elbow insertion concave groove is opened in response to the elbow treatment unit, to insert the forearm of a massage recipient; and the elbow insertion concave groove that is extended from the forearm insertion opening unit to insert and hold the forearm, including the hand, of a massage recipient in the inside of the armrest unit;

c. wherein the elbow insertion concave groove is formed with the outer rising unit, bottom unit, and top surface unit;

d. wherein the top surface unit is provided in the form of closing the top of the edge of the elbow insertion concave groove at the upper front-end of the outer rising unit;

e. wherein the armrest unit has;

e-1. the part at the front part that is surrounded by the bottom unit, outer rising unit, and top surface unit, and which corresponds to the hand treatment unit that is located at the elbow insertion concave groove; and

e-2. the part at the rear part that is formed in an L-shape with the bottom unit and the outer rising unit, and which corresponds to the elbow treatment unit that is located at the forearm insertion opening unit; and

f. expansion/contraction bags are provided respectively at a hand treatment unit, forearm treatment unit, and elbow treatment unit."

[Differences]

The differences between Invention C-1 and Exhibit Otsu C19 Invention are as stated below, including Differences 1 through 4, based on the divided explanation of constituent features; however, they are actually summarized in the point that they are different on the point that the "hollow unit" in Invention C-1 has an "inner rising wall," and, on the other hand, "elbow insertion concave groove 61a" in Exhibit Otsu C19 Invention has no "inner rising wall" (hereinafter said point of difference is referred to

as the "Difference").

(Difference 1)

Invention C-1 has the structure, in Constituent Feature [C], wherein "the hollow unit is formed with an outer rising wall and an inner rising wall respectively provided on the left and right sides in the width direction of the armrest unit, as well as a bottom unit" and the hollow unit has an inner rising wall, while Exhibit Otsu C19 Invention has elbow insertion concave groove 61a that is formed with an outer rising unit, a bottom unit, and a top surface unit, but has no inner rising wall.

(Difference 2)

Invention C-1 has the structure, in Constituent Feature [D], wherein "a hand-rest unit is provided at the upper front-end of the aforementioned outer rising wall and inner rising wall in the form of closing the upper end of the hollow unit," while Exhibit Otsu C19 Invention has a top surface unit that is provided at the upper front-end of the outer rising unit in the form of closing the top of the edge of elbow insertion concave groove 61a, but elbow insertion concave groove 61a has no inner rising wall.

(Difference 3)

Invention C-1 has the structure, in Constituent Feature [E-1], wherein "a treatment unit, wherein the front part is surrounded by the bottom unit, the outer rising wall, the inner rising wall, and the hand-rest unit and which is placed at the hollow unit," while Exhibit Otsu C19 Invention has a structure at the part corresponding to hand treatment unit 621a wherein elbow insertion concave groove 61a has a bottom unit, an outer rising unit, and a top surface unit, but has no inner rising wall.

(Difference 4)

Invention C-1 has the structure, in Constituent Feature [B], "wherein the armrest unit has a forearm insertion opening unit to insert the forearm of a massage recipient from the inner rear side and a hollow unit that is extended from the forearm insertion opening unit to insert and hold the forearm, including the hand, of a massage recipient in the inside of the armrest unit," while Exhibit Otsu C19 Invention has not defined whether the arm of a massage recipient is inserted from the inner rear side in the forearm insertion opening unit to insert the forearm of a massage recipient wherein elbow insertion concave groove 61a is opened in response to elbow treatment unit 623a.

(B) Invention stated in Exhibit Otsu C20

According to the statements in Exhibit Otsu C20 (Unexamined Patent Application Publication No. 2005-28045) that was a publication distributed before the filing of Application C ([0003], [0004], [0029] through [0031], [0034], [0035], [0043], [0064], FIG. 1, 2, 7 through 12), the following invention (hereinafter referred to as "Exhibit

Otsu C20 Invention") is stated in Exhibit Otsu C20.

A massage machine, "which has rear side opening 27 to insert the hand of a massage recipient from the inner rear side and tunnel support 22 that is extended from rear side opening 27 to insert and hold the hand of a massage recipient on the part corresponding to the hand of a massage recipient on armrest unit 7;

wherein tunnel support 22 that is provided at armrest unit 7 for the hand of a massage recipient is formed with right and left side units 24 and 24 that are respectively provided on the left and right sides in the width direction of armrest unit 7, and armrest unit surface 7a, which is a bottom surface;

wherein top surface unit 25 is provided in the form of closing the top of tunnel support 22 on the top surface connecting right and left side units 24 and 24;

wherein a treatment unit is located at tunnel support 22, in which armrest unit 7 is surrounded by armrest unit top surface 7a in the front part, right and left side units 24 and 24, and top surface unit 25; and

wherein tunnel support 22 has air cells 33, 34, and 35."

(C) Whether the difference could have been easily conceived of by a person skilled in the art

In Exhibit Otsu C20 Invention, tunnel support 22 is formed with right and left side units 24 and 24, top surface unit 25, and armrest unit top surface 7a. Tunnel support 22 in Exhibit Otsu C20 Invention corresponds to the "hollow unit" in Invention C-1, right and left side units 24 and 24 in Exhibit Otsu C20 Invention correspond to the "outer rising wall" and the "inner rising wall" in Invention C-1, and armrest unit top surface 7a in Exhibit Otsu C20 Invention corresponds to the "bottom unit" in Invention C-1, respectively. Therefore, the aforementioned tunnel support 22 in Exhibit Otsu C20 Invention has an "inner rising wall" and has the structure of Invention C-1 related to the Difference.

In addition, Exhibit Otsu C19 Invention and Exhibit Otsu C20 Invention are common in the technology field of "an invention related to a chair-type massage machine," the problem "to give an effective massage to hands," and they also share the function and effect: in Exhibit Otsu C19 Invention, elbow insertion concave groove 61a that has elbow holding mechanism 62a will effectively give massage by pressing, finger pressing, and kneading of hands, while Exhibit Otsu C20 Invention has the effect to massage hands for sure by tunnel support 22, which has air cells 33, 34, and 35. Concerning tunnel support 22, whether to surround the hand unit on all four sides of the bottom unit (armrest unit top surface 7a) by providing an outer rising wall, inner rising walls (side units 24 and 24), and top surface unit (top surface unit 25) as shown

in Invention Otsu C20 Invention, or whether to surround the hand unit on three sides of the bottom unit by providing an outer rising wall and top surface unit as shown in Invention Otsu C19 Invention were both publicly known structures and they were selective structures for a person skilled in the art before the filing of Application C. Based on the above, it can be said that there is the motivation to apply the structure of Exhibit Otsu C20 Invention to elbow insertion concave groove 61 in Exhibit Otsu C19 Invention based on Exhibits Otsu C19 and C20. Therefore, the structure of Invention C-1 related to the Difference could have been easily conceived of by a person skilled in the art.

C. Whether Inventions C-2 through C-5 could have been easily conceived of by a person skilled in the art

(A) Invention C-2

Comparing Invention C-2 and Exhibit Otsu C19 Invention, they are different on the following points: Exhibit Otsu C19 Invention does not have the structure of Invention C-2 "wherein the bottom unit and the hand-rest unit have different surfaces to place a massage recipient's forearm and the surface of the hand-rest unit is formed in a higher position than the surface of the bottom unit" (Constituent Feature [I]) and the structure of "a chair-type massage machine stated in Claim 1" (Constituent Feature [J]).

The difference related to Constituent Feature [J] could have been easily conceived of by a person skilled in the art, as stated in B. above.

In addition, as stated in B. (B) above, in Exhibit Otsu C20 Invention, "top surface unit 25 is provided in the form of closing the top of tunnel support 22 on the top surface connecting right and left side units 24 and 24, and armrest unit 7 is surrounded by armrest unit top surface 7a in the front part, right and left side units 24 and 24, and top surface unit 25." Therefore, top surface unit 25 of tunnel support 22 is formed in a higher position than armrest unit top surface 7a and Exhibit Otsu C20 Invention has a structure equivalent to the structure of Invention C-2 related to Constituent Feature [I]. The structures e., e-1., and e-2. of Exhibit Otsu C20 Invention are equivalent to the structure of Invention C-2 related to Constituent Feature [I] and there is the motivation to apply the structure of Exhibit Otsu C20 Invention to Exhibit Otsu C19 as indicated in B. (C) above. Therefore, a person skilled in the art could have easily conceived of the structure of Invention C-2 related to Constituent Feature [I] in Exhibit Otsu C19 Invention based on Exhibits Otsu C19 and C20.

(B) Invention C-3

Comparing Invention C-3 and Exhibit Otsu C19 Invention, they are different on the following points: Exhibit Otsu C19 Invention does not have the following structures of

Invention C-3 "wherein expansion/contraction bags are provided at the corresponding positions of two surfaces, that is, the outer rising wall and the bottom unit of the forearm insertion opening unit, respectively" (Constituent Feature [K]), "the lower edge of one of the expansion/contraction bags is fixed at the lower part of the outer rising wall and the edge of another expansion/contraction bag on the outer rising wall side is fixed on the outer rising wall side of the bottom unit" (Constituent Feature [L]), and "a chair-type massage machine as stated in Claim 1" (Constituent Feature [M]).

The difference related to Constituent Feature [M] could have been easily conceived of by a person skilled in the art, as stated in B. above.

In addition, the structures of Invention C-3 related to Constituent Features [K] and [L] are disclosed in [0023], [0025], [0027], FIG. 7 through 9, etc. of Exhibit Otsu C21 (Unexamined Patent Application Publication No. 2003-153970) and in [0032] through [0034], [0036] through [0041], FIG. 1, 2 through 5, 6, etc. of Exhibit Otsu C22 (Unexamined Patent Application Publication No. 2003-319990). Exhibit Otsu C19 Invention and inventions stated in Exhibits Otsu C21 and C22 have in common the technology field of "a chair-type massage machine," the problem "to give an effective massage to hands," and their actions and functions. Therefore, there is the motivation to apply the structures stated in Exhibits Otsu C21 and C22 to Exhibit Otsu C19 Invention.

Therefore, a person skilled in the art could have easily conceived of the structures of Invention C-3 related to Constituent Features [K] and [L] in Exhibit Otsu C19 Invention based on Exhibits Otsu C19 through C22.

(C) Invention C-4

Comparing Invention C-4 and Exhibit Otsu C19 Invention, they are different in the following points: Exhibit Otsu C19 Invention does not have the following structures of Invention C-4 "at the lower part of the outer rising wall of the forearm insertion opening unit, the edge that is formed at the lower part of one of the expansion/contraction bags is fixed, and the edge that is formed at another expansion/contraction bag is fixed on the outer rising wall side at the bottom unit of the forearm insertion opening unit" (Constituent Feature [N]) and "a chair-type massage machine stated in Claim 3" (Constituent Feature [O]).

The structure of Invention C-4 related to Difference N is not substantially different from the structures of Constituent Features [K] and [L] of Invention C-3.

In addition, the difference related to Constituent Feature [O] could have been easily conceived of by a person skilled in the art, as stated in (B) above. Therefore, a person skilled in the art could have easily conceived of the structure of Invention C-4 related

to Constituent Feature [N] in Exhibit Otsu C19 Invention based on Exhibits Otsu C19 through C22.

(D) Invention C-5

Comparing Invention C-5 and Exhibit Otsu C19 Invention, they are different on the following points: Exhibit Otsu C19 Invention does not have the structure of Invention C-5 "wherein the armrest unit is provided so as to be movable in the front-rear direction in relation to the chair body; and the armrest unit moves in the front-rear direction in relation to the chair body in conjunction with the reclining movement of the backrest unit while maintaining a predetermined amount of movement, which corresponds to the reclining angle of the backrest unit" (Constituent Feature [P]) and the structure "a chair-type massage machine stated in Claims 1 through 4" (Constituent Feature [Q]).

The difference related to Constituent Feature [Q] could have been easily conceived of by a person skilled in the art, as stated in (A) through (C) and B. above.

In addition, the structure of Invention C-5 related to Constituent Feature [P] is stated in Exhibit Otsu C20 ([0017], [0023] through [0026], [0027], FIG. 4 through 6, etc.) and was a well-known structure at the time when Patent C was filed (e.g., Exhibit Otsu C23 (Unexamined Patent Application Publication No. 1998-179675), Exhibit Otsu C24 (Unexamined Patent Application Publication No. 2005-177279)). As stated in B. (C) above, there is the motivation to apply the structure of Exhibit Otsu C20 Invention to Exhibit Otsu C19 Invention. Therefore, a person skilled in the art could have easily conceived of the structure of Invention C-5 related to Constituent Feature [P] in Exhibit Otsu C19 Invention based on Exhibits Otsu C19 and C20 and the well-known art at the time when Application C was filed.

D. Summary

Based on the above, Inventions C could have been easily conceived of by a person skilled in the art based on Exhibits Otsu C19 through C22 and well-known art at the time when Application C was filed, and therefore Patent C has grounds for invalidation (Article 123, paragraph (1), item (ii) of the Patent Act) for violating Article 29, paragraph (2) of said Act.

(2) Grounds for Invalidation 2 (Violation of clarity requirements)

According to the statements in the claims (Claim 1) of Invention C-1 and statements in Description C, the chair-type massage machine in Invention C-1 has the following structures: wherein a "forearm insertion opening unit" is provided in the armrest unit and a "hollow unit" that is extended from and in connection with the forearm insertion opening unit is provided inside the armrest unit (Constituent Feature [B]); wherein the "hollow unit" is formed with an outer rising wall and an inner rising wall respectively

provided on the left and right sides in the width direction of the armrest unit, as well as with a bottom unit (Constituent Feature [C]); wherein the armrest unit has a treatment unit, wherein the "front part" is surrounded by the bottom unit, the outer rising wall, the inner rising wall, and the hand-rest unit and which is placed at the "hollow unit"; and wherein the armrest unit has a treatment unit, wherein the "rear part" is formed in an L-shape with the bottom unit and the outer rising wall and which is located at the "forearm insertion opening unit" (Constituent Features [E-1] and [E-2]). There are statements in [0046] and FIG. 14 of Description C that the hollow unit that "is formed with an outer rising wall and an inner rising wall, as well as with a bottom unit" is located only in the "front part" and the insertion opening unit that "is formed in an L-shape with the bottom unit and the outer rising wall" is located at the "rear part." Based on the above, the "hollow unit" and "forearm insertion opening unit" in Invention C-1 are distinguished in terms of their areas by the fact that the "hollow unit" with an inner rising wall is provided at the "front part" and the "forearm insertion opening unit" without an inner rising wall is provided at the "rear part."

On the other hand, if it is construed based on the statements in [0046] and FIG. 14 of Description C that the "hollow unit" in Invention C-1 only requires a part with an outer rising wall, an inner rising wall, and a bottom unit and that the "hollow unit" includes the part without the inner rising wall, the difference between the "hollow unit" and "forearm insertion opening unit" becomes extremely unclear.

Then, the statements in the claims (Claim 1) of Invention C-1 are not clear and do not conform to the requirements as defined in Article 36, paragraph (6), item (ii) of the Patent Act (clarity requirements). The same applies to the statements in the claims (Claims 2 through 5) of Inventions C-2 through C-5 that directly or indirectly cite Invention C-1 as particulars for identifying the invention. Therefore, Patent C has grounds for invalidation (Article 123, paragraph (1), item (iv) of said Act) for violating Article 36, paragraph (6), item (ii) of said Act.

(3) Grounds for Invalidation 3 (Violation of amendment requirements as defined in Article 17-2, paragraph (3) of the Patent Act)

The "hollow unit" in Invention C-1 is construed to be one with a structure where the "inner rising wall" is provided around the entire "hollow unit" and to mean that the "inner rising wall" extends at least to part of the forearm of a massage recipient.

Working examples, etc. stated in the Original Description for Application C (Exhibit Otsu C9) only disclosed the structures wherein an inner rising wall is not provided in the "center part" of the armrest unit and wherein the hollow unit, which has an inner rising wall, an outer rising wall, and a bottom unit at the "front part," can give treatment

only to the hands of a massage recipient. There is no statement or suggestion about the structures wherein the "hollow unit" of which the "center part" is formed in a "C-shape" and which is formed with an inner rising wall, an outer rising wall, and a bottom unit so as to insert and hold the "forearm, including the hand."

Based on the above, the Amendment includes the addition of Invention C-2 (Claim 2) which has a treatment unit that is formed in a "C-shape" without having an inner rising wall at its "center part" (Exhibits Otsu C12 and C13). Therefore, the Amendment is to add new matters and does not conform to the requirements as defined in Article 17-2, paragraph (3) of the Patent Act.

Consequently, Patent C has grounds for invalidation (Article 123, paragraph (1), item (i) of said Act) for violating Article 17-2, paragraph (3) of said Act.

(4) Grounds for Invalidation 4 (Violation of support requirements related to Invention C-2)

According to the statements in the claims (Claim 2) of Invention C-2, it is construed that Invention C-2 forms the "center part" of the armrest unit in a C-shape and has the "hollow unit" that is formed with the bottom unit, the outer rising wall, and the inner rising wall at the "front part," and that forearm, including the hand, can be inserted and held in the "hollow unit" and the "hollow unit" can also massage "forearms." In addition, the "hollow unit" as defined in Claim 1 (Invention C-1) as cited in Constituent Feature [J] of Invention C-2 means one with an "inner rising wall" that extends at least to part of the forearms of a massage recipient.

On the other hand, in the detailed explanation of the invention in Description C, the structure wherein the "center part" is a C-shape is disclosed; however, there is only a statement concerning a working example where only the "hands" can be inserted and held at the "front part" that is a hollow unit and which includes three surfaces, a bottom unit, an outer rising wall, and an inner rising wall, and expansion/contraction bags to give treatment to the "hands" are provided. There is no statement or suggestion that, at the "front part," "forearms" can be inserted and held and treatment can be given to the "forearms," including the "hands," using expansion/contraction bags, etc.

Then, a person skilled in the art cannot recognize that the problems of Invention C-2 can be solved based on the statements in the detailed explanation of the invention in Description C and common general technical knowledge at the time when Application C was filed. Therefore, Invention C-2 does not conform to the requirements (support requirements) as defined in Article 36, paragraph (6), item (i) of the Patent Act.

Consequently, Patent C related to Invention C-2 has grounds for invalidation (Article 123, paragraph (1), item (iv) of said Act) for violating Article 36, paragraph

(6), item (i) of said Act.

(Allegation of the Appellant)

(1) Concerning Grounds for Invalidation 1

When intending to apply Exhibit Otsu C20 Invention to Exhibit Otsu C19 Invention, it is required to provide an "opening unit" that is formed with tunnel support 22 in Exhibit Otsu C20 Invention on the "top surface unit" of armrest unit 6a on which the hand can be placed in Exhibit Otsu C19 Invention. Therefore, even if Exhibit Otsu C20 Invention is applied to Exhibit Otsu C19 Invention, there is no way to achieve Invention C-1.

In addition, Exhibit Otsu C19 Invention aims to solve the problem in existing technology that "since a rising wall is provided at the top of the armrest unit of a chair body in order to hold and support the arms or elbows of a human body to give treatment, comfortable treatment can be given to arms and elbows, but when a massage recipient does not want to have a massage to arms or elbows or just wants to place elbows on the armrest, the rising wall may become an obstacle and cause discomfort; and the machine does not look nice and has a design problem"; and also aims to allow "to give treatment corresponding to differences of individual massage recipients and to provide an excellent massage machine with further new treatment effects and convenience." On the other hand, Exhibit Otsu C20 Invention aims to solve the problem that "since the hands are lighter than the body, when pressing the hands upward from the armrests, the hands move upward and a massage recipient cannot fully feel that he/she is massaged" and to "makes sure to give a massage to the hands." The problems to be solved and aims of both inventions are different, and therefore, there is no motivation to apply Exhibit Otsu C20 Invention to Exhibit Otsu C19 Invention.

Moreover, when intending to apply tunnel support 22 in Exhibit Otsu C20 Invention to hand treatment unit 621a at the front part of elbow insertion concave groove 61a in Exhibit Otsu C19 Invention, they physically collide. If tunnel support 22 in Exhibit Otsu C20 Invention that covers the front part of armrest unit 6a in Exhibit Otsu C19 Invention is applied, the top surface unit of the tunnel support becomes an obstacle when a massage recipient wants to place elbows on the top surface unit of the armrest unit. Therefore, there are factors interfering with the application of Exhibit Otsu C20 Invention to Exhibit Otsu C19 Invention.

Consequently, Grounds for Invalidation 1 alleged by the Appellee are groundless.

(2) Concerning Grounds for Invalidation 2

The Appellee only alleged that the criteria to distinguish the "forearm insertion opening unit" and "hollow unit" are unclear, but did not state that specific statements

in the claims (Claim 1) of Invention C-1 are unclear. Therefore, the allegation of the Appellee concerning the violation of clarity requirements itself is groundless.

According to Constituent Feature [B], Invention C-1 is identified as having a structure wherein the armrest unit has a "forearm insertion opening unit" and a "hollow unit"; the "forearm insertion opening unit" is a structure to insert the forearm of a massage recipient from the inner rear side and the "hollow unit" is a structure wherein it is extended from the forearm insertion opening unit to insert and hold the forearm, including the hand, of a massage recipient in the inside of the armrest unit. Therefore, the details of the "forearm insertion opening unit" and "hollow unit" are clear.

Consequently, Grounds for Invalidation 2 are groundless.

(3) Concerning Grounds for Invalidation 3

The "hollow unit" in Invention C-1 includes a structure wherein an "inner rising wall" is provided on part of the "hollow unit." The embodiment that is disclosed in [0046] and FIG. 14 in the Original Description for Application C discloses the embodiment of Invention C-2 regardless of whether the part where an inner rising wall is provided is to insert and hold only the hand of a massage recipient.

Therefore, the Amendment (Exhibit Otsu C13) is within the scope of the statements in the Original Description at the time when Application C was filed, but does not add a new matter. Therefore, Grounds for Invalidation 3 are groundless.

(4) Concerning Grounds for Invalidation 4

According to the statements in Description C, Invention C-2 can be recognized by a person skilled in the art as showing that the relevant problem can be solved and Invention C-2 conforms to the support requirements. Therefore, Grounds for Invalidation 4 are groundless.

5. Issue 3 (Amount of damages, etc. that should be compensated or returned by the Appellee)

(Allegation of the Appellant)

(1) Amount of damages based on Article 102, paragraph (2) of the Patent Act

A. Application of Article 102, paragraph (2) of the Patent Act

(A) The Appellee infringed Patent C by the export or sale of Defendant's Products 1 and 2, and therefore, the Appellee is obliged to compensate the Appellant for damages.

If there are circumstances where the patentee would have been able to gain profits if there had been no patent infringement by the infringer, it should be construed that the application of Article 102, paragraph (2) of the Patent Act is approved. When applying said paragraph, the patentee is not required to have worked the patented invention.

In addition, the nature of the damages estimated based on Article 102, paragraph (2)

of the Patent Act is lost profits due to decreases in the sales of the patentee. If the patentee was selling a product that is in a relationship where its sales decreased due to the presence of infringing products (products that have consumers in common and products under the same demand; hereinafter, such products are referred to as "competing products" in some cases), that fact provides a basis for finding damages to the patentee and it can be said that there are said circumstances.

Based on the above, Defendant's Products 1 and 2 are "a chair-type massage machine that has a forearm treatment mechanism in the armrest unit to give massages to the forearms of a massage recipient" and consumers who desire to purchase such massage machine make comparisons among any other chair-type massage machines that have a forearm treatment mechanism. Therefore, those massage machines should be construed to have consumers in common with Defendant's Products 1 and 2, fall under products under the same demand, and fall under competing products.

(B) During the period from January 1, 2011 until December 31, 2021, as stated in Attachment 14, the Appellant sold EC-2700, EC-2800, EC-3700, EC-3800, EC-3850, EC-3900, JP-1000, JP-1100, JP-870, Premium 4.0, Premium 4D, Premium 4S, and 4D-970 (hereinafter collectively referred to as "Appellant's Product 1"), all of which fall under "a chair-type massage machine that has a forearm treatment mechanism in the armrest unit to give massages to the forearms of a massage recipient," for overseas market of ●●●●●●●●●● (Exhibits Ko C8 through C17 and C65). Appellant's Product 1 is a competing product with Defendant's Product 1 that is product for overseas.

Countries and regions to which the Appellant may transfer and export products for overseas are not limited to specific countries and regions, but the Appellant may transfer or export the products to the whole world from Japan. In addition, based on the fact that the Japanese patent right is valid only in the Japanese territories, the question is a competition between Appellant's Product 1 and Defendant's Product 1 in the transfer and export from Japan to overseas, but not a competition on the market in an individual country and region outside the Japanese territories. It should be construed that to which overseas country or region the Appellant and the Appellee transfer or export products respectively does not have an impact on the decision whether to apply Article 102, paragraph (2) of the Patent Act.

Next, on and after November 25, 2011, the Appellant sold AS-760, AS-830, AS-840, AS-1000, and AS-1100 (hereinafter collectively referred to as "Appellant's Product 2"), all of which fall under "a chair-type massage machine that has a forearm treatment mechanism in the armrest unit to give massages to the forearms of a massage recipient," in Japan (Exhibits Ko C3 through C7 and C57). Appellant's Product 2 is a competing

product with Defendant's Product 2.

Therefore, in this case, application of Article 102, paragraph (2) of the Patent Act should be approved.

(C) In this regard, the Appellee alleged as follows: [i] in order to say that there are circumstances where the patentee would have been able to gain profits if there had been no patent infringement by the infringer, it should be construed to require that the patentee sell a substitute competing product (for which the selling time on the market overlaps with the infringing product) that has the same function and effect as the patent in question and does not infringe the patent right of another party whose infringement is alleged by the patentee; [ii] Appellant's Products 1 and 2 do not have the function and effect of Inventions C; [iii] Appellant's Products 1 and 2 are infringing products of Patent No. 4617275 (hereinafter referred to as "Unrelated Patent 2"; Exhibits Otsu C156 and C157) and Patent No. 5009445 (hereinafter referred to as "Unrelated Patent 3"; Exhibits Otsu C154 and C155) that are held by the Appellee and that the Appellee alleged as the grounds for demand in a patent infringement lawsuit which is pending at the Osaka District Court and wherein the Appellee is the "Plaintiff" and the Appellant is the "Defendant" (Osaka District Court 2017 (Wa) 7384; hereinafter referred to as the "Unrelated Case"); and [iv] therefore, Appellant's Products 1 and 2 are not competing products (for which the selling time on the market overlaps with the infringing products) that have the same function and effect as the function and effect of the relevant patent and are not products that infringe the patent right of another party whose infringement is alleged by the patentee; and, in this case, the aforementioned circumstances do not exist and it does not satisfy the requirements for applying Article 102, paragraph (2) of the Patent Act.

However, in order to say that the patentee's product is a competing product with the infringing product, it is only required that both products have consumers in common and it is not required that the patentee's product has the same function and effect as the function and effect of the patent in question. In addition, the elements of whether the arm can easily be inserted or removed or whether a massage recipient can easily stand up and sit, which are related to the function and effect of Inventions C, are the elements to be considered when a consumer selects a product; however, it is not a factor to distinguish consumers of a chair-type massage machine. Further, requiring it to be a product that shows the function and effect of Inventions C is equivalent to requiring it to be a product that worked the patented invention as a requirement for applying Article 102, paragraph (2) of the Patent Act. Therefore, it is not appropriate.

Next, Appellant's Products 1 and 2 are not infringing products of Unrelated Patents

2 and 3 to begin with. In addition, in a patent infringement lawsuit, injunction against the manufacture, sale, etc. due to infringement of the patent right of another person is approved only for the portion to be manufactured and sold in the future. Even if a competing product of a patentee is determined to be an infringing product of another person ex-post facto, as long as it is actually found that the competing product was distributed in the market, a relationship is found that the demand formerly attracted to the infringing product of the infringer will shift to the competing product. Therefore, it cannot be denied that damages occurred to the patentee due to patent infringement by the infringer, in other words, the fact that there are circumstances where the patentee would have been able to gain profits if there had been no patent infringement by the infringer. Further, it is only necessary that the profits that the patentee gained from working the patent of another person be adjusted with said other person ex-post facto.

Consequently, the aforementioned allegations of the Appellee are groundless in their premise.

B. Profits of the Appellee (marginal profit)

(A) Sales amounts

a. Sales amounts of Defendant's Products 1 and 2 for the period from November 2011 through March 2021 are as stated in Attachment 8; as for Defendant's Product 1, it is ●●●●●●●●●● yen in total and as for Defendant's Product 2, it is ●●●●●●●● yen in total (excluding returned products and price reduction) (Exhibit Otsu C47).

In addition, the sales volumes (export volumes or sales volumes; the same applies hereinafter) of Defendant's Products 1 and 2 for the aforementioned period are as stated in Attachment 9; as for Defendant's Product 1, it is ●●●●●● pieces in total and as for Defendant's Product 2, it is ●● pieces in total (excluding ● pieces of returned products) (Exhibit Otsu C47).

b. In this regard, the Appellee alleged that "component costs, etc." and "marketing support costs" should be deducted from the sales amount of Defendant's Product 1.

However, the "component costs, etc." as alleged by the Appellee are costs related to the after-sale service for defective products and have no relationship with the sales amount of Defendant's Product 1. In addition, the "marketing support costs" as alleged by the Appellee are included as "price reductions" internally by the Appellee. They do not have a relationship with the sales amount of Defendant's Product 1 and the calculation method has no reasonable basis.

Consequently, the aforementioned allegations of the Appellee are groundless.

(B) Expenses

The Appellee alleged that the following items are expenses that became additionally necessary directly in relation to the manufacture/export or manufacture/sale of Defendant's Products 1 and 2 respectively: for Defendant's Product 1, [i] purchasing costs (purchasing in Shanghai), [ii] material costs, [iii] manufacturing loss costs, [iv] assembly costs at Daisen Factory, [v] manufacturing and logistics costs, [vi] design costs, [vii] compensating deposit, [viii] WEEE, [ix] certification, [x] trademark registration, etc., and [xi] L/C usance; for Defendant's Product 2, [i] purchasing costs (purchasing in Shanghai), [ii] material costs, [iii] manufacturing loss costs, [iv] assembly costs at Daisen Factory, [v] manufacturing and logistics costs, [vi] design costs, and [vii] transportation costs and assembly costs.

From among the aforementioned allegations of the Appellee, as for Defendant's Product 1, [i], [ii], and [v], and as for Defendant's Product 2, [i], [ii], [v], and [vii] are found to be expenses to be deducted from sales amount respectively; however, as stated below, the remaining allegations are disputed.

a. Related to Defendant's Products 1 and 2

Concerning [iii] manufacturing loss costs, they are the amount on the books where the Appellee assumed the percentage of defective products that arise during the manufacturing process to be 10%. It is not proved that the amount was actually paid, and they are not the costs required additionally per piece for export or sale of Defendant's Products 1 and 2.

Concerning [iv] assembly costs at Daisen Factory, it is not proved that the amount was actually paid. In addition, they are labor costs as fixed costs. Since specific details of operations in charge and engagement status of employees who engage in manufacturing of Defendant's Products 1 and 2 are not defined, they are not the costs required additionally per piece for export or sale of Defendant's Products 1 and 2.

Concerning [vi] design costs, the outsourcing agreement (Exhibit Otsu C150), explanatory journal (Exhibit Otsu C151), and calculation sheet (Exhibit Otsu C152) that were submitted by the Appellee are only internal data and objective support for payment, such as invoice, etc., was not submitted. Based on the above, it is not proved that the amount was actually paid. In addition, in light of the statement in Article 7 of the aforementioned outsourcing agreement, 10%, there should be an agreement for the design royalty rate; however, since no evidence related to the agreement has been submitted, the basis for calculating the royalty rate to be 10% in the calculation sheet is also unclear.

b. Related to Defendant's Product 1

Concerning [vii] compensating deposit, [viii] WEEE, [ix] certification, [x] trademark registration, etc., and [xi] L/C usance, none of them correctly reflect objective data or present the amounts that were actually paid.

In addition, [vii] compensating deposit is only the amount accumulated by the Appellee for accounting; [viii] WEEE is abstract recycling costs for all products of the Appellee; [ix] certification should be acquired once only for Defendant's Product 1; [x] trademark registration, etc. does not change in connection with the manufacture or sale of Defendant's Product 1; and [xi] L/C usance is a settlement means that the Appellee optionally selected and they are non-operating expenses that are not related to the manufacture and export of Defendant's Product 1. Based on the above, none of them are the costs required additionally per piece for export or sale of Defendant's Product 1.

(C) Marginal profit

a. The profit amount that the Appellee received from the export of Defendant's Product 1 and the sale in Japan of Defendant's Product 2 is as stated in the column of "Profit amount" in Attachment 10, ●●●●●●●●●● yen in total, after deducting the expenses as defined in (B) above from the sales amount as defined in (A) a. above.

b. According to the main sentence and (2) of 5-2-5 of the Consumption Tax Act Basic Instructions, "in cases of an infringement of an intangible property right, compensation for damages that the intangible property right holder receives from the infringer" falls under the value of asset transfer, etc. Therefore, the "profit" as used in "if...the infringer has profited from the infringement" as defined in Article 102, paragraph (2) of the Patent Act should be construed to include the portion equivalent to the consumption tax.

This also applies to the case where the infringement mode is export. In order for the patentee to receive compensation for damages from patent infringement, the portion equivalent to the consumption tax that will be imposed should also be considered to fall under the aforementioned "profit."

In addition, the time of asset transfer, etc. is the time when the patent was infringed. Therefore, the consumption tax rate for the period from November 25, 2011 through March 31, 2014 is 5%, the consumption tax rate for the period from April 1, 2014 through September 30, 2019 is 8%, and the consumption tax rate on and after October 1, 2019 is 10%, respectively.

Then, the profit amount (marginal profit) as defined in Article 102, paragraph (2) of the Patent Act that the Appellee received from the infringement related to the export of Defendant's Product 1 and the sale in Japan of Defendant's Product 2, is as stated in the column of "Marginal profit (including the amount equivalent to the consumption tax)" in Attachment 10, ●●●●●●●●●● yen in total. The profit amount is

assumed to be the amount of damages to the Appellant pursuant to said paragraph (hereinafter referred to as "Paragraph (2) Presumption" in some cases).

C. Concerning the allegation of the grounds for rebuttal of presumption

The Appellee alleged that the following matters fall under the grounds for rebuttal of Paragraph (2) Presumption: [i] the fact that the patented inventions are worked only in a part of Defendant's Products 1 and 2; [ii] the existence of competing products in the markets; [iii] the non-identity of the markets; [iv] the Appellee's marketing efforts (the brand power and advertising); and [v] the performances of Defendant's Products 1 and 2 (functions, designs, and other characteristics other than Inventions C). However, all of them are groundless as stated below.

(A) The fact that the patented inventions are worked only in a part of Defendant's Products 1 and 2

a. The technical meaning of Inventions C is, while making use of an advantage of prior art where a massage can be given to a wide range of the hands and arms simultaneously because there are a pair of rising walls of existing chair-type massage machines, to provide a structure to eliminate the factors that cause discomfort due to unnecessary pressure from the rising walls of existing chair-type massage machines by providing a forearm insertion opening unit, which is formed in an L-shape with an outer rising wall and a bottom unit so that the arms can be inserted and removed smoothly and a massage recipient can stand up and sit comfortably ([0005] through [0008] and [0013] of Description C). In addition, the technical meaning of Invention C-5 is to enable the position of the forearm in the forearm treatment mechanism that is provided in the arm rest unit not to change as much as possible regardless of the reclining angle of the backrest unit and to make it possible to give a stable massage to the forearms by providing the armrest unit, which moves in the front-rear direction in relation to the chair body in conjunction with the reclining movement of the backrest unit ([0018]).

The function and effect of Inventions C are to achieve the comfortable use of the massage machine on the assumption that an inner rising wall is provided at least in part of the forearm treatment mechanism.

The body part to which a chair-type massage machine can give a massage is a particular point of focus when a consumer selects a product. In the brochures for Defendant's Products 1 and 2, the structure and the function and effect of Inventions C are appealed. For example, in the brochure for Defendant's Product 1 (Exhibit Otsu C40), the following points are clearly shown in photographs: an inner rising wall is provided in the armrest unit; a forearm insertion opening unit is provided; air cells are provided in the entire armrest unit; and the armrest unit moves in the front-rear direction

in relation to the chair body in conjunction with the reclining movement of the backrest unit. Therefore, it can be recognized at a glance that it has a structure wherein an inner rising wall is provided and the arms can be inserted and removed smoothly, and in addition, it is explained in a text (page 2) that Defendant's Product 1 can give a massage to a wide range of the hands and arms simultaneously. The same applies to the brochure for Defendant's Product 2 (Exhibit Otsu C54).

Consumers who desire to purchase a chair-type massage machine that gives a massage to a wide range of the hands and forearms simultaneously determines to purchase Defendant's Products 1 and 2 based on the statements of the aforementioned brochures, and therefore it is obvious that attractiveness is found in Inventions C.

Therefore, even if Inventions C are worked only in a part of Defendant's Products 1 and 2, it does not fall under the grounds for rebuttal of Paragraph (2) Presumption.

b. In this regard, the Appellee alleged as follows: the function and effect of Inventions C-1 and C-2 are shown by the structure of the massage machine stated in Exhibit Otsu C19, which is well-known art; the structure of an "inner rising wall" has no relationship with the aforementioned function and effect; the Appellant does not sell products that worked Inventions C; and therefore, there is almost no technical value or technical meaning in Inventions C.

However, the massage machine stated in Exhibit Otsu C19 eliminated the inner rising wall completely and does not show the aforementioned function and effect of Inventions C that are on the assumption that an inner rising wall is provided at least in a part of the forearm treatment mechanism.

In addition, whether the Appellant works Inventions C or not is related to its business strategy after considering various circumstances. It cannot be said that the technical meaning of Inventions C is poor immediately from the fact that the Appellant has not worked Inventions C.

Consequently, the aforementioned allegations of the Appellee are groundless.

(B) The existence of competing products in the markets

The Appellee listed other products that the Appellee manufactures and products of other competitors, such as Panasonic Corporation (hereinafter referred to as "Panasonic"), Daito Electric Machine Industry Co., Ltd. (hereinafter referred to as "Daito EMC"), etc., and alleged that even if Defendant's Products 1 and 2 are not sold, the demand will shift to competing products of other companies in the markets in Japan and overseas and it is not in the relationship that the demand will shift to Appellant's Products 1 and 2; and therefore the existence of competing products of other companies falls under the grounds for rebuttal of Paragraph (2) Presumption.

However, the products of other companies that the Appellee listed include products for overseas for which it is not clear whether they were sold at the same time as Defendant's Product 1, products that cannot be considered as products exported from Japan to overseas, products for Japan for which sale period does not overlap with Defendant's Product 2, products for which price is expensive (from slightly lower than 300,000 yen through exceeding 400,000 yen) and that do not compete with Defendant's Product 2, and other products to which consumers' demand would not shift even if Defendant's Products 1 and 2 were not exported or sold. Therefore, the aforementioned allegation of the Appellee is groundless.

(C) Non-identity of the markets

a. Defendant's Product 1

Since the Japanese patent right is valid only in Japanese territories, the identity of the markets becomes a problem only with regard to a competition between Appellant's Product 1 and Defendant's Product 1 in the transfer and export from Japan to overseas. It should be construed that to which overseas country or region the Appellant and the Appellee transfer or export products respectively does not have an impact.

In addition, during the period from January 1, 2011 through December 31, 2021, as stated in Attachment 14, the Appellant sold "a chair-type massage machine which has a forearm treatment mechanism in the armrest unit to give massages to the forearms of a massage recipient" for overseas market of ●●●●●●●●●●. Not only the market in Japan for export and sale of products for overseas customers, but also the overseas market of export and sale destination per destination country (including region; the same shall apply hereinafter) are in common.

Therefore, the allegation of the Appellee that the markets are different between Defendant's Product 1 and Appellant's Product 1 is groundless.

b. Defendant's Product 2

Appellant's Product 2 can be purchased from the Appellant's website or online shopping sites of electronics retail stores. Most consumers use online shopping sites, etc. when considering whether to purchase a "massage machine," compare regular products, used products, and irregular products among products on said sites, and then eventually decide on a product to purchase. Based on the above, since consumers can purchase Appellant's Product 2 from online shopping sites, etc., the market for Defendant's Product 2 and Appellant's Products 1 and 2 is in common.

Therefore, the allegation of the Appellee that the markets are different between Defendant's Product 2 and Appellant's Product 2 is groundless.

(D) The Appellee's marketing efforts (the brand power, advertising)

There are the following facts: the Appellant is known as a "pioneer manufacturer of massage chairs" (Exhibit Otsu C50); massage chair's market share is divided into three by the Appellant, the Appellee, and Panasonic, and in and after 2017, the Appellant accounts for approximately 50% of the market share in sales volume and 40% of the market share in sales amount (Exhibits Otsu C51 and C52); the Appellant also received the Good Design Award that the Appellee has received (Exhibit Otsu C59); it is not recognized that the Appellee alone manufactures and sells massage chairs with excellent design; the Appellant and the Appellee are major Japanese massage machine manufacturers in the U.S. massage machine market; both of them are positioned as market leaders in the market (Exhibit Ko C43); and it cannot be said that the Appellee's brand power in the U.S.A. is higher than that of the Appellant. In light of these facts, many circumstances that the Appellee listed as a basis for their brand power also apply to the Appellant and therefore it cannot be said that the Appellee's brand power is high to the extent to rebut Paragraph (2) Presumption.

Next, supervision by experts, advertisement by celebrities, posting advertisements, etc. on electronic signboards, etc. that the Appellee cited are also implemented by other massage machine manufacturers, including the Appellant (Exhibit Ko C60 through C63). They are not particularly rare and do not exceed the category of regular advertising activities.

In addition, the Appellee alleged, concerning the posting of advertisements for Defendant's Product 1 on an electronic signboard in Times Square in New York, that investing an enormous amount of advertising costs is a special marketing effort.

However, advertisement that requires an enormous amount of costs does not always relate to consumers' motivation for purchasing and, regarding the point of attracting many consumers, posting advertisements on electronic signboards is not different from broadcasting TV commercials, etc. Therefore, the Appellee's marketing efforts in the U.S.A. do not exceed the regular range, and the allegation of the Appellee is groundless.

(E) The performances of Defendant's Products 1 and 2 (functions, designs, and other characteristics other than Inventions C)

The Appellee alleged that Defendant's Product 1 received awards related to design.

However, as stated in (D) above, there are the following facts: in the massage machine market in the U.S.A., both the Appellant and the Appellee are positioned as market leaders; the fact that the Appellee received awards in the U.S.A. has no impact on the brand power of the Appellee in the U.S.A.; and massage chair design is not included in the parameters that the Appellee listed as elements to be checked when

consumers select a massage chair. In light of these facts, it is not recognized that the design of Defendant's Product 1 has attractiveness.

In addition, even if Defendant's Products 1 and 2 worked the patent, design, etc. held by the Appellee, the rebuttal of Paragraph (2) Presumption cannot be found immediately based on that fact. It is required to allege and prove concretely that said working of the patent, design, etc. contributes to the sale of Defendant's Products 1 and 2; however, such allegation and proof were not made.

Further, the Appellee alleged that Inventions C had no attractiveness; however, as stated in (A) a. above, the structure and the function and effect of Inventions C are appealed in the brochures for Defendant's Products 1 and 2, and Inventions C have attractiveness. Therefore, the aforementioned allegation of the Appellee is groundless.

D. Summary

Based on the above, the amount of damages to the Appellant based on Article 102, paragraph (2) of the Patent Act, as stated in the column of "Marginal profit" (including the amount equivalent to the consumption tax) in Attachment 10, is ●●●●●●●●●● yen in total.

The Appellant requested part of the aforementioned amount of damages, the amounts (●●●●●●●● yen in total) indicated in the column of "Amount of damages related to Defendant's Product 1" and in the column of "Amount of damages related to Defendant's Product 2" in the column of "Details of Amount Claimed" as stated in Table 1 of Attachment "List of Claimed Amounts."

E. Amount of damages based on Article 102, paragraph (3) of the Patent Act related to the portion of rebuttal of presumption (alternative claim)

(A) If a rebuttal of presumption based on the grounds for rebuttal of presumption as alleged by the Appellant is approved, it should be construed that, concerning damages related to the portion of rebuttal, compensation for damages for the amount equivalent to the royalty can be claimed based on Article 102, paragraph (3) of the Patent Act.

Article 102, paragraph (3) of the Patent Act is based on the assumption of approving that a patentee who has not worked the patented invention by him/herself may claim compensation for damages for the amount equivalent to the royalty and stipulates to calculate damages for the amount equivalent to the royalty by considering the fact that infringing products were actually sold without permission as the basis for occurrence of damages (loss of the royalties that could have been received from the infringer).

On the other hand, if there is a causal relationship with products, where the patentee could have sold products if there had been no infringement, the presumption as defined in paragraph (2) of said Article is rebutted. In theory, the sales volume corresponding

to the part where the presumption is rebutted can be presumed. Therefore, there is a basis where the amount of damages as defined in paragraph (3) of said Article can be claimed on the grounds of loss of opportunity for licensing concerning the volume of the corresponding part. Based on the Act Partially Amending the Patent Act and Other Acts (Act No. 3 of 2019; hereinafter referred to as the "Amended Patent Act 2019" in some cases), paragraph (1) of said Article was amended. In light of the fact that intellectual property rights have the nature where a patentee can work the patent by him/herself, as well as can license the right and receive profits, this amendment was made to define that, in addition to lost profits due to decreases in sales (item (i) of said paragraph), lost profits due to the loss of opportunity for licensing (item (ii) of said paragraph) are also included in the amount of damages to the patentee and to affirm the double application of paragraphs (1) and (3) of said Article, which had long been argued. This purport also applies to the relationship between paragraph (2) and paragraph (3) of said Article.

(B) It should not be construed that the approval of the double application of Article 102, paragraph (2) of the Patent Act and paragraph (3) of said Article differs depending on the details of the grounds for rebuttal.

The grounds for rebuttal due to the existence of competing products, the non-identity of the markets, and brand power are based on the fact that all demands formerly attracted to infringing products will not necessarily shift to the products of the patentee, and therefore, the patentee's lost profits due to decreases in sales are not found. On the other hand, actually, the portion of infringing products related to the portion of rebuttal of presumption has been also sold and lost profits due to the loss of licensing opportunities for that portion can be recognized.

In addition, the grounds for rebuttal due to the fact that the patented inventions are worked only in a part of the infringing product and due to the performance of infringing products constitute only one of the factors forming the demand. They are merely one factor in determining whether the circumstances related to the demand for the infringing products will all lead to form the demand for the patentee's products. Therefore, there is no reason to distinguish said grounds for rebuttal from the grounds for rebuttal due to the non-identity of the markets, etc.

Further, distinguishing whether to apply Article 102, paragraph (3) of the Patent Act for each of the grounds for rebuttal makes calculation of the royalty rate troublesome and is not appropriate. Various factors are tangled together compositely to form the demand for a product. It is practically difficult to find the rebuttal percentage for each of the grounds for rebuttal and to find and determine whether lost profits due to the loss

of a licensing opportunity are found for the relevant rebutted part.

Consequently, the application of Article 102, paragraph (3) of the Patent Act should be approved for the portion of rebuttal of presumption as a whole, and then, the circumstances for each of the grounds for rebuttal should be considered when calculating the amount equivalent to royalty.

(C) In this case, based on the same grounds as (2) A. (C) below, the total sum of the amount obtained by multiplying the sales amounts of Defendant's Products 1 and 2 related to the portion of rebuttal of presumption by 10% and the amount equivalent to the consumption tax can be claimed as the amount of damages based on Article 102, paragraph (3) of the Patent Act.

(2) Amount of damages based on Article 102, paragraph (3) of the Patent Act

A. (A) In Table III-10 of "FY2009 Japan Patent Office Property System Problems Survey and Study Report: Survey and Study Report on the Use of Patent, etc. based on the Intellectual Property Value Assessment - Identifying Actual Status of Intellectual Property (Asset) Value and Royalty Rate -" created by Teikoku Databank, Ltd. (hereinafter referred to as the "Report"; Exhibits Ko C18 and C19, and Otsu C39), the royalty rate for the industry field "general machinery" is stated to be 4.2% as a result of a questionnaire related to the "royalty rate of companies in Japan" ("Market rate data by country: Japan").

In addition, in Table III-11, concerning the "royalty rate by judicial determination" for the industry field "machinery" for the period from 1997 through 2008, it is stated that the average is 4.4%, the median is 5.0%, and the highest value is 10% (25 cases). In Table III-12, concerning the "royalty rate by judicial determination" for the industry field "machinery" for the period from 2004 through 2008, it is stated that the average is 3.9%, the maximum value is 10.0%, and the minimum value is 1.0% (12 cases).

Further, Defendant's Products 1 and 2 that are chair-type massage machines are classified as medical devices. Concerning the royalty rate by technology field of the patent right, the royalty rate in the technology field "medical device" is stated that the average is 5.0% and the maximum value is 14.5% (Table 2-2 in the Report).

(B) In a chair-type massage machine with a forearm treatment mechanism, the following facts are important elements that have an impact on customers when they select goods: the forearms can be smoothly inserted in and removed from the forearm treatment mechanism; and an effective and stable massage can be given to a wide range of the forearms. Inventions C have great value and made a great contribution to sales of Defendant's Products 1 and 2 and profits.

In addition, the Appellant has a policy not to grant licenses to competitors.

Therefore, when assuming a case where the Appellant licenses Inventions C to the Appellee, it is impossible that the license is granted at the royalty rate for the industry level, but rather, an extremely high royalty must be established.

Further, the royalty rate that is specified ex-post facto for a person who infringed a patent right should naturally be higher than a regular royalty rate.

In consideration of other circumstances that also appeared in this case, the aforementioned royalty rate is not less than 10%.

(C) In addition, based on the same grounds as (1) B. (C) b. above, the total sum of the amount obtained by multiplying the sales amounts of Defendant's Products 1 and 2 by 10% and the amount equivalent to the consumption tax can be claimed as the amount of damages based on Article 102, paragraph (3) of the Patent Act.

B. Based on the above, the amount of damages to the Appellant equivalent to the royalty based on Article 102, paragraph (3) of the Patent Act is, as stated in the column of "Amount equivalent to royalty (including the amount equivalent to the consumption tax) in Attachment 12, ●●●●●●●●●● yen in total.

(3) Attorney's fees

It is reasonable to consider that the amount of damages equivalent to the attorney's fees that has a corresponding causal relationship with the infringement of Patent Right C by the Appellee is, in relation to the claim related to the amount of damages based on Article 102, paragraph (2) of the Patent Act, ●●●●●●● yen in total as stated in the column of "Amount equivalent to the attorney's fees" in Table 1 of Attachment "List of Claimed Amounts," and in relation to the claim related to the amount of damages based on paragraph (3) of said Article, ●●●●●●●● yen in total as stated in the column of "Amount equivalent to the attorney's fees" in Table 2 of said Attachment.

(4) Concerning the allegation of extinctive prescription

Concerning the right to claim compensation for damages based on the tort related to the infringement of Patent Right C on and before April 12, 2015, the Appellee alleged that at the time when this lawsuit was filed (April 13, 2018), the extinctive prescription as determined in the first sentence of Article 724 of the Civil Code before amendment by Act No. 44 of 2017 (hereinafter referred to as the "Civil Code before Amendment") had expired.

However, the users' manual for Defendant's Products 1 and 2 only indicates the perspective views of the products (Exhibits Ko 7 and 8). It is impossible to construe the structure of the armrest unit, conditions of attaching expansion/contraction bags to the armrest unit, and the reclining movement based on the statements therein. Therefore, it is impossible to identify whether Defendant's Products 1 and 2 fall within the technical

scope of Inventions C unless the actual machine is purchased.

As described above, the Appellant started preparations for filing this lawsuit triggered by the filing of an unrelated lawsuit by the Appellee (July 31, 2017). At that time, the Appellant purchased Defendant's Product 1 and recognized for the first time that Defendant's Products 1 and 2 fall within the technical scope of Inventions C.

Based on the above, it cannot be said that the Appellant knew the "damages" and "infringer" related to the infringement of Patent Right C before then. Therefore, at the time when this lawsuit was filed, the extinctive prescription for the Appellant's right to claim compensation for damages based on the tort related to the infringement of Patent Right C by the Appellee had not expired.

Therefore, the aforementioned allegation of the Appellee is groundless.

(5) Claim for returning unjust enrichment (related to the alternative claim)

If it is found that an extinctive prescription had expired as alleged by the Appellee concerning the right to claim compensation for damages based on the tort related to the infringement on and before April 12, 2015, it follows that the Appellee received profits of an amount equivalent to the royalty (the amount equivalent to the royalty based on Article 102 paragraph (3) of the Patent Act) without legal causes and caused a loss of the same amount to the Appellant.

Consequently, the Appellant may claim that the Appellee pay ●●●●●●●●●●●●●● yen as stated in the column of "Unjust enrichment amount" in Attachment 13 based on the right to claim the return of unjust enrichment.

(6) Summary

The Appellant alleged selectively, concerning Defendant's Products 1 and 2, the amount of damages based on Article 102, paragraph (2) of the Patent Act ((1) above) or the amount of damages based on paragraph (3) of said Article ((2) above), whichever is found to be the higher amount.

In addition, if the extinctive prescription had expired as alleged by the Appellee concerning the right to claim compensation for damages based on the tort related to the infringement on and before April 12, 2015, the Appellant demands that the Appellee return unjust enrichment as an alternative claim for the part related to the damages ((5) above).

Therefore, the Appellant demands that the Appellee [i] pay, based on the right to claim compensation for damages based on the tort related to the infringement of Patent Right C, 1.5 billion yen, which is part of the amount of damages, and delay damages accrued on the amounts stated in the column of "Claimed amount" in Table 1 of Attachment "List of Claimed Amounts" at the rate stated in the column of "Delay

damage rate (per annum)" of said Attachment for the period from the dates stated in the column of "Start date of delay damages" of said Attachment until the completion of the payment ((1) above), or selectively, ●●●●●●●●●● yen and delay damages accrued on the amounts stated in the column of "Claimed amount" in Table 2 of Attachment "List of Claimed Amounts" at the rate stated in the column of "Delay damage rate (per annum)" of said Attachment for the period from the dates stated in the column of "Start date of delay damages" of said Attachment until the completion of the payment ((2) above); and [ii] pay, as an alternative claim for the part related to the infringement on and before April 12, 2015 as defined in [i] above, based on the right to claim the return of unjust enrichment, ●●●●●●●●●● yen as stated in the column of "Amount of unjust enrichment" in Attachment 13 and delay damages accrued thereon at 5% per annum as specified by the Civil Code before Amendment for the period from April 26, 2018 (the day following the day on which the complaint was served) until the completion of payment ((5) above).

(Allegation of the Appellee)

(1) Concerning the allegation of the amount of damages based on Article 102, paragraph (2) of the Patent Act

A. Non-application of Article 102, paragraph (2) of the Patent Act

(A) The fact that damages to a patentee have occurred by patent infringement is the requirement for applying Article 102, paragraph (2) of the Patent Act. In order to say that damages to a patentee have occurred, circumstances where the patentee would have been able to gain profits if there had been no patent infringement by the infringer need to exist.

In order to say that there are said circumstances, it should be construed to require that the patentee sells a product equivalent to a product that worked a patented invention, in other words, a substitute competing product (for which the selling time on the market overlaps with the infringing product) that has the same function and effect as the patent in question and does not infringe the patent right of another party whose infringement is alleged by the patentee.

In addition, if the product of the patentee does not fall under a substitute competing product that has the same function and effect as the patent in question, it should be construed to require that there are special circumstances such as that the market is divided into two by the infringing product and the product of the patentee.

(B) a. Concerning Defendant's Product 1, the Appellee receives orders from agencies, which are corporations different from the Appellee, in each country and exports the products to said agencies. Each of said agencies engages in sales after the export as an

[vi] Design costs: ●●●●●●● yen

[vii] Transportation cost and assembly costs: ●●●●●●● yen

c. Supplemental descriptions

(a) Related to Defendant's Products 1 and 2

[iii] Manufacturing loss costs

It is difficult to avoid the occurrence of a certain number of defects during the manufacturing process and therefore the amount of the predetermined percentage is included as expenses. They are a type of manufacturing costs.

[iv] Assembly costs at Daisen Factory

Labor costs for assembling components for products in process to finish them are calculated by multiplying the predetermined amount of the processing cost rate by the predetermined time required for assembly per product.

[vi] Design costs

Outsourcing costs for product designs of Defendant's Products 1 and 2 to P, who is a famous designer. Design costs are calculated by multiplying the respective headquarters' wholesale price for Defendant's Products 1 and 2 by the predetermined percentage.

(b) Related to Defendant's Product 1

[vii] Compensating deposit

Costs intended to cover costs related to marketing activities, sales promotion activities, etc. in the sales region of the product that are used for costs for the renewal of registration with the US FDA (US Food and Drug Administration), advertising costs and costs related to the establishment of a service center in Hong Kong, costs for adding language for user manuals based on the EU Low Voltage Directive, costs for handling defects in products for the U.S.A., and costs for supplying "motors" and "pulleys" equipped on products for the U.S.A. and Germany to sales agencies (Exhibits Otsu C140 through C145 and C173 through C183).

[viii] WEEE

Costs required for the reuse and recycling of waste from electrical and electronic equipment (registration and renewal costs, etc. in the U.K.). They are collected by adding to the product unit price (Exhibits Otsu C140 through C145 and C187 through C190).

[ix] Certification

Costs required for obtaining certifications in export destination countries (CD-LVD certification, CD-EMC certification, and cTUYus certification) (Exhibits Otsu C141 through C145 and C193 through C196).

[x] Trademark registration, etc.

Costs required for the application, registration, maintenance, etc. of trademarks, patents, and designs in export destination countries (Exhibits Otsu C140 through C145, C197, and C198).

[xi] L/C usance

Bank commissions for letter of credit transactions (L/C settlements) with overseas agencies, etc. (L/C confirmation charges, L/C notice charges) (Exhibits Otsu C140 through C145, C199, C200, C202, and C204).

(C) Marginal profit

a. The profit amount (marginal profit) that the Appellee received from the export of Defendant's Product 1 is, as stated in the column of "Defendant's Product 1" in the column of "Marginal profit amount" of Attachment 11, ●●●●●●●●●●●●●● yen in total, after deducting expenses as stated in (B) a. above from the sales amount as stated in (A) b. above.

On the other hand, concerning Defendant's Product 2, as stated in the column of "Defendant's Product 2" in the column of "Marginal profit amount" of said Attachment, when expenses stated in (B) b. are deducted from the sales amount stated in (A) a. above, the result is negative. Therefore, the profit (marginal profit) related to sales of Defendant's Product 2 in Japan is zero. Then, it cannot be said that the Appellee received "profit" (Article 102, paragraph (2) of the Patent Act) from the sale of the Defendant's Product. Therefore, said paragraph cannot be applied to damages related to the sale of Defendant's Product 2 in Japan.

b. In this regard, the Appellant alleged that, according to the main sentence and (2) of 5-2-5 of the Consumption Tax Act Basic Instructions, "in cases of an infringement of an intangible property right, compensation for damages that the intangible property right holder receives from the infringer" is considered to fall under the value of asset transfer, etc.; therefore, the "profit" as used in "if ...the infringer has profited from the infringement" as defined in Article 102, paragraph (2) of the Patent Act should be construed to include the portion equivalent to the consumption tax.

However, the consumption tax is exempted for export transactions (Article 7, paragraph (1), item (i) of the Consumption Tax Act). Defendant's Product 1 is a product for export. Concerning sales by export of Defendant's Product 1, the Appellee did not collect and receive the amount equivalent to the consumption tax from customers (overseas sales agencies).

The consumption tax is a system where the amount of taxable sales is closed at the end of the fiscal year and the consumption tax imposed on the amount of taxable sales

is offset with the consumption tax that is paid for purchasing, etc. materials and the difference after the offset is to be paid by the company subject to taxation at the tax time as notified thereto. The amount equivalent to the consumption tax that was collected from customers based on the sales amount is not scheduled to be the profit of the company subject to taxation under the system, nor is the profit that the infringer received from the tort.

Moreover, the aforementioned basic instructions only explained that a person who received compensation for damages is obliged to pay the consumption tax. Even if the Appellant is obliged to pay taxes for compensation for damages related to this lawsuit, the tax obligation occurs after the Appellant receives compensation for damages, but not when the tort occurred.

Therefore, it cannot be construed that the amount equivalent to the consumption tax is included in the "profit" as used in "if...the infringer has profited from the infringement" as defined in Article 102, paragraph (2) of the Patent Act. Therefore, the aforementioned allegation of the Appellant is groundless.

C. Grounds for rebuttal of presumption

All of Paragraph (2) Presumptions as alleged by the Appellant are rebutted on the grounds for rebuttal as stated below.

(A) The fact that the patented inventions are worked only in a part of Defendant's Products 1 and 2

a. Both Defendant's Products 1 and 2 are chair-type massage machines composed of a backrest, seat, upper arm unit, forearm unit, and footrest equipped with a massage function, and give massages to shoulders, back, waist, arms (upper arms and forearms) legs (calves and foot soles) (Exhibits Ko 7 and 8).

As described above, Inventions C are inventions related to "a forearm treatment mechanism to give a massage to the forearms" from among chair-type massage machines. The body part subject to the massage is limited to the forearms. In addition, the technical meaning of Inventions C is limited to the structure and the function and effect related to the forearms. Therefore, Inventions C are worked only in a part of Defendant's Products 1 and 2.

b. Description C stated that the following function and effect of Inventions C-1 and C-2 are shown concerning problems with the structure of prior art wherein an inner rising wall is formed to cover the area close to the elbow joint of a massage recipient and wherein the top of the front-end of the armrest unit is opened ([0005] through [0017] and FIG. 18 through FIG. 20): [i] the forearms can smoothly be inserted and removed in the forearm treatment mechanism so that a massage recipient can stand up and sit

comfortably ([0013]); [ii] when standing up or sitting down, a massage recipient can apply bodyweight to the hand-rest unit while avoiding rubbing of the inner side of the forearm against the inner rising wall ([0014]); [iii] in the hollow unit, a massage can be given to the hands of a massage recipient by pressing up and down using expansion/contraction bags ([0015]); and [iv] a massage can be given to forearms also in the forearm insertion opening unit that is formed with an outer rising wall and a bottom unit provided at the rear position of the hollow unit and that is formed in an L-shape ([0016]).

On the other hand, the function and effect of [i] through [iv] of Inventions C-1 and C-2 are produced by the structure stated in Exhibit Otsu C19, which was well-known technology before Application C was filed ([0073], FIG. 16, FIG. 17, and FIG. 20). The massage machine stated in Inventions C-1 and C-2 and the massage machine stated in Exhibit Otsu C19 are different only on the following point: Inventions C-1 and C-2 have the structure of an "inner rising wall" for the hands, excluding the forearms, while the massage machine stated in Exhibit Otsu C19 does not have the aforementioned structure. The structure of this "inner rising wall" has no relationship with the function and effect of [i] through [iv] above and has almost no technical value and technical meaning. The Appellant does not sell products that worked Inventions C and only sells products with "C"-shaped elbow insertion grooves that are the same as the massage machine stated in Exhibit Otsu C19 or products with "U"-shaped elbow insertion grooves.

Therefore, the function and effect of [i] through [iv] of Inventions C-1 and C-2 do not have attractiveness and the technical meaning of Inventions C is not different from well-known technology.

c. The elements that consumers focus on when selecting a chair-type massage machine are [i] massaging functions, [ii] convenient functions and equipment, and [iii] machine size and weight, etc. (Exhibit Otsu C50).

The massage functions in [i] include, for example, targeted body parts (whether the product corresponds to the body parts that users want to have massaged), automatic adjustment of the kneading positions (whether the product has a function to automatically adjust positions of kneading balls and rollers corresponding to the body size of users), and the number of automatic courses (how many types of automatic massage courses are equipped, where massage menus, such as fatigue recovery, relaxing, stretching, etc., are combined based on users' purposes).

Convenient functions and equipment in [ii] include, for example, footrest (whether the product has a massaging function for legs), electric reclining (whether the product

has a motorized function to change the backrest angle to receive a massage in a relaxed posture), remote controller storage (whether a supplied remote controller can be stored in the chair body, such as an armrest, etc., to prevent children's mischief or incorrect operation), wheels (whether wheels are provided under the chair so that the heavy massage machine can be moved smoothly), timer (whether it has a function to turn off the power automatically when a specified time elapses by specifying the massaging time in order to prevent excess massaging), liquid crystal panel remote controller (whether a liquid crystal panel is equipped to display operation status), folding storage (in order to store a large-size massage machine in a small space, whether it can be stored compactly by folding a backrest, etc.), and heating function (in order to use a massage machine comfortably even during the cold winter, whether the massage machine can be electrothermally heated).

The machine size and weight in [iii] include, for example, since a massage chair can be big in size, what the appropriate size and weight are based on the space in the installation site or storage size.

These elements are not related to the function and effect of Inventions C, and therefore, Inventions C do not contribute to motivating consumers to purchase Defendant's Products 1 and 2.

d. As described above, Inventions C are worked only in a part of Defendant's Products 1 and 2 and Inventions C do not have functions and effects to attract customers and therefore Inventions C do not contribute to motivating consumers to purchase Defendant's Products 1 and 2. Consequently, the fact that Inventions C are worked only in a part of Defendant's Products 1 and 2 falls under grounds for rebuttal of Paragraph (2) Presumption.

(B) Existence of competing products in the markets

a. According to the survey by Yano Research Institute Ltd., the size of the market for massage chairs in Japan as of 2016 was approximately 430,000 units in terms of shipment volume and approximately 56.7 billion yen in terms of monetary amounts. The market share of four companies, namely, the Appellant, Panasonic, Daito EMC, and the Appellee, was 78.1% in terms of the shipment volume and 82.6% in terms of monetary amounts (Exhibit Otsu C51). In addition, for the period from FY2014 through FY2019, the market size was between approximately 100,000 units and 50,000 units in terms of the sales volume and between approximately 24 billion yen and 13 billion yen in terms of monetary amounts, wherein the Appellant accounted for between 31.6% and 52.8% in terms of sales volume and between 33.0% and 43.9% in terms of monetary amounts, the Appellee accounted for between 16.5% and 33.5% in terms of sales

volume and between 22.6% and 31.9% in terms of monetary amounts, and Panasonic accounted for between 24.1% and 34.8% in terms of sales volume and between 30.9% and 40.0% in terms of monetary amounts. Therefore, the Appellee and Panasonic were competitive with the Appellant in terms of market share (Exhibit Otsu C52).

b. Many manufacturers other than the Appellant (Panasonic, etc.) manufactured and sold or exported overseas "a chair-type massage machine that has a forearm treatment mechanism in the armrest unit to give massages to the forearms" that is a competing product as alleged by the Appellant (a product with a C-shape elbow insertion groove or a product with a U-shape elbow insertion groove) on the market in Japan before Application C was filed (Exhibits Otsu C79 through C81, etc.). In particular, in the U.S.A., as "a chair-type massage machine that has a forearm treatment mechanism in the armrest unit to give massages to the forearms," products of LITEC Jiugong and Dr. Fuji that are separate companies of the Appellant (10 models), Osaki Massage Chair (OEM supplied by the Appellant) (39 models), Panasonic (6 models), Fujita (12 models), Infinity (19 models), Kyota (5 models) are also sold, in addition to the products of the Appellant and the Appellee. Models of Appellant's Products 1 and 2 were only 7 out of 94 models of "a chair-type massage machine that has a forearm treatment mechanism in the armrest unit to give massages to the forearms" whose sales periods overlap with the sales period of Defendant's Product 1 (Exhibits Ko C39 through C41, and C43, and Otsu C268, etc.).

Therefore, even if Defendant's Products 1 and 2 were not sold, it is obvious that the demands of consumers and traders (including overseas agencies) in the market in Japan and overseas will shift to competing products of other companies and there is no relationship that they shift to Appellant's Products 1 and 2. Therefore, the existence of competing products of other companies falls under grounds for rebuttal of Paragraph (2) Presumption.

(C) Non-identity of the markets

a. Defendant's Product 1

Defendant's Product 1 is a product for export. Because there are demands in overseas markets, it can be exported from Japan and sold in association with the export. Therefore, the markets for Defendant's Product 1 are overseas markets.

Concerning the export to destination countries, Defendant's Product 1 is exported as a product with specifications for individual destination countries. Power voltage specifications vary by country, and certifications and permissions necessary for products also vary by country (for example, Exhibits Otsu C239 through C244). Sales statuses of competing products of local manufacturers are also diverse. The profits that

the Appellee received from the export of Defendant's Product 1 were obtained by using market opportunities in individual export destination countries. Based on the above, the range of identity of markets between Defendant's Product 1 and Appellant's Product 1 should be considered for each destination country. There is no general overseas export market beyond borders of destination countries, which is consummated only within Japan, as alleged by the Appellant.

In addition, according to Attachment 14 as alleged by the Appellant, concerning Appellant's Product 1, there are many products that were exported only in single digit or double digits units to destination countries. Some destination countries are common to Defendant's Product 1 but many are different.

As described above, the fact that the destination countries of Defendant's Product 1 and destination countries of Appellant's Product 1 are different means that their markets are not identical, in other words, they do not compete in the market. Therefore, the fact falls under grounds for rebuttal of Paragraph (2) Presumption.

b. Concerning Defendant's Product 2

Defendant's Product 2 was originally sold at electronics retail stores. Production of Defendant's Product 2 was discontinued in March 2010. After the discontinuance of the production, they were not sold at electronics retail stores. After the registration date of Patent Right C (November 25, 2011), they were sold as "irregular products" or clearance products with big discounts at the Appellee's online shopping site. On the other hand, Appellant's Product 2 is mainly sold to electronics retail stores and their market is different from the market for Defendant's Product 2.

As described above, the fact that the market for Defendant's Product 2 and the market for Appellant's Product 2 are different falls under grounds for rebuttal of Paragraph (2) Presumption.

(D) The Appellee's marketing efforts (the brand power, advertising)

The Appellee is a long-established company that has led the massage chair industry for a long period of time and a leading company in the industry that has been competing for top class market share. Its brand power has been established (Exhibits Otsu C50 through C52 and C61). In particular, the brand power of the Appellee in the U.S.A. is tremendous. The Appellee's products ("Inada chair") have won various awards (Exhibits Otsu C65 through C68). Export of Defendant's Product 1 to the U.S.A. depends to a large extent on the brand power of the Appellee.

In addition, the Appellee has provided unique advertisements for products that the Appellee deals with, including Defendant's Products 1 and 2, such as through receiving supervision of a famous acupuncturist, selling collaborative goods, providing

advertisements using celebrities, having special staff members for explanations attend to customers at stores, etc. (Exhibits Otsu C63, C64, C70, etc.). For example, in the U.S.A., the Appellee invested an enormous amount of advertising costs (Exhibit Otsu C161), such as displaying advertising images of Defendant's Product 1 on the big electronic signboard (Thomson Reuters Building) in Times Square in New York in September 2014 (Exhibit Otsu C69), etc., and has carried out strong advertising activities. As described above, the Appellee made special marketing efforts for Defendant's Product 1, which might be impossible for other competing companies.

The brand power unique to the Appellee and advertisements that exceed the regular range contributed to the export and sale of Defendant's Products 1 and 2. Therefore, said marketing efforts of the Appellee fall under grounds for rebuttal of Paragraph (2) Presumption.

(E) The performances of Defendant's Products 1 and 2 (functions, designs, and other characteristics other than Inventions C)

a. Defendant's Product 1 has the following points of appeal: 16 different pre-programmed massage courses that can be selected only by clicking a button; simple operation; convenience without a complicated remote controller that requires manual operation; award-winning design with cooperation of a world famous designer P; and, in particular, a function where unique body scanning technology measures a user's body, detects finger pressure points, and, gives a massage conforming to the form of the user's back shape (Exhibit Otsu C40).

In addition, the Appellee holds many patents related to the points of appeal of Defendant's Product 1 (Exhibits Otsu C222 through C238). Furthermore, the design of Defendant's Product 1 was registered in many countries (Exhibits Otsu C213 through C221). Its excellent design contributed to exports.

On the other hand, in the brochure for Defendant's Product 1, there is no statement related to the function and structure of an armrest with an inner rising wall that are the characteristics of Inventions C. The function and effect of Inventions C do not contribute to the attractiveness of Defendant's Product 1.

b. Defendant's Product 2 has the following points of appeal: new functions, including "hand procedure, finger pressure, pulling and kneading function," "full-arm function," "overall body stretch function," "new fluctuation function," and "programs for children"; design; in particular, a medical program where finger pressure points that are different by body shape are automatically searched by an optical sensor and the massage is effectively given to the muscles and finger pressure points of each body part; and a massage function using a seesaw-type four-kneading ball unit and super slow system, a

swing-type air extrusion mechanism (Exhibit Otsu C54). The facts that the Appellee has many patents related to the points of appeal of Defendant's Product 2 and that the design of Defendant's Product 2 is excellent contribute to the sale of Defendant's Product 2, in the same manner as in the case of Defendant's Product 1.

On the other hand, in the brochure for Defendant's Product 2, there is no statement related to the function and structure of an armrest with an inner rising wall that are the characteristics of Inventions C. The function and effect of Inventions C do not contribute to the attractiveness of Defendant's Product 2.

c. Consequently, the performances of Defendant's Products 1 and 2 (functions, designs, and characteristics other than Inventions C) as defined in a. and b. above fall under grounds for rebuttal of Paragraph (2) Presumption.

(F) Summary

All the Paragraph (2) Presumptions should be rebutted on the grounds for rebuttal as stated above. If only part of Paragraph (2) Presumption is rebutted, the rebuttal rate is 99.5% through 99.9%.

D. Amount of damages based on Article 102, paragraph (3) of the Patent Act related to the portion of rebuttal of presumption (alternative claim)

(A) Article 102, paragraph (1), item (ii) of the Patent Act stipulates that if another license can be recognized for a volume exceeding the volume equivalent to the volume workable by the patentee or a specified volume, the amount equivalent to royalty is deemed to be the amount of damages to the patentee. In said paragraph, the reason why the parts that could have been licensed (item (ii)) can be distinguished and recognized separately from the parts presumed to have been able to be worked by the patentee (item (i)) is because said paragraph adopted a method to calculate the amount of damages related to the right holder's lost profits based on the "volume" that the infringer sells. In other words, concerning the volume that is not included in the evaluation framework for calculating the amount of damages, there is room where the right holder could have licensed in addition to working the patent by him/herself. Therefore, it only allows double application of paragraph (3) of said Article.

On the other hand, paragraph (2) of said Article adopted a method of calculating the amount of damages by presuming the "profits" of the infringer as the patentee's lost profits. It is the amount of damages as a result of the final calculation for which the presumption in said paragraph is rebutted. Part of the quantity of infringing products, which is the value still in the calculation process, is not deducted from the basis of the calculation.

Therefore, it should be said that, in the process of rebuttal of presumption under

said paragraph, all lost profits, including lost profits due to loss of the right holder's licensing opportunities, are evaluated completely. Application of paragraph (3) of said Article to the portion of rebuttal of presumption results in duplicated evaluation of damages to the right holder and it is not allowed.

The Amended Patent Act 2019, for which paragraph (1), item (ii) of said Article was newly established, does not stipulate the damages in an amount equivalent to royalties in paragraph (2) of said Article in writing, but this is construed to be based on the aforementioned purport.

(B) Even if it is logically possible that there is a case where double application of Article 102, paragraph (3) of the Patent Act is approved for the portion of rebuttal of presumption, the double application should not be affirmed uniformly to the entirety of the portion of rebuttal of presumption. It is necessary, in consideration of the details of the grounds for rebuttal, to examine whether there is a basis for the double application as defined in said paragraph, or whether the right holder could have granted a license (whether there was an opportunity for licensing). There may be a basis for double application as defined in paragraph (3) of said Article for the quantified portion of rebuttal of presumption based on grounds due to the ability for working, but there is no basis for double application as defined in said paragraph for the remaining portion of rebuttal of presumption.

In addition, concerning the portion of rebuttal of presumption related to the grounds for rebuttal in this case, as stated below, there is no room to construe that Patent Right C could have been licensed. Therefore, double application is not allowed.

a. The portion of rebuttal of presumption based on the grounds for rebuttal, "the patented inventions are worked only in a part of the infringing product," is a portion to which the patented inventions do not contribute, and therefore, it is not included in the range of protection under the patent right originally and it cannot be said that the patentee could have granted a license therefor. Allowing the double application as defined in Article 102, paragraph (3) of the Patent Act for said portion is to allow damages outside the range of protection under the patent right and it is against the purport of compensation for damages.

b. The portion of rebuttal of presumption on the grounds for rebuttal, "existence of competing products in the markets," is the portion for which it can be considered that, in cases where there were no infringing products, the demand for the infringing products would not shift to the patentee's products, but to competing products of other companies. Originally, opportunities for licensing to said other companies are evaluated in examining the grounds for rebuttal as a matter related to the degree of competition in

cases where the patentee actually granted said licenses. There is no room for the patentee to actually grant a license for the portion of rebuttal of presumption on the grounds for rebuttal that there were competing products, and therefore there is no opportunity for licensing.

c. Concerning the portion of rebuttal of presumption on the grounds for rebuttal, "non-identity of the markets," as for Defendant's Product 1, it is due to the fact that there are no circumstances where the Appellant could have gained lost profits if Defendant's Product 1 (products for exporting overseas) had not been sold in overseas markets. In other words, the compensation to be received from business operators in overseas markets for export is profits that are only based on overseas markets. Construing that the presumption as defined in Article 102, paragraph (2) of the Patent Act also covers such profits in overseas markets and monopolizing said profits from overseas markets based on the patent right in Japan deviates from the range of protection under the patent right and is not scheduled by law. There may be cases where a license is granted based on the patent right in the destination countries in anticipation of the sale of a product in overseas markets as well (taking actions to register and obtain corresponding patent rights in the destination countries). However, it is difficult to imagine an actual case of licensing only for export to the designation countries based on the patent right in Japan, and it is difficult to say that the profits that could have been received in the amount equivalent to the royalties from licensing were not received in such a case.

d. In order for the rebuttal of presumption on the grounds for rebuttal, "the Appellee's marketing efforts (the brand power and advertising)," to be approved, it is necessary to achieve the level where special devices and marketing efforts exceeding the regular scope were made. Such marketing efforts are not included in the range of protection under the patent right. Therefore, said portion of the rebuttal of presumption should be completely evaluated under Article 102, paragraph (2) of the Patent Act once the rebuttal of presumption was approved.

Therefore, even based on the assumption that the infringer would have been obliged to pay an amount equivalent to the royalty if the patentee had granted a license to the infringer, it is reasonable to construe that the amount equivalent to the royalty is evaluated by the application of paragraph (3) of said Article alone and double application of paragraphs (2) and (3) of said Article is not allowed.

e. The portion of rebuttal of presumption on the grounds for rebuttal, "performances of Defendant's Products 1 and 2 (functions, designs, and characteristics other than Inventions C)," is the portion where infringing products have excellent performances other than the patentee's patented inventions and this increased additional value of the

infringing products, and therefore the infringing products could be sold by adding more profits than other products. Said portion is not included in the range of protection under the patent right. Therefore, there is no reasonableness to approve the double application of Article 102, paragraph (2) and paragraph (3) of the Patent Act.

(C) Even if there is a portion of rebuttal of presumption for which double application as defined in Article 102, paragraph (3) of the Patent Act in this case, the royalty rate related to the portion of rebuttal of presumption is less than 0.5% based on the same grounds as stated in (2) below.

(2) Concerning the allegation of the amount of damages based on Article 102, paragraph (3) of the Patent Act

The allegation of the Appellant will be disputed.

The patent related to a chair-type massage machine is related to commercial-off-the-shelf products. Therefore, it is reasonable to consider its royalty rate to be around the minimum value in the category of medical devices (e.g., the minimum value of 0.5% as stated in Table 2-2 of the Report).

In addition, as stated in (1) C. (A) above, the technical meaning of Inventions C is poor; the function and effect of Inventions C had been produced by well-known technology (the function and effect that "in a chair-type massage machine that has a forearm treatment mechanism, the forearms can be inserted and removed smoothly at the forearm treatment mechanism and effective and stable massage can be given to a wide range of the forearms" as alleged by the Appellant is also the same as above); there is no technical function and effect by providing an "inner rising wall" that is a characteristic component of Inventions C, and therefore, substitutability with other competing products is high; and the contribution degree of the characteristic component and the function and effect of Inventions C to sales and profits of Defendant's Products 1 and 2 are none or very small. In light of the above, the royalty rate that is a basis for calculating the amount of damages based on Article 102, paragraph (3) of the Patent Act should be even less than 0.5%.

(3) Attorney's fees

The allegation of the Appellant will be disputed.

(4) Extinctive prescription

A. Concerning the Appellant's right against the Appellee to claim compensation for damages based on the tort related to the infringement of Patent Right C on and before April 12, 2015, three years of the extinctive prescription period have elapsed, at the time when this lawsuit was filed (April 13, 2018), from when the Appellant learned of the damages and the infringer. Therefore, the extinctive prescription as determined in

the first sentence of Article 724 of the Civil Code before Amendment had expired.

In other words, the following can be found. [i] Information related to the sale and functions of Defendant's Products 1 and 2 is information that can be easily learned by anyone through browsing the Appellee's websites or from downloadable catalogs and users' manuals, as well as sales promotion activities at electronics retail stores, etc., and other advertising activities (catalogs). [ii] The Appellant and the Appellee are competitors who compete with each other for top share of the massage machine industry, are always interested in each other's product trends (structures, functions, etc.), and are in a relationship where they experienced multiple patent infringement lawsuits, patent invalidation trials, etc. regarding many massage machines and many patent rights for the period from 2009 through 2012. Therefore, it can be said that the Appellant surveyed and examined the Appellee's new product trends and its functions as necessary. [iii] In the list of subjects for cross licensing that the Appellant presented to the Appellee on December 9, 2016 (Exhibit Otsu C43-2) and a document titled "Treatment of intellectual properties" that the Appellant sent to the Appellee as of January 31, 2017 (Exhibit Otsu C44), Patent C was listed. Based on that fact, it is obvious that the Appellant examined at that time whether Defendant's Products 1 and 2 fell within the technical scope of Inventions C. [iv] The Appellant filed an application for Patent C (divisional application) only five months after the manufacture, sale, etc. of Defendant's Product 2 started in May 2008. It is presumed based on the above that the Appellant learned of the fact of the release of Defendant's Product 2, established the scope of patent claims in a manner to include it in the technical scope, and filed Application C (divisional application). Based on the above together, it should be construed that soon after the start of the manufacture, sale, and export of Defendant's Products 1 and 2, the Appellant recognized the fact of the manufacture, sale, and export, etc. of Defendant's Products 1 and 2 and their structures, functions, etc. and also recognized that Defendant's Products 1 and 2 fell within the technical scope of Inventions C. Therefore, concerning the Appellant's right against the Appellee to claim compensation for damages based on the tort related to the infringement of Patent Right C, the extinctive prescription had expired as of the time when this lawsuit was filed (April 13, 2018) since three years of extinctive prescription period had elapsed from when the Appellant learned of the damages and the infringer.

B. The Appellee invoked an extinctive prescription against the Appellant on the first day of preparatory proceedings in this case, August 23, 2022, concerning the Appellant's right against the Appellee to claim compensation for damages based on the tort related to the infringement of Patent Right C on and before April 12, 2015.

(5) Concerning the allegation for the claim to return unjust enrichment (alternative claim)

The allegation of the Appellant will be disputed.

No. 4 Judgment of this court

1. Issue 1-1 (Whether Defendant's Products 1 through 8 fall within the technical scope of Invention A) (Issue related to Patent A)

(1) Statements in Description A

A. There are the following statements in Description A (Exhibit Ko 2) (for FIG. 1 through FIG. 6 that are cited in the following statements, see Attachment 2).

(A) [Technical field]

[0001]

The present invention relates to a chair-type treatment apparatus and, more particularly, to a chair-type treatment apparatus suitable for massaging a user's waist.

[Background art]

[0002]

A chair-type treatment apparatus includes a seat unit and a backrest attached to the rear part of the seat unit in a reclinable state, and a user can receive treatment in a state of sitting on the chair-type treatment apparatus. In this chair-type treatment apparatus, a seat unit is provided with a thigh airbag for massaging the thighs and a hip airbag for massaging the hips, and a backrest is provided with neck and shoulder airbags for massaging the neck and shoulders, back airbags for massaging the back, and waist airbags for massaging the waist. These airbags are inflated or contracted to give a massage to each body part of the user (...).

[Problem to be solved by the invention]

[0003]

However, in the prior art, the waist airbags are fixed on the backrest and the height position cannot be adjusted in the vertical direction. For example, when a user with a small body sits, the user's waist position and the waist airbag position do not match and the user receives a massage to a body part different from the waist (e.g., back side higher than the waist) and cannot fully receive a massage to the intended body part.

[0004]

The problem of the present invention is to provide a chair-type treatment apparatus that can fully give treatment to the waist by massaging.

(B) [Means to solve the problem]

[0005]

In order to solve the problem, in the present invention, a user's waist height position

can be adjusted by inflating the hip airbag. For example, the present invention is a chair-type treatment apparatus including a seat unit and a backrest attached to the rear part of the seat unit; the seat unit is provided with at least a hip airbag from among a thigh airbag for massaging the thighs and a hip airbag for massaging the hips; the backrest has at least a waist treatment element; and it is characterized by providing a control means that activates the waist treatment element when giving treatment to the user's waist, by inflating the hip airbag while gradually raising the height of the user's waist.

[0006]

Based on the aforementioned structure, when a user with a small body sits, the user's waist position is raised when supplying air to the hip airbag and inflating the hip airbag. This will gradually raise the user's waist position. As a result, the user's waist position and the waist treatment element position match and a massage can be fully given to the body part that the user intended.

(C) [Effects of the invention]

[0007]

According to the present invention, since a user's waist height position can be gradually adjusted, it is possible to fully give a massage to the waist.

(D) [Embodiment Example 1]

[0009]

FIG. 1 is a perspective view showing an external appearance of chair-type treatment apparatus 1 in Embodiment Example 1. Chair-type massage machine 1 includes leg 2 which also serves as an armrest, seat unit 3 which is supported by leg 2, backrest 4 which is attached to the rear part of seat unit 3 in a reclinable state, and footrest 5 which is attached to the lower part of seat unit 3.

[0010]

On the upper part of backrest 4, neck and shoulder air bags 6R and 6L ("R" refers to a component on the right side and "L" refers to a component on the left side respectively; the same applies hereinafter) and kneading balls 7R and 7L are provided. Airbags 6R and 6L repeat their expansion/contraction movement by being supplied and discharged with air, and kneading balls 7R and 7L give a massage to a user's neck and shoulder in association with the expansion/contraction movement of airbags 6R and 6L.

[0011]

At the center in the height direction of backrest 4, back airbags 8R and 8L are provided as back treatment elements. Airbags 8R and 8L repeat their expansion/contraction movement by being supplied and discharged with air and give a massage to a user's back.

[0012]

At the lower part of backrest 4, waist airbags 9R and 9L are provided as waist treatment elements. Airbags 9R and 9L also repeat their expansion/contraction movement by being supplied and discharged with air and provide a massage to a user's waist.

[0013]

In addition, seat unit 3 is provided with hip airbag 10 at the side close to backrest 4 and thigh airbag 11 at the side distant from backrest 4, respectively. Hip airbag 10 gives a massage to a user's hip and thigh airbag 11 gives a massage to a user's thigh.

[0014]

Further, leg placement grooves 5R and 5L are formed on the right and left of front side of footrest 5. Leg airbags 12R and 12R are provided by facing each other on both sides of leg placement groove 5R and leg airbags 12L and 12L are provided by facing each other on both sides of leg placement groove 5L, respectively.

[0015]

In FIG. 1, code 13 is a remote control for a user to input the configuration for the desired massage.

[0016]

FIG. 2 is a control system diagram for controlling the operation of the aforementioned airbags.

[0017]

Air hose 14 is connected to neck and shoulder airbags 6R and 6L, air hose 15 is connected to back airbags 8R and 8L, air hose 16 is connected to waist airbags 9R and 9L, respectively. Air hoses 14, 15, and 16 join together and are connected to one end of air hose 17. Another end of air hose 17 is connected to the discharge side of upper body pump 18.

[0018]

Air hose 19 is connected to hip airbag 10, air hose 20 is connected to thigh airbag 11, and air hose 21 is connected to waist airbags 12R and 12L, respectively. Air hoses 19, 20, and 21 join together and are connected to one end of air hose 22. Another end of air hose 22 is connected to the discharge side of lower body pump 23.

[0019]

Solenoid valves (distribution valves) 24, 25, and 26 are provided in the middle of air hoses 14, 15, and 16, and solenoid valves (distribution valves) 27, 28, and 29 are provided in the middle of air hoses 19, 20, and 21, respectively. Solenoid valves 24, 25, and 26 and solenoid valves 27, 28, and 29 are formed as three-way valves.

[0020]

Further, control circuit 30 is provided as a control means. Control circuit 30 is electrically connected to upper body pump 18, lower body pump 23, solenoid valves 24, 25, and 26, and solenoid valves 27, 28, and 29, respectively. In addition, control circuit 30 is also electrically connected to remote control 13. Control circuit 30 is formed with a microcomputer and placed at the bottom of seat unit 3 (see FIG. 1).

(E) [0021]

Next, the operation of chair-type treatment apparatus 1 with the aforementioned structure is explained.

[0022]

If a user sits on chair-type treatment apparatus 1 and the user's waist height matches the position of waist airbags 9R and 9L, there is no problem and the user can receive a massage for the waist by operating remote control 13 to activate waist airbags 9R and 9L.

[0023]

However, when a user with a small body sits, the user's waist position and position of waist airbags 9R and 9L do not match. Therefore, the user cannot fully receive a massage for the waist.

[0024]

In this case, the user operates remote control 13 to set the height position adjustment mode. When the height position adjustment mode is set, as shown in FIG. 3, for example, control circuit 30 activates lower body pump 23 at time t1 and also controls solenoid valve 27 to allow the air compressed by lower body pump 23 to flow into hip airbag 10. This inflates hip airbag 10 so that the user adjusts the waist position against waist airbag 9R and 9L.

[0025]

When it becomes time t2 after the predetermined time elapsed from time t1, control circuit 30 controls and closes solenoid valve 27 in order to maintain hip airbag 10 in an inflated state and stops the operation of lower body pump 23.

[0026]

Subsequently, control circuit 30 activates upper body pump 18 at time t3, controls solenoid valve 26, and allows the air compressed by upper body pump 18 to flow into waist airbags 9R and 9L in order to inflate waist airbags 9R and 9L.

[0027]

Next, control circuit 30 controls and closes solenoid valve 26 at time t4 to maintain waist airbags 9R and 9L in an inflated state and stops the operation of upper body pump

18. Further, at time t5, control circuit 30 controls solenoid valve 26, allows compressed air in waist airbags 9R and 9L to be exhausted outside, and thereby contracts waist airbags 9R and 9L.

[0028]

By repeating the operations for the period from time t3 through time t5, a massage is given to the user's waist.

[0029]

When stopping a massage for the waist, the user operates remote control 13 to stop the operation, and by doing so, the massage for the waist ends. Control circuit 30 controls solenoid valve 27 at time t6, exhausts compressed air in hip airbag 10 outside, and contracts hip airbag 10.

[0030]

According to the present embodiment example, a user's waist position and the position of waist airbags 9R and 9L can be matched so that the user can fully receive a massage for the waist.

[0031]

FIG. 4 is an example of modification of the present embodiment example. In the example of modification, thigh airbag 11 is also inflated and contracted along with hip airbag 10. In other words, thigh airbag 11 is inflated at time t1 and contracted at time t6, in the same way as hip airbag 10. Control of waist airbags 9R and 9L, upper body pump 18, and lower pump 23 is provided in the same way as in the case shown in FIG. 3.

[0032]

According to the example of modification, since thigh airbag 11 is inflated along with hip airbag 10, a user can be raised more steadily against waist airbags 9R and 9L.

(F) [Embodiment Example 2]

[0033]

FIG. 5 shows Embodiment Example 2. In the present embodiment example, hip airbag 10 is gradually inflated. In Embodiment Example 1, when solenoid valve 27 is opened, the compressed air from lower body pump 23 is allowed to flow into hip airbag 10 at once. However, in the present embodiment example, when solenoid valve 27 is opened at time t1, the opening level of solenoid valve 27 is controlled so that the compressed air from lower body pump 23 gradually flows into hip airbag 10. When compressed air flows gradually into hip airbag 10, waist airbags 9R and 9L are activated. Further, lower body pump 23 is operated until time t5'. At time t5', solenoid valve 27 is controlled to maintain hip airbag 10 in an inflated state.

[0034]

According to the present embodiment, while the user is gradually raised, the user's waist is fully massaged by waist airbags 9R and 9L so that the user can fully receive a massage for the waist and surrounding areas.

[0035]

In addition, after the user is raised for the predetermined amount (for the period from time t5' through time t6), the user can receive the same massage as in the case of Embodiment Example 1.

[0036]

FIG. 6 is an example of modification of the present embodiment example. In the present example of modification, in the same way as in the case of FIG. 5, thigh airbag 11 is gradually inflated along with hip airbag 10. Control of waist airbags 9R and 9L, upper body pump 18, and lower pump 23 is provided in the same way as the case in FIG. 4.

B. According to the statement in A. above, it is found that the following are disclosed in relation to Invention A in Description A.

(A) Regarding a chair-type treatment apparatus that has a seat unit that is provided with a thigh airbag for massaging the thighs and a hip airbag for massaging the hips, and a backrest attached to the rear part of the seat unit in a reclinable state with neck and shoulder airbags for massaging the neck and shoulders, back airbags for massaging the back, and waist airbags for massaging the waist, and that can give a massage to the body parts of a user by inflating and contracting air bags, it used to have a structure wherein the waist air bag was fixed to the backrest and its height position could not be controlled in the vertical direction. Therefore, there was a problem that a user could not fully receive a massage for the intended part of the waist ([0002] and [0003]).

(B) The "present invention" is a chair-type treatment apparatus which aims to provide a chair-type treatment apparatus that can fully give a treatment through a massage for the waist as its problem and which adopts the following structure as a means to solve the relevant problem: wherein a seat unit is provided with at least a hip airbag from among a thigh airbag for massaging the thighs and a hip airbag for massaging the hips, and wherein a backrest is provided with at least a waist treatment element; and wherein a control means is provided to activate the waist treatment element when giving a treatment to a user's waist by inflating the hip airbag while gradually raising the height of a user's waist ([0004] and [0005]).

As a result, when the "present invention" supplies air to the hip airbag to inflate, a user's hips are raised so that the user's hip height position can be controlled to be raised

gradually and the "present invention" shows the effect that treatment can be fully given for the waist ([0006] and [0007]).

(2) Fulfillment of constituent features by Defendant's Products 1 and 2

A. Structures of Defendant's Products 1 and 2

As stated in the basic facts above, Defendant's Products 1 and 2 have the structures stated in No.1, 1. (1) of Attachment 1 "Descriptions of Defendant's Products 1 through 8" and the structures as stated in No.1, 1. (2) a. through d, and f. of said Attachment.

According to the aforementioned facts found in this case and evidence (Exhibits Ko 7, Ko A1, A2, A17, and Otsu A8 and A9), it is found that Defendant's Products 1 and 2 have "hip airbag A" as stated in FIG. 3 of Attachment 1 placed on top of the seat unit, which inflates upwards and raises the bottom of a user's hips, and that when a user is using the "座[Seat]" air course, it is possible to inflate hip airbag A and raise the user's waist height position gradually by approximately 16 mm.

Based on the above, Defendant's Products 1 and 2 are found to have the following structures a. through f.

- a. and d. A massage chair, which includes a seat unit and a backrest unit attached to the rear part of the seat unit;
- b. wherein the seat unit has a thigh airbag for massaging the thighs, and hip airbag A for massaging the hips; and
- c. wherein the backrest has a waist airbag;
- e. and f. and a massage chair characterized by including a control means that activates the waist airbag when a user is using the "座[Seat]" air course, by inflating hip airbag A and gradually raising the user's waist height position by approximately 16 mm.

B. Fulfillment of Constituent Feature [B]

(A) As stated in the basic facts above, Defendant's Products 1 and 2 fulfill Constituent Features [A], [D], and [F] of Invention A.

According to the statement in Constituent Feature [B] of Invention A ("wherein, the seat unit has at least a hip airbag among a thigh airbag for massaging the thighs and a hip airbag for massaging the hips"), if at least "a hip airbag for massaging the hips" is provided in the "seat unit," it is construed to fulfill Constituent Feature [B].

According to structure b. of Defendant's Products 1 and 2, hip airbag A of Defendant's Products 1 and 2 is an airbag "for massaging the hips" provided in the "seat unit" and corresponds to the "hip airbag" in Constituent Feature [B]. Therefore, Defendant's Products 1 and 2 are found to fulfill Constituent Feature [B].

(B) On the other hand, the Appellee alleged as follows: [i] the structure of Constituent Feature [B] of Invention A of "having at least a hip airbag among a thigh airbag for

massaging the thighs and a hip airbag for massaging the hips" is construed that if a "thigh airbag" is provided, the "thigh airbag" is required not to simply inflate, but also to contribute to gradually raising a user's waist height position together with the "hip airbag"; and [ii] the "thigh airbag" of Defendant's Products 1 and 2 does not inflate in a way that contributes to the transfer of a waist position "by gradually raising" it as in the form of raising a user's body upward by the inflation of the "hip airbag"; and therefore, Defendant's Products 1 and 2 do not fulfill Constituent Feature [B].

However, based on the statement in Constituent Feature [B], as stated in (A) above, it is construed that if at least "a hip airbag for massaging the hips" is provided in the "seat unit," it fulfills Constituent Feature [B].

The Appellee's aforementioned allegation construes the structure related to the movement of the "thigh airbag" that is not stated in Constituent Feature [B] in addition to the particulars for identifying the invention and is not based on the statements in the claims (Claim 1) of Invention A. Therefore, the allegation cannot be adopted in their premise.

The Appellee alleged that the "hip airbag" in Invention A requires a structure wherein, when giving treatment to the waist, the "hip airbag" inflates in a direction to push up a user by massaging the hips to raise the user's hip height position. However, this point is related to the issue of fulfillment of Constituent Feature [E] of Defendant's Products 1 and 2 and is not examined here.

C. Fulfillment of Constituent Feature [C]

(A) According to the statements in the claims (Claim 1) of Invention A, it is construed that the "waist treatment element" as used in Constituent Feature [C] of "wherein the backrest has at least a waist treatment element" refers to the part that is provided in the "backrest" to give treatment (massage) for the waist.

On the other hand, in the claims (Claim 1) of Invention A, there is no statement to limit the "waist treatment element" to one with a specific structure.

Next, in Description A, there is no statement to define the "waist treatment element." In Description A, there are the following statements concerning "waist treatment element": as Embodiment Example 1, "at the lower part of backrest 4, waist airbags 9R and 9L are provided as waist treatment elements. Airbags 9R and 9L also repeat their expansion/contraction movement by being supplied and discharged with air and give a massage to a user's waist." ([0012]); "According to the present embodiment example, a user's waist position and the position of waist airbags 9R and 9L can be matched so that the user can fully receive a massage for the waist." ([0030]); and as Embodiment Example 2, "According to the present embodiment, while the user is gradually raised,

the user's waist is fully massaged by waist airbags 9R and 9L so that the user can fully receive a massage for the waist and surrounding areas." ([0034]); and waist airbags 9R and 9L are shown in FIG. 1.

On the other hand, in Description A, there is no statement to limit the "waist treatment element" to one with the structures of waist airbags 9R and 9L.

According to the statements in the claims (Claim 1) of Invention A above and the statements in Description A, the "waist treatment element" of Constituent Feature [C] is construed to refer to the part provided in the "backrest" to give treatment (massage) for the waist and not to be limited to one with a specific structure.

The "waist airbag" in structure c. of Defendant's Products 1 and 2 is an airbag provided in the "backrest unit" to give a massage for the waist and corresponds to the "waist treatment element" of Constituent Feature [C]. Therefore, Defendant's Products 1 and 2 are found to fulfill Constituent Feature [C].

(B) On the other hand, the Appellee alleged as follows: the "waist treatment element" in Invention A means one at a fixed position in the backrest and it is construed that one movable in the body height direction does not correspond to the "waist treatment element" ([0012], [0022], [0023], FIG. 1, etc.); Defendant's Products 1 and 2 also include "kneading balls" that are movable in the body height direction, have the position of "kneading balls" match with a user's waist position, and give a massage for the intended parts of the waist; however, the "kneading balls" do not correspond to the "waist treatment element" and therefore Defendant's Products 1 and 2 do not fulfill Constituent Feature [C].

According to the statements in the claims (Claim 1) of Invention A and the statements in Description A, however, the "waist treatment element" of Constituent Feature [C] refers to the part provided in the "backrest" to give treatment (massage) for the waist and is not construed to be limited to one with a specific structure; and, as stated in (A) above, Defendant's Products 1 and 2 include the "waist airbag" in structure c., and it is the airbag provided in the "backrest unit" to give a massage for the waist and corresponds to the "waist treatment element" of Constituent Feature [C]. Therefore, the Appellee's aforementioned allegation cannot be accepted.

D. Fulfillment of Constituent Feature [E]

(A) Meaning of "including a control means that activates the waist treatment element when giving treatment to a user's waist, by inflating the hip airbag while gradually raising the height of a user's waist" (Constituent Feature [E])

a. According to the statements in the claims (Claim 1) of Invention A, it is construed that the "control means" of Constituent Feature [E] controls treatment for the waist,

wherein it "activates the waist treatment element" by "inflating the hip airbag while gradually raising the height of a user's waist." On the other hand, there is no statement in the claims (Claim 1) of Invention A to specify the amount of change in a user's waist height position and the degree of the change.

Next, as it is found in B. (A) above, the following are disclosed in Description A concerning Invention A: an existing chair-type treatment apparatus has a structure wherein the waist air bag was fixed in the backrest and its height position could not be controlled in the vertical direction, and therefore there was a problem that a user could not fully receive a massage for the intended part of the waist ([0002] and [0003]); Invention A aims to provide a chair-type treatment apparatus that can fully give a treatment through a massage for the waist as its problem and which adopts the following structure as a means to solve the relevant problem: wherein a seat unit is provided with at least a hip airbag from among a thigh airbag for massaging the thighs and a hip airbag for massaging the hips, and wherein a backrest is provided with at least a waist treatment element; and wherein a control means is provided to activate the waist treatment element when giving a treatment to a user's waist by inflating the hip airbag while gradually raising the height of a user's waist ([0004] and [0005]); and as a result, when the "present invention" supplies air to the hip airbag to inflate, a user's hips are raised so that the user's hip height position can be controlled to be raised gradually and the "present invention" shows the effect that treatment can be fully given for the waist ([0006] and [0007]).

There are the following statements in Description A concerning the "control means" of Constituent Feature [E]: "FIG. 2 is a control system diagram for controlling the operation of the aforementioned airbags." ([0016]); "Air hose 14 is connected to neck and shoulder airbags 6R and 6L, air hose 15 is connected to back airbags 8R and 8L, air hose 16 is connected to waist airbags 9R and 9L, respectively. Air hoses 14, 15, and 16 join together and are connected to one end of air hose 17. Another end of air hose 17 is connected to the discharge side of upper body pump 18." ([0017]); "Air hose 19 is connected to hip airbag 10, air hose 20 is connected to thigh airbag 11, and air hose 21 is connected to waist airbags 12R and 12L, respectively. Air hoses 19, 20, and 21 join together and are connected to one end of air hose 22. Another end of air hose 22 is connected to the discharge side of lower body pump 23." ([0018]); "Further, control circuit 30 is provided as a control means. Control circuit 30 is electrically connected to upper body pump 18, lower body pump 23, solenoid valves 24, 25, and 26, and solenoid valves 27, 28, and 29, respectively. In addition, control circuit 30 is also electrically connected to remote control 13. Control circuit 30 is formed with a microcomputer and

placed at the bottom of seat unit 3 (see FIG. 1)." ([0020]); " FIG. 5 shows Embodiment Example 2. In the present embodiment example, hip airbag 10 is gradually inflated. In Embodiment Example 1, when solenoid valve 27 is opened, the compressed air from lower body pump 23 is allowed to flow into hip airbag 10 at once. However, in the present embodiment example, when solenoid valve 27 is opened at time t1, the opening level of solenoid valve 27 is controlled so that the compressed air from lower body pump 23 gradually flows into hip airbag 10. When compressed air flows gradually into hip airbag 10, waist airbags 9R and 9L are activated. Further, lower body pump 23 is operated until time t5'. At time t5', solenoid valve 27 is controlled to maintain hip airbag 10 in an inflated state." ([0033]); "According to the present embodiment, while the user is gradually raised, the user's waist is fully massaged by waist airbags 9R and 9L so that the user can fully receive a massage for the waist and surrounding areas." ([0034]); and "In addition, after the user is raised for the predetermined amount (for the period from time t5' through time t6), the user can receive the same massage as in the case of Embodiment Example 1." ([0035]). According to the aforementioned statements and FIG. 2 and FIG. 5, it is found that the following are disclosed in Description A: control means 30 controls the opening degree of solenoid valve 27 so that compressed air from lower body pump 23 gradually flows into hip airbag 10 and activates waist airbags 9R and 9L when compressed air gradually flows into hip airbag 10; and thanks to this control, while hip airbag 10 inflates and a user's hip is gradually raised, the user's waist is massaged by waist airbags 9R and 9L evenly so that the user can fully receive a massage for the waist and surrounding areas.

On the other hand, there is no statement in Description A concerning the amount of change in a user's waist height position and the degree of the change by the control of control means 30; and there is no statement on specific examples of correcting misalignment between a user's waist height position and the position of waist airbags 9R and 9L by the aforementioned control and a concrete statement of the degree of the effects of the massage for the waist and surrounding areas.

According to the aforementioned statements in the claims (Claim 1) of Invention A and statements in Description A, it is construed that the "control means" of Constituent Feature [E] is not limited to one that specifies the amount of change in a user's waist height position and the degree of the change as well as concrete effects of the control, as long as the "control means" controls treatment for the waist, wherein it "activates the waist treatment element" by "inflating the hip airbag while gradually raising the height of a user's waist."

b. On the other hand, the Appellee alleged that in careful consideration of the statements

in Description A ([0001] through [0007]), since the meaning is not defined unambiguously based on the statement of the functional movement mode of Constituent Feature [E], "by inflating the hip airbag while gradually raising the height of a user's waist," Constituent Feature [E] should be construed that it provided the "hip airbag" as a control means to solve a mismatch in cases where a user's waist position and the waist airbag position do not match, in order to "gradually raise the user's waist height position" to the extent to give a full massage to the user's waist.

However, as explained in a. above, there is no statement in the claims (Claim 1) of Invention A to identify the amount of change in a user's waist height position and the degree of the change by the control of the "control means" of Constituent Feature [E] and the same applies to the statements in Description A.

In addition, looking at the overall statements in Description A, there is no statement or suggestion that the waist position of various users with various body sizes and the position of the waist treatment element always match and their mismatch is solved by Invention A.

Therefore, in cases where a user's waist position and the waist airbag position do not match, it cannot be said that the "control means" of Constituent Feature [E] is required to provide control to solve the mismatch and to "gradually raise the user's waist height position" to the extent of fully giving a massage to the user's waist. Consequently, the Appellee's aforementioned allegation cannot be accepted.

(B) Defendant's Products 1 and 2

a. According to structure e. of Defendant's Products 1 and 2, Defendant's Products 1 and 2 include a control means (structure e.) that activates the waist airbag when a user is using the "座[Seat]" air course, by inflating hip airbag A and gradually raising the user's waist height position approximately by 16 mm. This control means controls treatment for the waist, wherein it "activates the waist treatment element" by "inflating the hip airbag while gradually raising the height of a user's wait," and corresponds to the "control means" of Constituent Feature [E]. Therefore, it is found that Defendant's Products 1 and 2 fulfill Constituent Feature [E].

b. On the other hand, the Appellee alleged as follows: the "waist airbag" as indicated by an arrow in FIG. 3 in No. 1 of Attachment 1 "Descriptions of Defendant's Products 1 through 8" is a waist airbag that is fixed on the backrest and does not move. In light of the fact that its vertical and horizontal lengths are 260 mm × 120 mm (Exhibit Otsu A34), the up-and-down movement of approximately only 16 mm or 32 mm cannot always match the waist positions of various users having differences in body size and the waist treatment element position, and cannot solve the mismatch; and therefore,

Defendant's Products 1 and 2 do not fulfill Constituent Feature [E].

However, as explained in (A) above, the "control means" of Constituent Feature [E] is construed not to be limited to one that specifies the amount of change in a user's waist height position and the degree of the change as well as concrete effects of the control, as long as the "control means" controls treatment for the waist, wherein it "activates the waist treatment element" by "inflating the hip airbag while gradually raising the height of a user's wait." It cannot be said that the "control means" is required to provide control to solve the mismatch and to "gradually raise the user's waist height position" to the extent of fully giving a massage to the user's waist.

In addition, raising the waist position by approximately 16 mm is included in the statement of "... raise a user's waist height position" of Constituent Feature [B], and therefore, the Appellee's aforementioned allegation cannot be accepted.

E. Summary

Based on the above, Defendant's Products 1 and 2 fulfill all constituent features of Invention A and therefore fall within the technical scope of Invention A.

(3) Fulfillment of constituent features by Defendant's Product 3

A. Structures of Defendant's Product 3

As stated in the aforementioned basic facts, Defendant's Product 3 has the structures as stated in No.2, 1. of Attachment 1 and the structures as stated in a. through d, and f. of No. 2, 2. of said Attachment.

According to the aforementioned facts found in this case and evidence (Exhibits Ko 9, Ko A1, A3, A7, A8, A11, A18, and Otsu A10), it is found that Defendant's Product 3 has "hip airbag A" as stated in FIG. 6 of Attachment 1 that is placed on top of the seat unit and inflates upwards and presses the bottom of a user's hips, and that when a user is using the "Quick course" or the "Body trunk training course," it is possible to inflate hip airbag A and raise the user's waist height position gradually by approximately 16 mm and activate kneading balls around the user's waist.

Based on the above, Defendant's Product 3 is found to have the following structures a. through f.

- a. and d. A massage chair, which includes a seat unit and a backrest unit attached to the rear part of the seat unit;
- b. wherein the seat unit has a thigh airbag for massaging the thighs, and hip airbag A for massaging the hips; and
- c. wherein the backrest has kneading balls to give treatment to the back and waist;
- e. and f. and a massage chair characterized by including a control means that activates the kneading balls around the waist area when a user is using the "Quick course" or the

"Body trunk training course," by inflating hip airbag A and gradually raising the user's waist height position by approximately 16 mm.

B. Fulfillment of constituent features

(A) As stated in the basic facts above, Defendant's Product 3 fulfills Constituent Features [A], [D], and [F] of Invention A.

"Hip airbag A" in structure b. of Defendant's Product 3 is found to correspond to the "hip airbag" of Constituent Feature [B], and the "kneading ball" in structure c. is found to correspond to the "waist treatment element" of Constituent Feature [C]. Therefore, Defendant's Product 3 is found to fulfill Constituent Features [B] and [C].

(B) Defendant's Product 3 includes a control means (structure e.) that activates the kneading balls around the waist area when a user is using the "Quick course" or the "Body trunk course," by inflating hip airbag A and gradually raising the user's waist height position by approximately 16 mm. This control means controls treatment for the waist, wherein it "activates the waist treatment element" by "inflating the hip airbag while gradually raising the height of a user's waist" and corresponds to the "control means" of Constituent Feature [E].

Therefore, it is found that Defendant's Product 3 fulfills Constituent Feature [E]. The Appellee's allegation against the above cannot be accepted.

(C) Based on the above, Defendant's Product 3 fulfills all constituent features of Invention A and therefore falls within the technical scope of Invention A.

(4) Fulfillment of constituent features by Defendant's Product 4

A. Structures of Defendant's Product 4

As stated in the aforementioned basic facts, Defendant's Product 4 has the structures as stated in No.3, 1. of Attachment 1 and the structures as stated in a. through d, and f. of No. 3, 2. of said Attachment.

According to the aforementioned facts found in this case and evidence (Exhibits Ko 11, and Otsu A7 and A15), it is found that Defendant's Product 4 has "hip airbag C" that is provided on the inner surface of a treatment board that rises from the top of the seat unit, expands towards the inside by using the lower end of the treatment board as a support and the treatment board as a back anchor, and sandwiches the sides of the hips; however, there is no evidence to find that hip airbag C and the kneading balls in the backrest unit activate simultaneously and that a user's waist height position is raised when hip airbag C inflates.

Based on the above, Defendant's Product 4 is found to have the following structures a. through d.

a. and d. A massage chair, which includes a seat unit and a backrest unit attached to the

rear part of the seat unit;

b. wherein the seat unit has hip airbag C for massaging the hips; and

c. wherein the backrest has kneading balls to give treatment to the neck, back and waist.

B. Fulfillment of constituent features

The structures of Defendant's Product 4 are as stated in A. above, and it cannot be found to have a structure corresponding to Constituent Feature [E].

Consequently, without the need to make determinations on the remaining issues, Defendant's Product 4 does not fall within the technical scope of Invention A.

(5) Fulfillment of constituent features by Defendant's Product 5

A. Structures of Defendant's Product 5

As stated in the aforementioned basic facts, Defendant's Product 5 has the structures as stated in No.2, 1. of Attachment 1 and the structures as stated in a. through d, and f. of No. 2, 2. of said Attachment.

According to the aforementioned facts found in this case and evidence (Exhibits Ko 12, Ko A1, A4, A19, and Otsu A11 and A16), it is found that Defendant's Product 5 has "hip airbag A" as stated in FIG. 6 of Attachment 1 that is placed on top of the seat unit, inflates upwards and raises the bottom of a user's hips, and that when a user is using the "Stretch course," "the Stress-buster course," or the "Body stretch course," it is possible to inflate hip airbag A and raise the user's waist height position gradually approximately by 32 mm and activate the kneading balls around the user's waist.

Based on the above, Defendant's Product 5 is found to have the following structures a. through f.

a. and d. A massage chair, which includes a seat unit and a backrest unit attached to the rear part of the seat unit;

b. wherein the seat unit has a thigh airbag for massaging the thighs, and hip airbag A for massaging the hips; and

c. wherein the backrest has kneading balls to give treatment to the back and waist;

e. and f. and a massage chair characterized by including a control means that activates the kneading balls around the waist area when a user is using the "Stretch course," the "Stress-buster course," or the "Body stretch course," by inflating hip airbag A and gradually raising the user's waist height position by approximately 32 mm.

B. Fulfillment of constituent features

(A) As stated in the basic facts above, Defendant's Product 5 fulfills Constituent Features [A], [D], and [F] of Invention A.

"Hip airbag A" in structure b. of Defendant's Product 5 is found to correspond to the "hip airbag" of Constituent Feature [B], and the "kneading ball" in structure c. is

found to correspond to the "waist treatment element" of Constituent Feature [C]. Therefore, Defendant's Product 5 is found to fulfill Constituent Features [B] and [C].

(B) Defendant's Product 5 includes a control means (structure e.) that activates the kneading balls around the waist area when a user is using the "Stretch course," the "Stress-buster course," or the "Body stretch course," by inflating hip airbag A and gradually raising the user's waist height position by approximately 32 mm. This control means controls treatment for the waist, wherein it "activates the waist treatment element" by "inflating the hip airbag while gradually raising the height of a user's waist" and corresponds to the "control means" of Constituent Feature [E].

Therefore, it is found that Defendant's Product 5 fulfills Constituent Feature [E].

The Appellee's allegation against the above cannot be accepted.

(C) Based on the above, Defendant's Product 5 fulfills all constituent features of Invention A and therefore falls within the technical scope of Invention A.

(6) Fulfillment of constituent features by Defendant's Product 6

A. Structures of Defendant's Product 6

As stated in the aforementioned basic facts, Defendant's Product 6 has the structures as stated in No.3, 1. of Attachment 1 and the structures as stated in a. through d, and f. of No. 3, 2. of said Attachment.

According to the aforementioned facts found in this case and evidence (Exhibits Ko 13, Ko A7, A9, A20, and Otsu A12), it is found that kneading balls are activated while inflating hip airbag B (which is provided on top of the seat unit, inflates towards the inside, and presses the side of the hips; the same applies hereinafter). According to a video (Exhibit Ko A9) in which Defendant's Product 6 was activated with a dummy placed thereon, it can be visually confirmed that the mark indicating a user's waist height position moved a few millimeters; however, it is not clear based on the video whether the movement of the mark reflects the movement of the upper body responding to the movement of the kneading balls or due to the change in the waist position by the inflation of the hip airbag. Therefore, it is not sufficient to find that a user's waist height position is raised by the inflation of hip airbag B.

Based on the above, Defendant's Product 6 is found to have the following structures a. through f.

- a. and d. A massage chair, which includes a seat unit and a backrest unit attached to the rear part of the seat unit;
- b. wherein the seat unit has hip airbag B for massaging the hips; and
- c. wherein the backrest has kneading balls to give treatment to the neck, back and waist.
- e. and f. and a massage chair characterized by including a control means that activates

the kneading balls around the waist area when a user is using the "Stretch exercise course," the "Rocking and massage course," or the "Quick massage course," by inflating hip airbag B.

B. Fulfillment of constituent features

The structures of Defendant's Product 6 are as stated in A. above. It includes a control means (e.) that activates the kneading balls around the waist area while inflating hip airbag B; however, it cannot be found that it has a structure corresponding to the structure of "inflating the hip airbag" "while gradually raising the height of a user's waist" (Constituent Feature [E]). Therefore, Defendant's Product 6 does not fulfill Constituent Feature [E].

Consequently, without the need to make determinations on the remaining issues, Defendant's Product 6 does not fall within the technical scope of Invention A.

(7) Fulfillment of constituent features by Defendant's Product 7

A. Structures of Defendant's Product 7

As stated in the aforementioned basic facts, Defendant's Product 7 has the structures as stated in No.3, 1. of Attachment 1 and the structures as stated in a. through d, and f. of No. 3, 2. of said Attachment.

According to the aforementioned facts found in this case and evidence (Exhibits Ko 14, Ko A1, A7, A10, A21, and Otsu A13), it is found that kneading balls are activated while inflating hip airbag B. According to a video (Exhibit Ko A10) which shot a user receiving a treatment by Defendant's Product 7, it can be visually confirmed that the mark indicating a user's waist height position moved a few millimeters; however, it is not clear based on the video whether the movement of the mark reflects the movement of the upper body responding to the movement of the kneading balls or is due to the change in the waist position by the inflation of the hip airbag. Therefore, it is not sufficient to find that a user's waist height position is raised by the inflation of hip airbag B.

Based on the above, Defendant's Product 7 is found to have the following structures a. through f.

- a. and d. A massage chair, which includes a seat unit and a backrest unit attached to the rear part of the seat unit;
- b. wherein the seat unit has hip airbag B for massaging the hips; and
- c. wherein the backrest has kneading balls to give treatment to the neck, back and waist.
- e. and f. and a massage chair characterized by including a control means that activates the kneading balls around the waist area when a user is using the "Whole-body fatigue recovery course," the "Shoulder/muscle fatigue treatment course," the "Waist/muscle

fatigue treatment course," the "Whole-body quick course," the "Waist-concentration course," or the "Pelvis and hips course," by inflating hip airbag B.

B. Fulfillment of constituent features

The structures of Defendant's Product 7 are as stated in A. above. It includes a control means (e.) that activates the kneading balls around the waist area while inflating hip airbag B; however, it cannot be found that it has a structure corresponding to the structure of "inflating the hip airbag" "while gradually raising the height of a user's waist" (Constituent Feature [E]). Therefore, Defendant's Product 7 does not fulfill Constituent Feature [E].

Consequently, without the need to make determinations on the remaining issues, Defendant's Product 7 does not fall within the technical scope of Invention A.

(8) Fulfillment of constituent features by Defendant's Product 8

A. Structures of Defendant's Product 8

As stated in the aforementioned basic facts, Defendant's Product 8 has the structures as stated in No.2, 1. of Attachment 1 and the structures as stated in a. through d, and f. of No. 2, 2. of said Attachment.

According to the aforementioned facts found in this case and evidence (Exhibits Ko 15, Ko A1, A6, A22, and Otsu A14), it is found that Defendant's Product 8 has "hip airbag A" as stated in FIG. 6 of Attachment 1 that is placed on top of the seat unit, inflates upwards and raises the bottom of a user's hips, and that when a user is using the "Hip comfortable course," it is possible to inflate hip airbag A and raise the user's waist height position gradually approximately by 16 mm and activate the kneading balls around the user's waist.

Based on the above, Defendant's Product 8 is found to have the following structures a. through f.

- a. and d. A massage chair, which includes a seat unit and a backrest unit attached to the rear part of the seat unit;
- b. wherein the seat unit has a thigh airbag for massaging the thighs, and hip airbag A for massaging the hips; and
- c. wherein the backrest has kneading balls to give treatment to the back and waist;
- e. and f. and a massage chair characterized by including a control means that activates the kneading balls around the waist area when a user is using the "Hip comfortable course," by inflating hip airbag A and gradually raising the user's waist height position by approximately 16 mm.

B. Fulfillment of constituent features

(A) As stated in the aforementioned basic facts, Defendant's Product 8 fulfills

Constituent Features [A], [D], and [F] of Invention A.

"Hip airbag A" in structure b. of Defendant's Product 8 is found to correspond to the "hip airbag" of Constituent Feature [B], and the "kneading ball" in structure c. is found to correspond to the "waist treatment element" of Constituent Feature [C]. Therefore, Defendant's Product 8 is found to fulfill Constituent Features [B] and [C].

(B) Defendant's Product 8 includes a control means (structure e.) that activates the kneading balls around the waist area when a user is using the "Hip comfortable course," by inflating hip airbag A and gradually raising the user's waist height position by approximately 16 mm. This control means controls treatment for the waist, wherein it "activates the waist treatment element" by "inflating the hip airbag while gradually raising the height of a user's waist" and corresponds to the "control means" of Constituent Feature [E].

Therefore, it is found that Defendant's Product 8 fulfills Constituent Feature [E].

The Appellee's allegation against the above cannot be accepted.

(C) Based on the above, Defendant's Product 8 fulfills all constituent features of Invention A and therefore falls within the technical scope of Invention A.

(9) Summary

As described above, Defendant's Products 1 through 3, 5, and 8 fall within the technical scope of Invention A; however, Defendant's Products 4, 6, and 7 do not fall within the technical scope of Invention A.

2. Issue 1-2 (Whether the invalidity defense related to Patent A is established) (Issue related to Patent A)

(1) Grounds for Invalidation 1 (Lack of novelty of Invention A, which uses an invention related to AS-878 (publicly worked invention) as prior art)

A. Whether an invention related to AS-878 was publicly known to be worked

According to evidence (Exhibits Otsu A42 and A43) and the entire import of oral arguments, it is found that the Appellant sold AS-878 in Japan in and after July 2003, which is before Application A was filed, and AS-878 has the structures shown in FIG. 1 and FIG.2 of Attachment 4.

It is found that a person skilled in the art could have learned the structures and function of AS-878 by observing it from the outside or actually using AS-878 and by checking and analyzing its movement. Therefore, it is found that the invention related to AS-878 was publicly known to be worked before the Application was filed.

B. Details of the invention related to AS-878

(A) According to the facts found in this case as stated in A. above, evidence (Exhibits Otsu A42, A45, and A48), and the entire import of oral arguments, the invention

including the following structures can be found as an invention related to ASA-878.

- a. and d. A massage chair, which includes a seat unit and a backrest unit;
- b. wherein the seat unit has an airbag for massaging the thighs, and an airbag for massaging the hips (hip airbag); and
- c. wherein the backrest has kneading balls and air bags (waist airbags) to give treatment to the waist; and
- e. and f. a massage chair, which has a control means when it is used in the "Waist Course" of the "Automatic Courses," wherein the hip airbag is inflated in approximately 2 seconds and a user's waist position is raised at least approximately 15 mm, and kneading balls activate at a user's waist position, simultaneously.

(B) On the other hand, the Appellant alleged as follows: in the video related to AS-878 (Exhibits Otsu A45 and A48), it seems that a user's waist position changes in the up-and-down direction; however, this is merely associated with the change in the angle of the line from a user's shoulder to neck, but not with an upward move of a user's entire body in a near-vertical direction; it cannot be objectively confirmed according to the aforementioned video that the waist treatment element is activated and a user's waist position is raised; and therefore, it is not proved that AS-878 has the control means of the structure e. in (A) above.

However, according to the video in Exhibit Otsu A48, it is found that a user's waist position changed in response to the changes in the seat unit position from inflation and contraction of the hip airbag and the waist position was raised at least approximately 15 mm. It is not found that the change reflected the changes in the angle of the line from a user's shoulder to neck. In addition, according to the video (Exhibit Otsu A45) in which movements of broken-down AS-878 were shot, when the hip airbag inflates, it is found that kneading balls activate at a user's waist position simultaneously.

Then, it can be said that in AS-878, the hip airbag inflates and raises a user's waist position and kneading balls activate at a user's waist position simultaneously. AS-878 is found to have the control means defined in structure e. mentioned in (A) above.

Therefore, the Appellant's aforementioned allegation is groundless.

C. Identity between Invention A and the invention related to AS-878

Comparing Invention A and an invention related to AS-878, it is found that the hip airbag and kneading balls that are components of the invention related to AS-878 respectively correspond to the "hip airbag" and "waist treatment element" in Invention A, and structures a. through d. and f. of the invention related to AS-878 correspond to Constituent Features [A] through [D] and [F] of Invention A.

The invention related to AS-878 has a control means (structure e.), wherein "the hip

airbag is inflated in approximately 2 seconds and a user's waist position is raised at least approximately 15 mm, and kneading balls activate at a user's waist position, simultaneously." A user's waist position was raised by approximately 15 mm by the inflation of the hip airbag in approximately 2 seconds. It is found that it has a control means that activates the waist treatment element "by inflating the hip airbag while gradually raising the height of a user's waist position" simultaneously. Therefore, the invention related to AS-878 is found to have the structure of Constituent Feature [E] of Invention A.

Based on the above, the invention related to AS-878 has all the structures of Constituent Features [A] through [F] of Invention A and therefore Invention A is found to be identical to the invention related to AS-878.

The Appellant's allegation against the above cannot be accepted.

(2) Summary

Based on the above, the Grounds for Invalidation 1 as alleged by the Appellee have grounds. Without the need to make determinations on the remaining issues, the Appellant cannot exercise the right based on Patent Right A against the Appellee (Article 104-3, paragraph (1), Articles 123, paragraph (1), item (ii), and Article 29, paragraph (1), item (ii) of the Patent Act).

3. Issue 2-1 (Whether Defendant's Products 1 and 2 fall within the technical scope of Inventions C) (Issue related to Patent C)

(1) Statements in Description C

A. There are the following statements in Description C (Exhibit Ko 6) (for FIG. 1 through FIG. 4, and FIG. 6 through FIG. 20 that are cited in the following statements, see Attachment 3).

(A) [Technical field]

[0001]

The present invention relates to a chair-type massage machine including a forearm treatment mechanism for massaging the forearms of a massage recipient in an armrest unit.

[Background art]

[0002]

Among existing chair-type massage machines having a seat unit, a backrest unit, and armrest units provided on both right and left sides of the seat unit, a chair-type massage machine having a forearm treatment mechanism on the upper part of the armrest unit to give a massage to the arms of a seated massage recipient already exists and has been commercialized on the market.

[0003]

For example, a chair-type massage machine having a forearm treatment mechanism as shown in FIG. 19 is disclosed. In other words, as treatment machine 1 with a hand kneading function, it is structured as follows: armrest unit 21 provided with rising walls 211 and 211 on both sides in the elbow width direction is provided on both sides of chair body 2 and means to supply and exhaust compressed air is provided so that an expansion/contraction treatment can be given to the hands of a massage recipient between rising walls 211 and 211 in armrest unit 21 where the hands can be inserted and removed freely, thereby making it possible to hold a seated massage recipient's hands stably on the top surface of both armrests 21 and 21 and efficiently give air pressure treatment to the hands and arms of the massage recipient. In addition, rising wall 211 is not formed on the upper-front surface of armrest 21 and therefore the upper-front surface is flat.

[0004]

Further, FIG. 20 shows a configuration in which the aforementioned pair of right and left rising walls are provided in the entire longitudinal direction of the right and left armrest units. In other words, air massage machine 3, wherein a treatment unit where air bags are fixed respectively on the inner walls of the concave unit so that there is a space to insert a massage recipient's arms and legs, and wherein an air supply and exhaust device is communicated and provided to inflate and contract the air bags by supplying and exhausting air to and from the air bags, is provided on the entire top area of the armrests of chair 20.

[Problem to be solved by the invention]

[0005]

As shown in FIG. 20, an existing chair-type massage machine, which is provided with a pair of right and left rising walls in the entire longitudinal direction of the armrest unit as a forearm treatment mechanism, is convenient since it can give a massage for a wide range of the hands and forearms simultaneously. However, since each of the rising walls is formed to cover the area close to the elbow joint of a massage recipient, as shown in FIG. 18, there are the following disadvantages: inner rising wall 623 on the massage recipient side applies compression near the elbow joint of the inner upper arm and gives discomfort to the massage recipient or hinders insertion and removal of the arms in the forearm treatment mechanism. In particular, it is considered that the lower the height and the smaller the body size of the massage recipient, the larger the compression by inner rising wall 623.

[0006]

In addition, when a seated massage recipient stands up or sits, he/she usually holds the front end of the armrest unit and applies his/her body weight. Since the chair-type massage machine in the configuration shown in FIG. 20 has right and left rising walls up to the front end of the armrest units, the top surface of the front end of each of the forearm units is open and it is difficult for a massage recipient to apply body weight on such parts.

[0007]

On the other hand, in cases of a chair-type massage machine provided with a pair of right and left rising walls, wherein the rising walls, as shown in FIG. 19, are not formed on the front top surfaces of the armrest units and said parts are flat, a massage recipient can apply his/her body weight by using those flat parts as hand-rest units; however, since the bottom of the concave unit that is formed between the pair of rising walls on the right and left sides and the flat part of the hand-rest unit are on the same level, respectively, when a massage recipient holds the hand-rest units to stand up, he/she receives compression applied by inner rising walls 623 at around the elbow joints of the upper arms inside and has the inner sides of the forearms and the areas surrounding the elbow joints rubbed while removing the arms from the concave units in the same way as shown in FIG. 18 above. Then, such chair-type massage machine was also considered to give discomfort to a massage recipient and to be a problem that should be solved.

[0008]

Therefore, the present invention is formed to solve the aforementioned problem. It aims to provide a chair-type massage machine composed to solve causes of discomfort, where the rising walls of the forearm treatment mechanism give compression unnecessarily to the arms of a massage recipient, so that the arms can be smoothly inserted and removed in the forearm treatment mechanism, and a massage recipient can comfortably stand up and sit, even if the machine has a forearm treatment mechanism.

(B) [Means to solve the problem]

[0009]

In other words, concerning the chair-type massage machine in the present invention, it is a chair-type massage machine that has a chair body including a seat unit and a backrest unit, and an armrest unit on both sides of the chair body; which is characterized by the following structures: wherein the armrest unit has a forearm insertion opening unit to insert the forearm of a massage recipient from the inner rear side and a hollow unit that is extended from the forearm insertion opening unit to insert and hold the forearm, including the hand, of a massage recipient in the armrest unit; wherein the

hollow unit is formed with an outer rising wall and an inner rising wall respectively provided on the left and right sides in the width direction of the armrest unit, as well as with a bottom unit; wherein a hand-rest unit is provided at the upper front-end of the aforementioned outer rising wall and inner rising wall in the form of closing the upper end of the hollow unit; wherein the armrest unit has a treatment unit, wherein the front part is surrounded by the bottom unit, the outer rising wall, the inner rising wall, and the hand-rest unit and which is located at the hollow unit, and a treatment unit, wherein the rear part is formed in an L-shape with the bottom unit and the outer rising wall and which is located at the forearm insertion opening unit; and each treatment unit is provided with an expansion/contraction bag respectively.

[0010]

In addition, the chair-type massage machine in the present invention has the forearm insertion opening unit formed with the outer rising wall and the bottom unit provided at the rear position of the hollow unit, wherein expansion/contraction bags are provided at the corresponding positions of two surfaces, that is, the outer rising wall and the bottom unit of the forearm insertion opening unit, respectively.

[0011]

Further, the chair-type massage machine in the present invention is composed as follows: at the lower part of the outer rising wall of the forearm insertion opening unit, the edge that is formed at the lower part of one of the expansion/contraction bags is fixed; and the edge that is formed at another expansion/contraction bag is fixed on the outer rising wall side at the bottom unit of the forearm insertion opening unit.

[0012]

In addition, the chair-type massage machine in the present invention has the following structures: wherein the armrest unit is provided so as to be movable in the front-rear direction in relation to the chair body, and the armrest unit moves in the front-rear direction in relation to the chair body in conjunction with the reclining movement of the backrest unit while maintaining a predetermined amount of movement, which corresponds to the reclining angle of the backrest unit.

(C) [Effects of the invention]

[0013]

Thus, the chair-type massage machine in the present invention has a forearm insertion opening unit to insert the forearm of a massage recipient from the inner rear side of the armrest, and a hollow unit that is extended from the forearm insertion opening unit to insert and hold the forearm, including the hand, of a massage recipient in the armrest unit; wherein the hollow unit is formed with an outer rising wall and an

inner rising wall respectively provided on the left and right sides in the width direction of the armrest unit, as well as with a bottom unit; wherein a hand-rest unit is provided at the front-end of the outer rising wall and the inner rising wall of the hollow unit; and wherein expansion/contraction bags are respectively provided on the lower surface of the hand-rest unit and on the top surface of the bottom of the hollow unit respectively. Therefore, the forearms can be inserted and removed smoothly in the forearm treatment mechanism and a massage recipient can stand up and sit comfortably.

[0014]

In other words, when standing up or sitting down, a massage recipient can apply body weight to the hand-rest unit while avoiding the rubbing of the inner side of the forearm against the inner rising wall.

[0015]

In addition, in the hollow unit, a massage to compress the hands of a massage recipient in the up and down direction can be given by the expansion/contraction bags.

[0016]

In addition, the chair-type massage machine in the present invention has the forearm insertion opening unit that is formed with the outer rising wall and the bottom unit provided at the rear position of the hollow unit, wherein expansion/contraction bags are provided at the corresponding positions of two surfaces, that is, the outer rising wall and the bottom unit of the forearm insertion opening unit, respectively. Therefore, it can also give a massage to the forearms at the rear position of the hollow unit.

[0017]

Further, the chair-type massage machine in the present invention has the following structures: at the lower part of the outer rising wall of the forearm insertion opening unit, the edge that is formed at the lower part of one of the expansion/contraction bags is fixed; and the edge that is formed at another expansion/contraction bag is fixed on the outer rising wall side at the bottom unit of the forearm insertion opening unit. Thereby, it can give a compression massage with two surfaces, that is, the outer rising wall and the bottom unit of the forearm insertion opening unit.

[0018]

In addition, the armrest unit is provided so as to be movable in the front-rear direction in relation to the chair body; and the armrest unit moves in the front-rear direction in relation to the chair body in conjunction with the reclining movement of the backrest unit while maintaining a predetermined amount of movement, which corresponds to the reclining angle of the backrest unit. Thereby, it enables the position of the forearm in the forearm treatment mechanism that is provided in the armrest unit

not to change as much as possible regardless of the reclining angle of the backrest unit and to make it possible to give a massage to the forearms that are stabilized.

(D) [Best embodiment of the invention]

[0019]

The chair-type massage machine in the present invention is explained in detail based on an embodiment shown in the drawings below. FIG. 1 is a perspective view showing an embodiment of the chair-type massage machine in the present invention. FIG. 2 is a perspective view showing an embodiment of the chair-type massage machine in the present invention when it is in use. FIG. 3 and FIG. 4 are right side views showing an embodiment of the chair-type massage machine in the present invention when it is in use. FIG. 5 is a cross-sectional illustration drawing showing an embodiment of a backrest unit of the chair-type massage machine in the present invention. FIG. 6 is a plan illustration drawing of an embodiment of an armrest unit of the chair-type massage machine in the present invention when it is in use. FIG. 7 through FIG. 12 are longitudinal sectional illustration drawings showing an embodiment of an armrest unit of the chair-type massage machine in the present invention. FIG. 13 through FIG. 16 are perspective illustration drawings showing an embodiment of an armrest unit of the chair-type massage machine in the present invention. FIG. 17 is a partial front illustration drawing showing an embodiment of the chair-type massage machine in the present invention when it is in use. FIG. 18 through FIG. 20 are reference drawings showing prior art.

[0020]

In other words, as shown in the embodiment in FIG. 1 through FIG. 3, the chair-type massage machine in the present invention is chair-type massage machine 1a comprised of chair body 10a including seat unit 11a, with which a massage recipient's hips and thighs come into contact, backrest unit 12a, with which a massage recipient's back comes into contact, and armrest units 14a on both sides of chair body 10a; wherein backrest unit 12a is connected at the rear side of seat unit 11a in a reclinable manner; wherein foot-rest unit 13a is provided to the front side of seat unit 11a in a way that it can be oscillated in the vertical direction; and wherein side wall units 2a that protrude towards the front are provided respectively on both the right and left sides of backrest unit 12a.

[0021]

As shown in FIG. 1, backrest unit 12a has treatment element mechanism 3a, which has a pair of right and left treatment elements 31a at the center part thereof and that can freely move up and down. Treatment mechanism 3a moves up and down from the top

end to the down end of backrest unit 12a along with a pair of right and left guide rails 32a that are provided on the right and left of inside of backrest unit 12a.

[0022]

Treatment element mechanism 3a is a machine-type massage mechanism that activates a pair of right and left treatment elements 31a with a motor, and other driving sources, and gives treatment in various modes, such as tapping, kneading, rolling, oscillating, finger pressure, etc. to the neck, back, waist, hips, and overall back area of a massage recipient who leans on backrest unit 12a.

[0023]

In addition, in each of the predetermined positions of chair-type massage machine 1a, expansion/contraction bags 4a that can repeat expansion and contraction through supplying and exhausting air are embedded respectively. Expansion/contraction bag 4a is designed to expand and contract by air supply and exhaust from air supply and exhaust device 42a, which is composed of a distributor, etc. to distribute air to an air compressor and expansion/contraction bags 4a, and air supply and exhaust device 42a is provided in the bottom space of seat unit 11a.

[0024]

The expansion/contraction movement of expansion/contraction bags 4a by air supply and exhaust device 42a enables giving pressing, finger pressure, etc. for the predetermined treatment part of a massage recipient. If multiple expansion/contraction bags 4a are provided in corresponding positions as a pair, compression, and other treatment can be given. In addition, if expansion/contraction bags 4a are maintained in an expanded state, it makes it possible to hold the predetermined part of a massage recipient for a specified period of time.

[0025]

In addition, an appropriate number of expansion/contraction bags 4a can be provided at the upper right and left and the lower right and left of backrest unit 12a of chair-type massage machine 1a. When these expansion/contraction bags 4a are provided in appropriate positions, chair-type massage machine 1a can be configured to give treatment by pressing the back and waist of a massage recipient or by compressing both the right and left sides of a massage recipient.

[0026]

Further, expansion/contraction bags 4a for the lower hips or thighs are embedded in the rear side of seat unit 11a respectively to give treatment mainly by pressing from the lower side to the upper side.

(E) [0030]

Chair-type massage machine 1a in the present invention, as shown in FIG. 1 and FIG. 6, includes armrest unit 14a, which has forearm insertion opening unit 61a to insert the forearm of a massage recipient from the inner rear side of armrest unit 14a and hollow unit 62a that is extended from forearm insertion opening unit 61a to insert and hold the forearm of a massage recipient in armrest unit 14a.

[0031]

Moreover, chair-type massage machine 1a also has forearm treatment mechanism 6a in places on inner wall surface 621a of hollow unit 62a in order to give a massage to the forearms of a massage recipient.

[0032]

Hollow unit 62a is formed with outer rising wall 622a and inner rising wall 623a, which are respectively provided on the right and left in the width direction of armrest 14a, as well as with bottom unit 624a; wherein forearm treatment mechanism 6a is provided on inner wall surfaces 621a of outer rising wall 622a and inner rising wall 623a. Forearm treatment mechanism 6a can also be provided on bottom unit 624a as necessary.

[0033]

Bottom unit 624a is formed as a placement surface on which a massage recipient's forearms can be placed. Bottom unit 624a is designed so that treatment can be given by forearm treatment mechanism 6a in a state where the hands and forearms are placed on bottom unit 624a.

[0034]

Forearm treatment mechanism 6a may also be formed with expansion/contraction bags 4a. As shown in FIG. 6 and FIG.7, a pair of right and left expansion/contraction bags 4a and 4a can be provided in the front and rear in the length direction of hollow unit 62a so that a compression massage can be given respectively to a massage recipient's hands and forearms. In other words, forearm treatment mechanism 6a can be structured as stated below: the pair of left and right expansion/contraction bags 4a provided in the front side in the length direction of hollow unit 62a correspond to the hands and the pair of left and right expansion/contraction bags 4a provided in the rear side in the length direction of hollow unit 62a correspond to the forearms.

[0035]

Further, varied massages can be given by expanding and contracting the pair of right and left expansion/contraction bags 4a corresponding to the hands and the pair of right and left expansion/contraction bags 4a corresponding to the forearms simultaneously or alternately.

[0036]

On the top surface of armrest unit 14a, placement surface 63a is formed to place a massage recipient's forearms separated by hollow unit 62a. Thus, when a massage recipient does not want to receive treatment from forearm treatment mechanism 6a, he/she can place the forearms on placement surface 63a. Placement surface 63a is in a higher position than bottom unit 624a, and therefore it can be used as a convenient armrest for a tall massage recipient.

[0037]

As shown in FIG. 1, armrest unit 14a is provided with hand-rest unit 65a on upper-front end of outer rising wall 622a and inner rising wall 623a in order to support the body weight when a seated massage recipient stands up or sits. In other words, hand-rest unit 65a is provided in the form of closing the top of the tip of hollow unit 62a.

[0038]

As shown in FIG. 17, different from the placement surfaces of bottom unit 624a and hand-rest unit 65a, the placement surface of hand-rest unit 65a is formed in a higher position than the placement surface of bottom unit 624a. Therefore, when a massage recipient holds hand-rest unit 65a to stand up from a seated state, the forearms have already moved upward from bottom unit 624a and removed from hollow unit 62a. Consequently, it is possible to avoid the rubbing of the inside of the forearms against inner rising wall 623a, in the same way as the existing structure as shown in FIG. 18.

[0039]

Further, as shown in FIG. 13, it is also possible to have a structure so that the hands are compressed up and down by providing expansion/contraction bags 4a on the lower surface of hand-rest unit 65a and on the top surface of bottom unit 624a, respectively.

[0040]

A varied massage can be given by performing said up-and-down compression action for the hands in forearm treatment mechanism 6a and the aforementioned both-side compression action for the hands simultaneously or alternately.

[0041]

As shown in FIG. 13, it is possible to provide expansion/contraction bags 4a as necessary in the position of a pair of right and left expansion/contraction bags 4a corresponding to the forearms in bottom unit 624a, in addition to the aforementioned pair of right and left expansion/contraction bags 4a corresponding to the hands.

[0042]

A varied massage can be given by expanding and contracting the pair of right and left expansion/contraction bags 4a corresponding to the forearms and

expansion/contraction bags 4a that are provided on bottom unit 624a in a manner corresponding to the former, simultaneously or alternately. Alternatively, a pressure massage can be given while maintaining the forearms in a stabilized state by expanding expansion/contraction bag 4a, which is provided on bottom unit 624a, upward while a pair of right and left expansion/contraction bags 4a are kept expanded.

[0043]

As shown in FIG. 13, expansion/contraction bags 4a may be provided in a further rear position than expansion/contraction bags 4a corresponding to the forearms in hollow unit 62a. Since forearm insertion opening unit 61a is provided in the rear position, inner rising wall 623a is not formed, but as shown in FIG. 8, expansion/contraction bags 4a and 4a may be provided at the corresponding positions of two surfaces, that is, outer rising wall 622a and bottom unit 624a.

[0044]

In this case, as shown in FIG. 8, edge 41a of the lower part of expansion/contraction bag 4a may be fixed at the lower part of outer rising wall 622a and edge 41a on the outer rising wall 622a side of another expansion/contraction bag 4a may be fixed on outer rising wall 622a side of bottom unit 624a. With this structure, a compression massage can be given with two surfaces, that is, outer rising wall 622a and bottom unit 624a.

(F) [0045]

Forearm massaging mechanism 6a, as shown in FIG. 13, illustrates the structure wherein square-shape treatment unit 66a is provided in the front part, concave treatment unit 67a is provided at the center, and L-shape treatment unit 68a is provided in the rear part, respectively. In other words, square-shape treatment unit 66a is a treatment unit surrounded in the form of a square by bottom unit 624a, outer rising wall 622a, inner rising wall 623a, and hand-rest unit 65a; concave treatment unit 67a is a treatment unit formed in the concave shape with bottom unit 624a, outer rising wall 622a, and inner rising wall 623a; and L-shape treatment unit 68a is a treatment unit formed in an L-shape with bottom unit 624a and outer rising wall 622a.

[0046]

The configuration shown in FIG. 14 is provided with square-shape treatment unit 66a in the front part, C-shape treatment unit 69a at the center, and L-shape treatment unit 68a in the rear part, respectively. C-shape treatment unit 69a is a treatment unit formed in a C-shape with bottom unit 624a, outer rising wall 622a, and hand-rest unit 65a.

[0047]

This configuration allows, in particular, a compression in the up-and-down direction for the middle forearms. In addition, since the area of hand-rest unit 65a becomes large, it enables a massage recipient to stand up and sit easily by placing the hands on the top surface of hand-rest unit 65a.

[0048]

FIG. 15 shows the structure wherein square-shape treatment units 66a are provided in the front part and at the center and L-shape treatment unit 68a is provided in the rear part, respectively. This is a configuration that additionally enhances treatment, in particular, for the middle forearms.

[0049]

FIG. 9 shows another layout of expansion/contraction bags 4a, which are provided at square-shape treatment unit 66a. In other words, expansion/contraction bags 4a are provided respectively on the inner surface of triangle hollow unit 62a where the lower part is the bottom and the upper part is the vertex. With this configuration, it is possible for a massage recipient to place the palms down as shown in FIG. 9, or to place the hands vertically as shown in FIG. 10, according to the preferences of the massage recipient.

[0050]

Alternatively, as shown in FIG. 11, it is also possible to form hollow unit 62a in a square shape and to connect multiple expansion/contraction bags 4a to make a triangle so that the hands and forearms can be inserted inside the triangle formed with expansion/contraction bags 4a. In this case, the hands and forearms can be rotated freely inside hollow unit 62a that is formed in a square shape and a massage recipient can receive a treatment in the desired posture.

[0051]

Alternatively, ring-shape expansion/contraction bags 4a may be provided inside hollow unit 62a that is formed in a square shape. Ring-shape expansion/contraction bags 4a can fully compress surrounding areas of the hands and forearms as shown in FIG. 12.

[0052]

In addition, as shown in FIG. 4, armrest unit 14a is provided so as to be movable in the front-rear direction in relation to chair body 10a, and armrest unit 14a moves in the front-rear direction in relation to chair body 10a in conjunction with the reclining movement of backrest unit 12a while maintaining a predetermined amount of movement, which corresponds to the reclining angle of backrest unit 12a.

[0053]

In other words, pivot unit 141a for pivoting in the front-rear direction is provided at the lower part of armrest unit 14a and connecting unit 142a is provided in the rear of armrest unit 14a to connect pivotally to the side of backrest unit 12a.

[0054]

Alternatively, although it is not shown in the figure, a horizontal slide mechanism employing a guide rail may be provided in place of pivot unit 141a, so that the entire armrest unit 14a may be slid horizontally in conjunction with the reclining movement of backrest unit 12a.

[0055]

As shown in FIG. 1, safety stop switch 64a for stopping the operation of all the massage mechanisms including forearm treatment mechanism 6a is provided at the tip of hollow unit 62a. By providing safety stop switch 64a, for example, in an emergency situation where a massage recipient immediately needs to get away from chair body 10a for evacuation, but the massage recipient's body or arms and legs are restrained by compression of expansion/contraction bags 4a, he/she may operate safety stop switch 64a with his/her fingertips to immediately release the internal air pressure of expansion/contraction bags 4a to remove his/her body, arms, and legs.

[0056]

In order to operate chair-type massage machine 1a, as shown in FIG. 1, operation unit 5a, such as a remote control, etc., is provided in front of one side of side wall units 2a that are provided on the right and left of backrest unit 12a. Operation unit 5a can operate all functions of chair-type massage machine 1a, including the following operations: turning on/off the power; selecting type and strength, etc. of treatment by treatment element mechanism 3a, air supply and exhaust device 42a, and expansion/contraction bags 4a; controlling the reclining of backrest unit 12a and up-and-down movement of foot-rest unit 13a, etc. In addition, although it is not shown in the figure, it may be configured to perform the operations of operation unit 5a with the operation display unit of liquid crystal display, etc. or operation and instruction unit, such as operation buttons, dials, etc.

[0057]

Furthermore, as shown in FIG. 16, it is also possible to provide operation tool 51a at the tip of hollow unit 62a separately from operation unit 5a so that the operations that are performed by operation unit 5a can be performed by operation tool 51a.

[0058]

A stick type equipped with lever 511a and execution button 512a, which can be easily operated by a massage recipient by hand, may be used for operation tool 51a.

Lever 511a has a form that enables selection and operation by moving it in the front-rear direction or right-left direction, or in circumference, such as four or eight directions, etc. It enables a massage recipient to select items by confirming the liquid crystal display of operation unit 5a and then execute it by pressing execution button 512a.

[0059]

In order to handle the difference in length of the arms of massage recipients, operation tool 51a may be equipped with slide control means 513a for adjustment by sliding it in the front-rear direction. Slide control means 513a may be comprised of a sliding rail and sliding component, which are not shown in the figure. Operation tool 51a may also be equipped with safety stop switch 64a as necessary.

[0060]

In addition, the control in association with the operation of chair-type massage machine 1a by operation unit 5a or operation tool 51a is an electronic control and may be designed to move based on the pre-programmed data or based on the programmed data that a massage recipient has optionally input.

[0061]

Concerning chair-type massage machine 1a, chair-type massage machines were mainly presented. However, not limited to these, the aforementioned structure may apply to, for example, mat-type or bed-type massage machines that are formed with a seat unit, with which at least a massage recipient's hips or thighs come into contact, and a backrest unit, with which a massage recipient's back comes into contact. In this configuration, forearm treatment mechanism 6a may be provided on both the right and left sides of the backrest unit or seat unit.

B. According to the statements in A. above, it is found that the following are disclosed in relation to Invention C-1 in Description C.

(A) In an existing chair-type massage machine provided with a pair of right and left rising walls in the entire length direction of an armrest unit as a forearm treatment mechanism to give a massage to the arms of a massage recipient, since each rising wall is formed to cover the area close to the elbow joint of a massage recipient, there are the following disadvantages: the inner rising wall applies compression near the elbow joint of the upper arm inside and may give discomfort to a massage recipient and hinder insertion and removal of the arms in the forearm treatment mechanism; in addition, since the right and left rising walls are formed also at the front end of the armrest unit, the top surface of the front end of the armrest unit was open and there was a problem that it was difficult to apply the body weight on said part when a seated massage recipient stands up or sits ([0002], [0004] through [0006]).

On the other hand, in the case of the existing chair-type massage machine provided with a pair of right and left rising walls as a forearm treatment mechanism where a flat part as a rising wall is not formed on the top surface on the front side of the armrest unit, a massage recipient can stably maintain the hands on top of both armrest units while he/she is seated. However, since the bottom of the concave unit that is formed between a pair of right and left rising walls and the flat part that serves as the hand-rest unit are on the same level, there was a problem when a massage recipient attempts to stand up by holding the hand-rest unit, he/she receives compression applied by inner rising walls at around the elbow joints of the upper arms inside and has the inner sides of the forearms and the areas surrounding the elbow joints rubbed while removing the arms from the concave units ([0003] and [0007]).

(B) The "present invention" aims to provide a chair-type massage machine that is formed to solve the problem stated in (A) above and eliminate the factor that causes a rising wall for the forearm treatment mechanism to compress the arms of a massage recipient unnecessarily and give discomfort, and to make it possible to insert and remove the arms in the forearm treatment mechanism smoothly, as well as to enable a massage recipient to stand up and sit comfortably even if the chair-type massage machine has the forearm treatment mechanism. As a means to solve the problem, the chair-type massage machine in the "present invention" adopted the following structures: including a forearm insertion opening unit to insert the forearm of a massage recipient from the inner rear side of the armrest, and a hollow unit that is extended from the forearm insertion opening unit to insert and hold the forearm, including the hand, of a massage recipient in the armrest unit; wherein the hollow unit is formed with an outer rising wall and an inner rising wall respectively provided on the left and right sides in the width direction of the armrest unit, as well as with a bottom unit, and a hand-rest unit is provided at the front end of the top surface of the outer rising wall and the inner rising wall of the hollow unit; and expansion/contraction bags are respectively provided on the lower surface of the hand-rest unit and on the top surface of the bottom unit of the hollow unit, respectively ([0008] and [0013]).

Based on the above, the "present invention" shows the effects that the forearms can be inserted and removed smoothly in the forearm treatment mechanism and a massage recipient can stand up and sit comfortably ([0013] and [0014]).

(2) Issue 2-1-1-1 (Fulfillment of constituent features of Inventions C-1 and C-2)

A. Structures of Defendant's Products 1 and 2

(A) As stated in the basic facts above, Defendant's Products 1 and 2 have the structures stated in No.1, 2. (1) of Attachment 1 "Descriptions of Defendant's Products 1 through

8" and the structures as stated in No. 1, 2. (2) a., d., f., and g. of said Attachment.

(B) According to the facts found in this case as stated in (A) above, evidence (Exhibits Ko 7, 8, and Otsu C15 through C17, C25, and C40), and the entire import of oral arguments, Defendant's Products 1 and 2 are found to have the following structures as stated in a. through g.

a. and g. A massage chair that has a chair body including a seat unit and a backrest unit, and armrest units on both sides of the chair body;

b. wherein an opening unit to insert the forearm of a massage recipient from the inner rear side of the arm unit is provided and a space (forearm holding unit) that is extended from the opening unit to insert and hold the forearm, including the hand, of a massage recipient in the arm unit is provided;

c. wherein the forearm holding unit has an outer wall surface unit that is provided on the outside in the width direction of the arm unit and bottom unit and an inner wall surface unit that is provided on the inside in the width direction of the arm unit in the front;

d. wherein in the front of the forearm holding unit, an armrest (rest unit) is provided at the top of the inner wall surface unit and the outer wall surface unit in the form of closing the top of the front end; and

e. wherein the arm unit is equipped with:

e-1. a treatment unit, for which the front unit is surrounded by the bottom unit, the outer wall surface unit, the inner wall surface unit, and the armrest and which is located at the forearm holding unit; and

e-2. a nearly L-shape treatment unit, which is formed in nearly an L-shape at the rear part with the bottom unit and the outer wall surface unit and which is located at the opening unit; and

f. a hand press unit (airbag) is provided in the front part and a forearm press unit (airbag) is provided in the rear part, respectively.

B. Fulfillment of constituent features of Invention C-1 by Defendant's Products 1 and 2

(A) "Hollow unit" (Constituent Features [B] and [C])

a. As stated in the basic facts above, Defendant's Products 1 and 2 fulfill Constituent Features [A], [D], [F], and [G] of Invention C-1.

Based on the statements in the claims (Claim 1) of Invention C-1, it is construed that the "hollow unit" in Invention C-1 is provided at the "armrest unit" and is "extended from the forearm insertion opening unit to insert and hold the forearm, including the hand, of a massage recipient in the inside of the armrest unit" (Constituent Feature [B])

and is "formed with an outer rising wall and an inner rising wall respectively provided on the left and right sides in the width direction of the armrest unit, as well as with a bottom unit" (Constituent Feature [C]). The term "forearm" as used in "the forearm, including the hand" generally refers to the part from elbow to wrist (Exhibit Otsu C6) and the term "hand" as used in "the hand" generally refers to the part from wrist to the fingertips (Exhibit Otsu C7).

On the other hand, the claims (Claim 1) of Invention C-1 have no statement stipulating that it is necessary to provide an "inner rising wall" that forms the "hollow unit" in the entire area in the length direction of the hollow unit.

Next, as found in (1) B. above, in Description C, the following are disclosed concerning Invention C-1: in an existing chair-type massage machine provided with a pair of right and left rising walls in the entire length direction of an armrest unit as a forearm treatment mechanism to give a massage to the arms of a massage recipient, since each rising wall is formed to cover the area close to the elbow joint of a massage recipient, there are the following disadvantages: the inner rising wall applies compression near the elbow joint of the upper arm inside and may give discomfort to a massage recipient and hinder insertion and removal of the arms in the forearm treatment mechanism; in addition, since the right and left rising walls are formed also at the front end of the armrest unit, the top surface of the front end of the armrest unit was open and there was a problem that it was difficult to apply the body weight on said part when a seated massage recipient stands up or sits ([0002], [0004] through [0006]); in addition, in the case of the existing chair-type massage machine provided with a pair of right and left rising walls as a forearm treatment mechanism where a flat part as a rising wall is not formed on the top surface on the front side of the armrest unit, a massage recipient can stably maintain the hands on top of both armrest units while he/she is seated; however, since the bottom of the concave unit that is formed between a pair of right and left rising walls and the flat part that serves as the hand-rest unit are on the same level, there was a problem when a massage recipient attempts to stand up by holding the hand-rest unit, he/she receives compression applied by inner rising walls at around the elbow joints of the upper arms inside and has the inner sides of the forearms and the areas surrounding the elbow joints rubbed while removing the arms from the concave units ([0003] and [0007]); Invention C-1 aims to provide a chair-type massage machine that is formed to eliminate the factor that causes a rising wall of forearm treatment mechanism to compress the arms of a massage recipient unnecessarily and give discomfort, and to make it possible to insert and remove the arms in the forearm treatment mechanism smoothly, as well as to enable a massage recipient to stand up and

sit comfortably even if the chair-type massage machine has the forearm treatment mechanism; as a means to solve the problem, Invention C-1 adopted the following structures; including a forearm insertion opening unit to insert the forearm of a massage recipient from the inner rear side of the armrest, and a hollow unit that is extended from the forearm insertion opening unit to insert and hold the forearm, including the hand, of a massage recipient in the inside of the armrest unit; wherein the hollow unit is formed with an outer rising wall and an inner rising wall respectively provided on the left and right sides in the width direction of the armrest unit, as well as with a bottom unit, and a hand-rest unit is provided at the front end of the top surface of the outer rising wall and the inner rising wall of the hollow unit; and expansion/contraction bags are respectively provided on the lower surface of the hand-rest unit and on the top surface of the bottom unit of the hollow unit respectively ([0008] and [0013]); based on the above, Invention C-1 shows the effects that the forearms can be inserted and removed smoothly in the forearm treatment mechanism and a massage recipient can stand up and sit comfortably ([0013] and [0014]).

Description C has the following statements concerning the "hollow unit": "Chair-type massage machine 1a in the present invention, as shown in FIG. 1 and FIG. 6, includes armrest unit 14a, which has forearm insertion opening unit 61a to insert the forearm of a massage recipient from the inner rear side of armrest unit 14a and hollow unit 62a that is extended from forearm insertion opening unit 61a to insert and hold the forearm of a massage recipient in armrest unit 14a." ([0030]); "Moreover, chair-type massage machine 1a also has forearm treatment mechanism 6a in places on inner wall surface 621a of hollow unit 62a in order to give a massage to the forearms of a massage recipient." ([0031]); "Hollow unit 62a is formed with outer rising wall 622a and inner rising wall 623a, which are respectively provided on the right and left in the width direction of armrest 14a, as well as with bottom unit 624a; wherein forearm treatment mechanism 6a is provided on inner wall surfaces 621a of outer rising wall 622a and inner rising wall 623a. Forearm treatment mechanism 6a can also be provided on bottom unit 624a as necessary." ([0032]); "Forearm treatment mechanism 6a may also be formed with expansion/contraction bags 4a. As shown in FIG. 6 and FIG. 7, a pair of right and left expansion/contraction bags 4a and 4a can be provided in the front and rear in the length direction of hollow unit 62a so that a compression massage can be given respectively to a massage recipient's hands and forearms. In other words, forearm treatment mechanism 6a can be structured as stated below: the pair of left and right expansion/contraction bags 4a provided in the front side in the length direction of hollow unit 62a correspond to the hands and the pair of left and right

expansion/contraction bags 4a provided in the rear side in the length direction of hollow unit 62a correspond to the forearms." ([0034]); "As shown in FIG. 1, armrest unit 14a is provided with hand-rest unit 65a on the upper-front end of outer rising wall 622a and inner rising wall 623a in order to support the body weight when a seated massage recipient stands up or sits. In other words, hand-rest unit 65a is provided in the form of closing the top of the tip of hollow unit 62a." ([0037]); "As shown in FIG. 13, expansion/contraction bags 4a may be provided in a further rear position than expansion/contraction bags 4a corresponding to the forearms in hollow unit 62a. Since forearm insertion opening unit 61a is provided in the rear position, inner rising wall 623a is not formed, but as shown in FIG. 8, expansion/contraction bags 4a and 4a may be provided at the corresponding positions of two surfaces, that is, outer rising wall 622a and bottom unit 624a." ([0043]); "Forearm massaging mechanism 6a, as shown in FIG. 13, illustrates the structure wherein square-shape treatment unit 66a is provided in the front part, concave treatment unit 67a is provided at the center, and L-shape treatment unit 68a is provided in the rear part, respectively. In other words, square-shape treatment unit 66a is a treatment unit surrounded in the form of a square by bottom unit 624a, outer rising wall 622a, inner rising wall 623a, and hand-rest unit 65a; concave treatment unit 67a is a treatment unit formed in the concave shape with bottom unit 624a, outer rising wall 622a, and inner rising wall 623a; and L-shape treatment unit 68a is a treatment unit formed in an L-shape with bottom unit 624a and outer rising wall 622a." ([0045]); "The configuration shown in FIG. 14 is provided with square-shape treatment unit 66a in the front part, C-shape treatment unit 69a at the center, and L-shape treatment unit 68a in the rear part, respectively. C-shape treatment unit 69a is a treatment unit formed in a C-shape with bottom unit 624a, outer rising wall 622a, and hand-rest unit 65a." ([0046]); "FIG. 15 shows the structure wherein square-shape treatment units 66a are provided in the front part and at the center and L-shape treatment unit 68a is provided in the rear part, respectively. This is a configuration that additionally enhances treatment, in particular, for the middle forearms." ([0048]). In addition, in FIG. 8, a code "62a" representing the hollow unit is indicated in the space where there is no inner rising wall and that is formed in an L-shape with outer rising wall 622a and bottom unit 624a; and in FIG. 14, a code "62a" representing the hollow unit is indicated in the space where there is no inner rising wall and that is formed in a C-shape with bottom unit 624a, outer rising wall 622a, and hand-rest unit 65a.

On the other hand, there is no statement or suggestion in Description C that the "inner rising wall" that forms the "hollow unit" is required to be provided along the entire area in the length direction of the hollow unit. However, as stated above,

Description C discloses the following: in an existing chair-type massage machine provided with a pair of right and left rising walls along the entire area in the length direction of an armrest unit as a forearm treatment mechanism to give a massage to the arms of a massage recipient, there are disadvantages that the inner rising wall on the massage recipient side applies compression near the elbow joint of the upper arm inside and gives discomfort to a massage recipient and hinders insertion and removal of the arms in the forearm treatment mechanism.

Considering the aforementioned statements in the claims (Claim 1) of Invention C-1 and the statements in Description C together, it is construed as follows: the "hollow unit" in Invention C-1 "is formed with an outer rising wall and an inner rising wall respectively provided on the left and right sides in the width direction of the armrest unit, as well as with a bottom unit" and is a part "that is extended from the forearm insertion opening unit to insert and hold the forearm, including the hand, of a massage recipient in the armrest unit"; it is not required that the inner rising wall exists along the entire area in the length direction of the hollow unit and the structure wherein an inner rising wall exists in part in the length direction also falls under the "hollow unit."

b. On the other hand, the Appellee alleged as follows: [i] according to the statements in the claims (Claim 1) of Invention C-1, the "hollow unit" in Invention C-1 is required to be extended from and adjacent to the "insertion opening unit," which is provided at the rear of the "hollow unit," where "the forearm, including the hand" can be inserted, and to be "formed with an outer rising wall and an inner rising wall, as well as with a bottom unit, and therefore, "the "hollow unit" in Invention C-1 refers to a hollow unit provided with an "inner rising wall" around the entire "hollow unit," and that has an "inner rising wall" to cover at least part of the forearm of a massage recipient; [ii] according to the statements in Description C, the "hollow unit" is provided in the form of putting a cover on the inner rising wall and the outer rising wall in order to "avoid the rubbing of the forearms against the inner rising wall when a massage recipient stands up or sits," and therefore, the "hollow unit" in Invention C-1 must have the "inner rising wall" to cover at least part of the forearm; [iii] by the Amendment related to Description C, the "hollow unit" in Invention C-1 is limited to one "formed with an outer rising wall and an inner rising wall respectively provided on the left and right sides in the width direction of the armrest unit, as well as with a bottom unit" and the armrest unit in "C-shape" in FIG. 14 of Description C is not included in the "hollow unit" in Invention C-1; however, on the other hand, in light of the statements in the Written Statement (Exhibit Otsu C10) and the Written Opinion (Exhibit Otsu C12), the reason why there are the statements of [0046] and FIG. 14 in Description C is only because they were not amended, etc. when

Application C was filed or the Amendment was made; and the statement of "62a" in FIG. 8 only indicates "hollow unit 62a" using a virtual line for indicating the "forearm insertion opening unit" that is "at the rear" of "hollow unit 62a," and therefore, it does not show that there is part that is not equipped with an "inner rising wall" in the "hollow unit"; consequently, the "hollow unit" in Invention C-1 refers to one where the "inner rising wall" is provided around the entire "hollow unit" and means one with an "inner rising wall" that extends at least to part of the forearm of a massage recipient.

However, concerning [i] and [ii], as explained in a. above, according to the statements in the claims (Claim 1) of Invention C-1 and the statements in Description C, it cannot be construed that the "hollow unit" in Invention C-1 is one with a structure where the "inner rising wall" is provided around the entirety thereof nor that it has the "inner rising wall" that extends at least to cover part of the forearm of a massage recipient.

Next, concerning [iii], the Written Statement (Exhibit Otsu C10), which was submitted by the Appellant and Shigeru Tec upon filing Application C, contains the statement that "concerning the parts changed, inventions based on the matters stated in [0032], [0033], [0034], and [0037] in the description immediately before dividing the Original Application and drawings [FIG.1] through [FIG. 4], [FIG. 6], [FIG. 7], [FIG. 13], and [FIG. 16] were newly added"; it is found that the Written Statement aims to explain that Application C fulfills the substantial requirements for division, etc., but not to restrict the claims related to Application C; the aforementioned statement is found to be explaining that the matters stated in the claims, description, or drawings of Application C are within the range of matters stated in the claims, description, or drawings immediately before the division of the Original Application; and it cannot be said that the relevant part of the statement presents an intention to eliminate the embodiment examples stated in the paragraphs and drawings in the description that are not stated in the aforementioned part from the technical scope of the patented invention related to Application C.

In addition, the claims (Claim 2) of Invention C-2 including the structure wherein part of the hollow unit is a C-shape treatment unit are added by the Amendment. The Written Opinion (Exhibit Otsu C12), which was submitted at the same time as the Amendment, contains the following statement concerning the details of the amendment of Claim 1: "it is stated in columns of [0045] and [0046] of the Description of the Application that 'the armrest unit has a treatment unit, wherein the front part is surrounded by the bottom unit, the outer rising wall, the inner rising wall, and the hand-rest unit and which is located at the hollow unit, and a treatment unit, wherein the rear

part is formed in an L-shape with the bottom unit and the outer rising wall and which is located at the forearm insertion opening unit." It cited [0046] of Description C and explained that the Amendment does not fall under the addition of new matters. In light of the above, it cannot be found that the Appellant intentionally eliminated the embodiment wherein an inner rising wall is provided at only part of the hollow unit from the claims of Invention C-1.

As described above, even considering the details of the application of Patent C, there is no reason to construe that the "hollow unit" in Invention C-1 refers to one with an "inner rising wall" provided around the entirety thereof.

Based on the above, the aforementioned Appellee's allegations cannot be accepted. c. Then, whether Defendant's Products 1 and 2 include the "hollow unit" in Invention C-1 is examined below.

Defendant's Products 1 and 2 have structures a. through g. in A. (B) above. The "arm unit," "outer wall surface unit," "inner wall surface unit," "bottom unit," "armrest (rest unit)," and "(hand/forearm) press unit" of Defendant's Products 1 and 2 are found to correspond to the "armrest unit," "outer rising wall," "inner rising wall," "bottom unit," "hand-rest unit," and "expansion/contraction bag" in Invention C-1, respectively.

As shown in the photographs of No. 1, FIG. 4 and FIG. 5 of Attachment 1 "Descriptions of Defendant's Products 1 through 8," it is found that structure b. of Defendant's Products 1 and 2, "a space (forearm holding unit) that is extended from the opening unit to insert and hold the forearm, including the hand, of a massage recipient in the arm unit," (the part from near the dotted line (c) to the front (dotted line (a) direction) stated in FIG. 5 of Attachment 1) has a bottom unit and an outer rising wall around the entire part; an inner rising wall is provided in the front part; and a square-shape space is formed with the bottom unit, the outer rising wall and the inner rising wall, and the armrest that covers the upper tip.

Then, the following is found: the forearm holding unit of Defendant's Products 1 and 2 has the bottom unit and the outer rising wall around the entire part and is a part "that is extended from the opening unit to insert the forearm that is to insert and hold the forearm, including the hand, of a massage recipient inside the armrest unit, wherein the front part is "formed with an outer rising wall and an inner rising wall respectively provided on the left and right sides in the width direction of the armrest unit, as well as with a bottom unit," and wherein part in the length direction thereof is provided with an inner rising wall; and therefore it corresponds to the "hollow unit" in Invention C-1.

The Appellee's allegation against the above cannot be accepted.
(B) "Forearm insertion opening unit" (Constituent Feature [B])

a. According to the statements in the claims (Claim 1) of Invention C-1, it is construed that the "forearm insertion opening unit" in Invention C-1 is an opening unit that is provided at the "armrest unit" "to insert the forearm of a massage recipient from the inner rear side," and that the "hollow unit" "that is extended from the forearm insertion opening unit to insert and hold the forearm, including the hand, of a massage recipient in the armrest unit" is provided (Constituent Feature [B]). The term "extend" refers to "extend and provide." In light of the above, the phrase "that is extended from the forearm insertion opening unit" is construed to mean being extended from the "forearm insertion opening unit" and provided. Therefore, the "hollow unit" in Invention C-1 is construed to start from the "forearm insertion opening unit" and the "forearm insertion opening unit" composes part of the "hollow unit."

Next, there are the following statements in Description C concerning the "forearm insertion opening unit": "the chair-type massage machine in the present invention has the forearm insertion opening unit that is formed with the outer rising wall and the bottom unit provided at the rear position of the hollow unit, wherein expansion/contraction bags are provided at the corresponding positions of two surfaces, that is, the outer rising wall and the bottom unit of the forearm insertion opening unit, respectively. Therefore, it can give a massage to the forearms at the rear position of the hollow unit." ([0016]); "Chair-type massage machine 1a in the present invention, as shown in FIG. 1 and FIG. 6, includes armrest unit 14a, which has forearm insertion opening unit 61a to insert the forearm of a massage recipient from the inner rear side of armrest unit 14a and hollow unit 62a that is extended from forearm insertion opening unit 61a to insert and hold the forearm of a massage recipient in armrest unit 14a." ([0030]); "As shown in FIG. 13, expansion/contraction bags 4a may be provided in a further rear position than expansion/contraction bags 4a corresponding to the forearms in hollow unit 62a. Since forearm insertion opening unit 61a is provided in the rear position, inner rising wall 623a is not formed, but as shown in FIG. 8, expansion/contraction bags 4a and 4a may be provided at the corresponding positions of two surfaces, that is, outer rising wall 622a and bottom unit 624a." ([0043]). In addition, FIG. 6 indicates that forearm insertion opening unit 61a is provided at the rear of hollow unit 62a. According to the aforementioned statements, it is found that Description C disclosed that the "forearm insertion opening unit" is "formed with the outer rising wall and the bottom unit" at "the rear of the hollow unit" and comprises part of the "hollow unit."

According to the statements in the claims (Claim 1) of Invention C-1, it is construed that the "forearm insertion opening unit" in Invention C-1 is an opening unit that is

provided at the "armrest unit" "to insert the forearm of a massage recipient from the inner rear side" and that is the part constituting part of the "hollow unit."

b. Structure b., "opening unit," of Defendant's Products 1 and 2 (near the dotted line (c) stated in FIG. 5 of Attachment 1) is an opening unit that is provided at the "armrest unit" "to insert the forearm of a massage recipient from the inner rear of the armrest unit" and is a part constituting part of the "hollow unit." Therefore, it is found to correspond to the "forearm insertion opening unit" in Invention C-1.

c. On the other hand, the Appellee alleged that the opening unit of Defendant's Products 1 and 2 is to insert the forearm of a massage recipient from the inner side and is not an opening unit that is provided "to insert the forearm of a massage recipient from the inner back," and therefore that it does not fall under the "forearm insertion opening unit" in Invention C-1.

However, Defendant's Products 1 and 2 have the structure wherein "an armrest (rest unit) is provided in the front part of the arm holding unit in the form of closing the top of the upper tip at the upper part of the inner wall surface unit and the outer wall surface unit" (structure d.). Therefore, even in cases of "inserting the forearm, including the hand, from the side of the arm unit," it is associated with an action to insert the forearm, including the hand, from the inner back towards the front. Therefore, the "opening unit" in structure b. corresponds to the opening unit that is provided "to insert the forearm of a massage recipient from the inner back."

Consequently, the aforementioned allegation of the Appellee cannot be accepted.

(C) Fulfillment of Constituent Features [B] and [C]

Based on the above, Defendant's Products 1 and 2 include the "hollow unit" and "forearm insertion opening unit" in Invention C-1 and therefore they fulfill Constituent Features [B] and [C].

(D) Fulfillment of Constituent Features [E-1] and [E-2]

As it was found in (B) and (C) above, the "arm unit," "outer wall surface unit," "inner wall surface unit," "bottom unit," "armrest (rest unit)," "forearm holding unit," and "opening unit" of Defendant's Products 1 and 2 correspond to the "armrest unit," "outer rising wall," "inner rising wall," "bottom unit," "hand-rest unit," "hollow unit," and "forearm insertion opening unit" in Invention C-1.

Based on the above, it is found that "a treatment unit, for which the front unit is surrounded by the bottom unit, the outer wall surface unit, the inner wall surface unit, and the armrest and which is located at the forearm holding unit" of the "arm unit" in structure e-1 of Defendant's Products 1 and 2 and "a nearly L-shape treatment unit, which is formed in nearly an L-shape at the rear part with the bottom unit and the outer

wall surface unit and which is located at the opening unit" of the "arm unit" in structure e-2 of Defendant's Products 1 and 2 respectively correspond to the structure of Constituent Feature [E-1] of Invention C-1 ("a treatment unit, where the front part is surrounded by the bottom unit, the outer rising wall, the inner rising wall, and the hand-rest unit and which is located at the hollow unit" of the "armrest unit") and the structure of Constituent Feature [E-2] of Invention C-1 ("a treatment unit, where the rear part is formed in an L-shape with the bottom unit and the outer rising wall and which is located at the forearm insertion opening unit").

The Appellee's allegation against the above cannot be accepted.

(E) Summary

Based on the above, Defendant's Products 1 and 2 fulfill all constituent features of Invention C-1 and therefore fall within the technical scope of Invention C-1.

C. Fulfillment of constituent features of Invention C-2 by Defendant's Products 1 and 2

(A) Defendant's Products 1 and 2 fulfill all constituent features of Invention C-1 as found in B. above, and Defendant's Products 1 and 2 fulfill Constituent Feature [I] of Invention C-2 as stated in basic facts above.

According to evidence (Exhibits Ko 7, 8, and Otsu C15 through C17, C25, C40) and the entire import of oral arguments, it is found that Defendant's Products 1 and 2 include a structure (structure h.) that "the arm unit is provided with a treatment unit formed nearly in C-shape by the bottom unit and the outer wall surface unit at the center and the armrest whose width becomes narrower towards the rear end."

(B) According to the statements in the claims (Claim 2) of Invention C-2, it is construed that the "treatment unit" of Constituent Feature [H] "is formed in a C-shape with the bottom unit, the outer rising wall, and the hand-rest unit" at the "center" of the "armrest unit."

On the other hand, there is no statement in the claims (Claim 2) of Invention C-2 to stipulate the shape of the bottom unit, the outer rising wall, and the hand-rest unit that form a "C-shape" treatment unit. In addition, Description C has the following statements: "The configuration shown in FIG. 14 is provided with square-shape treatment unit 66a in the front part, C-shape treatment unit 69a at the center, and L-shape treatment unit 68a in the rear part, respectively. C-shape treatment unit 69a is a treatment unit formed in a C-shape with bottom unit 624a, outer rising wall 622a, and hand-rest unit 65a." ([0046]); "This configuration allows, in particular, a compression in the up-and-down direction for the middle forearms. In addition, since the area of hand-rest unit 65a becomes large, it enables a massage recipient to stand up and sit

easily by placing the hands on the top surface of hand-rest unit 65a." ([0047])). In the same way as in the statements in the claims (Claim 2), there is no statement on limiting the shape of the bottom unit, the outer rising wall, and the hand-rest unit that form the "C-shape" treatment unit to specific forms.

In addition, based on the fact that the "arm unit," "bottom unit," "outer wall surface unit," and "armrest" of Defendant's Products 1 and 2 respectively correspond to the "armrest unit," "bottom unit," "outer rising wall," and "hand-rest unit" of Invention C-2, it is found that structure h. of Defendant's Products 1 and 2, "a treatment unit formed in nearly C-shape," corresponds to "a treatment unit" of Constituent Feature [H].

The Appellee's allegation against the above cannot be accepted.

(C) Based on the above, Defendant's Products 1 and 2 fulfill all constituent features of Invention C-2 and therefore fall within the technical scope of Invention C-2.

(3) Issue 2-1-1-2 (Whether constituent features of Inventions C-3 through C-5 are fulfilled)

A. Fulfillment of constituent features of Inventions C-3 and C-4 by Defendant's Product 1

(A) As found in (2) B. above, Defendant's Product 1 fulfills all constituent features of Invention C-1.

According to evidence (Exhibits Ko 7, 8, and Otsu C15, C16, C40) and the entire import of oral arguments, Defendant's Product 1 is found to have the following structures k. and l.

k. wherein outer wall airbag 1 and outer wall airbag 2 are provided at the corresponding positions of two surfaces, that is, the outer wall surface unit and the bottom unit of the opening unit, and a bottom wall airbag is provided on the bottom unit side, respectively; and

l. the lower edge of outer wall airbag 1 is fixed at the top surface of the protrusion, which is formed on the inner surface of the outer wall surface unit, and the edge of the outer wall surface unit side of outer wall airbag 2 and bottom wall airbag is fixed on the outer wall surface unit side of the bottom unit.

(B) a. According to the statements in the claims (Claim 3) of Invention C-3, the "outer rising wall" (Constituent Feature [K]) in Invention C-3 is construed to be a wall provided on the outside of the armrest unit in the width direction. In addition, the "lower part of the outer rising wall" in Constituent Feature [L] is construed to refer to the lower half position in cases of observing the entire outer rising wall in the up and down direction.

b. As stated in 3. of Attachment 5 "Figures for Allegation (Defendant's Products 1 and

2)," concerning Defendant's Product 1, outer wall airbag 1 is provided at the "outer wall surface unit," which corresponds to the outer rising wall, and a bottom wall airbag is provided at the bottom unit, and the lower edge of outer wall airbag 1 is fixed on the top surface of the protrusion formed on the inner surface of the outer wall surface unit (structures k. and l.); and the "protrusion" is a swelling part provided on the inner surface of the outer wall surface unit, and based on their positional relationship and shapes, it is considered to be a component of the "outer rising wall." The top surface of the protrusion is not at the lower end of the inner rising wall, but, when observing the entire outer rising wall in the up and down direction, it can be said that it is positioned in the lower half, or in the lower part, and therefore it can be said that the end of the lower part of outer wall airbag 1 is fixed at the lower part of the outer rising wall. In addition, the end of the outer wall surface unit side of another expansion/contraction bag, that is, the bottom wall airbag, is fixed on the outer rising wall of the bottom unit.

Then, Defendant's Product 1 fulfills Constituent Features [K] and [L] of Invention C-3.

c. On the other hand, the Appellee alleged as follows: [i] as shown in 3. of Attachment 5 "Figures for Allegation (Defendant's Products 1 and 2)," the edge of the bottom wall airbag and the edge of outer wall airbag 2 are fixed at places on the outer wall surface unit side of the bottom unit and outer wall airbag 1 is fixed at the top surface of the protrusion, but not fixed at the outer wall surface unit; and as the protrusion is not formed of the outer wall surface unit and the inner wall surface, it is not included in the "outer rising wall" (Constituent Feature [K]) of Invention C-3; [ii] the top surface of the protrusion is, as indicated in 4. of said Attachment, located near the "center part" of the outer wall from among the outer wall and the top wall that constitute the outer wall surface unit; and therefore, outer wall airbag 1 does not have the structure of Constituent Feature [L] wherein "the lower edge of one of the expansion/contraction bags is fixed at the lower part of the outer rising wall"; outer wall airbag 2 is also fixed at the bottom unit, and therefore, does not have the aforementioned structure; consequently, Defendant's Product 1 does not fulfill Constituent Features [K] and [L] of Invention C-3.

However, in light of the fact found in b. above, the aforementioned Appellee's allegations cannot be accepted.

(C) Based on the above, Defendant's Product 1 fulfills all constituent features of Invention C-3 and therefore falls within the technical scope of Invention C-3.

In addition, Defendant's Product 1 fulfills all constituent features of Invention C-4 based on the same grounds as above, and therefore falls within the technical scope of

Invention C-4.

B. Fulfillment of constituent features of Inventions C-3 and C-4 by Defendant's Product 2

(A) As found in (2) B. above, Defendant's Product 2 fulfills all constituent features of Invention C-1.

According to evidence (Exhibits Ko 8, and Otsu C15, C17, C25) and the entire import of oral arguments, Defendant's Product 2 is found to have the following structures k' and l'.

k'. wherein outer wall airbag 1 and outer wall airbag 2 are provided at the corresponding positions of two surfaces, that is, the outer wall surface unit and the bottom unit of the opening unit, and a bottom wall airbag is provided on the bottom unit side, respectively; all of outer wall airbag 1, outer wall airbag 2, and bottom wall airbag are divided into two along the extension direction of the forearm; and

l'. the lower edge of outer wall airbag 1 and outer wall airbag 2 are fixed at the top surface of the protrusion, which is formed on the inner surface of the outer wall surface unit, and the edge of the outer wall surface unit side of the bottom wall airbag is fixed on the outer wall surface unit side of the bottom unit.

(B) a. Concerning the "protrusion" of structures k' and l' of Defendant's Product 2, as stated in 5. of Attachment 5 "Figures for Allegation (Defendant's Products 1 and 2)," outer wall airbags 1 and 2 are fixed at the protrusion respectively.

In addition, it is found that the protrusion is a swelling part formed on the inner surface of the "outer wall surface unit," which corresponds to the outer rising wall, and is a component of the "outer rising wall." Therefore, the top surface of the protrusion falls under the "lower part of the outer rising wall."

Then, Defendant's Product 2 fulfills Constituent Features [K] and [L] of Invention C-3.

b. On the other hand, the Appellee alleged that, in Defendant's Product 2, as shown in 5. and 6. of Attachment 5 "Figures for Allegation (Defendant's Products 1 and 2)," outer wall airbags 1 and 2 are fixed at the top surface of the protrusion; however, the protrusion is not included in the "outer rising wall" (Constituent Feature [K]) in Invention C-3; the top surface of the protrusion is, as indicated in 6. of said Attachment, located near the "center part" of the outer wall from among the outer wall and the top wall that constitute the outer wall unit; therefore, outer wall airbags 1 and 2 do not have the structure of Constituent Feature [L] wherein "the lower edge of one of the expansion/contraction bags is fixed at the lower part of the outer rising wall"; accordingly, Defendant's Product 2 does not fulfill Constituent Features [K] and [L] of

Invention C-3.

However, in light of the fact found in a. above, the aforementioned Appellee's allegations cannot be accepted.

(C) Based on the above, Defendant's Product 2 fulfills all constituent features of Invention C-3 and therefore falls within the technical scope of Invention C-3.

In addition, Defendant's Product 2 fulfills all constituent features of Invention C-4 based on the same grounds as above, and therefore falls within the technical scope of Invention C-4.

C. Fulfillment of constituent features of Invention C-5 by Defendant's Products 1 and 2

Defendant's Products 1 and 2 fulfill all constituent features of Invention C-1 as found in B. above, and Defendant's Products 1 and 2 fulfill Constituent Feature [P] of Invention C-5 as stated in basic facts above.

Based on the above, Defendant's Products 1 and 2 fulfill all constituent features of Invention C-5 and therefore fall within the technical scope of Invention C-5.

(4) Summary

As described above, Defendant's Products 1 and 2 fall within the technical scope of Inventions C.

4. Issue 2-2 (Whether the invalidity defense related to Patent C is established) (Issue related to Patent C)

(1) Grounds for Invalidation 1 (Lack of an inventive step of Inventions C, which use Exhibit Otsu C19 as primary prior art)

A. Statements in Exhibit Otsu C19

(A) There are the following statements in Exhibit Otsu C19 (Unexamined Patent Application Publication No. 2005-287831) (for FIG. 1 through FIG. 3, FIG. 16 through FIG. 21, FIG. 36 through FIG. 38, see Attachment 6).

a. [Claims]

[Claim 1]

A treatment machine, which has a chair body wherein armrest units are provided on both sides of the seat unit and a back rest unit is provided at the back of the seat unit; and which is characterized by providing at least one of the means of holding underarms, which holds both underarms of a massage recipient by sandwiching them from both sides and gives treatment thereto, or the means of lifting up underarms, which holds both underarms of a massage recipient in a manner to enable them to be lifted up, on both sides of the backrest unit of the chair body.

[Claim 2]

A treatment machine, which has a chair body wherein armrest units are provided on both sides of the seat unit and a back rest unit is provided at the back of the seat unit; and which is characterized by including elbow insertion concave grooves inside both the armrest units of the chair body and providing an elbow sandwiching means which holds the elbows by sandwiching them and gives treatment thereto.

b. [Technical field]

[0001]

The present invention relates to a chair-type treatment machine capable of comfortably performing various treatments for the human body.

[Background art]

[0002]

As a treatment machine capable of treating various parts of a human body, for example, there have been a chair as shown in FIG. 36 and FIG. 37, and a treatment machine with a hand kneading function as shown in FIG. 38.

[0003]

The chair shown in FIG. 36 and FIG. 37 is provided with chair body 2 including seat unit 11, backrest unit 12, which can rise and fall, footrest unit 3, wherein insertion concave groove 28 is provided respectively on the right and left thereof, and armrest unit 11c provided on the right and left of seat unit 11; wherein expansion/contraction bags 16 through 20, 26, and 27 that expand and contract by compressed air supplied and exhausted by air supply device 4 are provided in seat unit 11, backrest unit 12, and insertion concave grooves 28 that are provided on the right and left of footrest unit 3; wherein backrest unit 12 can give treatment mainly for the back side of the human body, footrest 3 can give treatment mainly for the calves, and seat unit 11 can give treatment mainly for the thighs, respectively.

[0004]

In addition, backrest unit 12 is provided with engagement convex unit 51, which is provided at the lower part of backrest unit 12 so that backrest unit 12 does not get caught on the underarm of a massage recipient in the rising and falling range where backrest unit 12 reclines nearly at 150 degrees against the seat surface from the standing position, and backrest unit 12 can get caught on the underarm of a massage recipient when backrest unit 12 reclines more than the aforementioned nearly 150 degrees; wherein, when backrest unit 12 is reclined nearly 150 degrees or more, underarm engagement convex unit 51 gets caught on the underarm of a seated person and the seated person, whose lower thighs are caught by footrest 3, is pulled in his/her head direction, thereby a stretching action can be performed. (Patent Document 1)

[0005]

In addition to treatment for the human body and legs that can be given by a chair-type massage machine as above, a treatment machine with a hand kneading function as shown in FIG. 38 can give treatment for the human arms or elbows; in the treatment machine with a hand kneading function, rising walls 211 are provided on the top outer sides of armrests 21 of chair body 2, which is composed of a backrest unit, seat unit, and armrest units 21; wherein expansion/contraction bags 12, which expand and contract by air supply device 4, are provided on the top surfaces of rising walls 211 and armrest units 21, respectively; and wherein a treatment is given by expansion/contraction bags 12 while sandwiching and holding the human arms or elbows placed on the top surfaces of armrest units 21. (Patent Document 2)

[Problems to be solved by the invention]

[0006]

An existing chair as indicated in Patent Document 1 above is provided with a pair of engagement convex units, which do not perform treatment movement at the underarm position of a massage recipient, in a state where they are always protruded, at fixed positions on both sides of the backrest unit surface. Therefore, the engagement convex unit is an obstacle and unnecessary unless the backrest unit is reclined towards the back and the underarm part is lifted up by the engagement convex unit, and when a massage recipient sits so that his/her back position is placed at the center of the backrest unit, there will be no problem; however, if a massage recipient moves from the center of the backrest unit unintentionally and leans on the engagement convex unit, it is highly possible that the convex unit will strike his/her back or waist, etc. and cause discomfort from pain, etc. or cause serious injury. Such a possibility is the most dangerous for elderly persons, particularly for persons with osteoporosis.

[0007]

In the conventional chair as disclosed in Patent Document 1, a pair of engagement convex units is provided in a state where they are always protruded at fixed positions on both sides of the backrest unit surface; the chair has poor appearance and is inferior in design. The engagement convex unit cannot respond to differences in seating heights of massage recipients. In the case of a massage recipient with a high seating height, the convex unit does not get caught on his/her underarm well and in the case of a massage recipient with a low seating height, the convex unit gets caught on his/her underarm too much and causes a problem.

[0009]

Next, in the conventional treatment machine with a hand kneading function as

described in Patent Document 2 above, since a rising wall is provided to give treatment for human arms or elbows by holding and sandwiching them on the top surfaces of the armrest units of the chair body and therefore comfortable treatment can be given for the arms or elbows. However, in cases where massage recipients do not want to receive treatment for the arms or elbows or where they simply want to place their elbows on the armrest unit, the rising wall may be an obstacle and give discomfort. Additionally, its appearance is poor and it has a design problem.

[0010]

In light of the aforementioned problems, the present invention aims to provide an excellent treatment machine that solves these problems, gives treatment responding to individual differences of massage recipients, and has new, additional treatment effects and convenience.

c. [Means to solve the problems]

[0011]

In other words, the treatment machine as defined in Claim 1 of the present invention has a chair body wherein armrest units are provided on both sides of the seat unit and a back rest unit is provided at the back of the seat unit; and which is characterized by providing at least one of the means of holding underarms, which holds both underarms of a massage recipient by sandwiching them from both sides and gives treatment thereto, or the means of lifting up underarms, which holds both underarms of a massage recipient in a manner to enable them to be lifted up, on both sides of the backrest unit of the chair body.

[0012]

In addition, the treatment machine as defined in Claim 2 of the present invention has a chair body wherein armrest units are provided on both sides of the seat unit and a back rest unit is provided at the back of the seat unit; and which is characterized by including elbow insertion concave grooves inside both armrest units of the chair body and providing an elbow sandwiching means which holds the elbows by sandwiching them and gives treatment thereto.

d. [Effects of the invention]

[0018]

Thus, the treatment machine as defined in Claim 1 of the present invention is provided with armrest units on both sides of a seat unit and a backrest unit at the rear of the seat unit, wherein at least one or more means of holding underarms, which can hold and sandwich both underarms of a massage recipient from both sides and give treatment, or means of lifting up underarms, which can hold both underarms of a

massage recipient in a manner to enable them to be lifted up, are provided on both sides of a backrest unit of a chair body. Therefore, the means of holding underarms can effectively hold both sides of the body through the underarms of a massage recipient in a stable state and can give pressure treatment, finger pressure treatment, and kneading treatment for the body through the underarms, and the means of lifting up underarms can lift up both sides of the body through the underarms of a massage recipient in a stable state and can give lifting-up treatment for the shoulders as well as stretch actions for the upper body simultaneously.

[0021]

The treatment machine as defined in Claim 2 of the present invention is provided with armrest units on both sides of a seat unit and a backrest unit at the rear of the seat unit, wherein elbow insertion concave grooves and a means of sandwiching and holding elbows that can hold and sandwich elbows in the elbow insertion concave grooves and give treatment are provided inside both armrest units of the chair body. Therefore, if a massage recipient wants to receive treatment for the elbows, arms, and hands, the massage recipient can insert his/her elbows, arms, and hands in the elbow insertion concave grooves and receive pressing treatment, finger pressing treatment, and kneading treatment effectively for the stabilized target body parts by the means of sandwiching and holding elbows.

[0022]

In addition, the treatment machine as defined in Claim 2 of the present invention is provided with elbow insertion concave grooves inside of both armrest units. Therefore, it is not necessary for a massage recipient to receive a massage by lifting his/her elbows and arms to the upper part of the armrest unit, as required in the past, and pressing treatment, finger pressing treatment, kneading treatment for the elbows, arms, and hands are given to a massage recipient in a relaxed posture as necessary.

[0023]

Moreover, the treatment machine as defined in Claim 2 of the present invention is provided with elbow insertion concave grooves inside of both of the armrest units but there are no obstacles, such as previous rising walls, on top of the armrest units. Therefore, even if a massage recipient simply wants to place his/her elbows on the armrest units, he/she can place the elbows, arms, and hands in a relaxed seating posture in the same way as in a regular chair.

e. [0036]

FIG. 1 through FIG. 3 show an embodiment of chair body 2a that is used for treatment machine 1a of the present invention. Chair body 2a is formed in a chair-shape,

provided with seat unit 3a, in which a massage recipient sits, and backrest unit 5a, which is provided at the rear of seat unit 3a and freely rises and falls in conjunction with advancing and retracting actions of advancing and retracting mechanism 51a; provided with footrest unit 4a at the lower front of seat unit 3a so that it freely appears and retracts in conjunction with the advancing and retracting action of advancing and retracting mechanism 41a; and provided with armrest units 6a on both the right and left sides of seat unit 3a, respectively.

[0070]

FIG. 16 through FIG. 21 show another embodiment. They show an embodiment, where underarm holding mechanism 53a and underarm lifting-up mechanism 54a are provided in backrest unit 5a of chair body 2a of treatment machine 1a of the present invention; elbow insertion concave grooves 61a are provided inside armrest units 6a, which are provided on the right and left of chair body 2a; and upper arm and shoulder insertion concave grooves 63a are provided on the right and left of backrest unit 5a, respectively.

[0071]

Elbow insertion concave grooves 61a are provided with elbow sandwiching mechanism 62a (means of sandwiching elbows) that can sandwich and hold the elbows, arms, and hands of a massage recipient and give treatment. As shown in FIG. 17, they are configured so that when a massage recipient wants to receive a treatment for the elbows, arms, and hands, he/she can receive a treatment only by inserting the elbows or other target treatment parts into elbow insertion concave grooves 61a.

[0072]

Elbow sandwiching mechanism 62a (means of sandwiching elbows) is provided with expansion/contraction bags at elbow insertion concave grooves 61a and said bags expand and contract by air supply device 7a and their expansion and contraction are controlled, in the same way as above, by operation remote control 8a and control circuit 84a, which is provided inside armrest unit 6a; a comfortable treatment can be given by compressing and holding or by compressing, expanding, and contracting the elbows, arms, and hands, and their surrounding areas as shown in FIG. 20, by elbow sandwiching mechanism 62a.

[0073]

FIG. 16 and FIG. 17 show a case where elbow sandwiching mechanism 62a is provided by dividing it into hand treatment unit 621a, which gives a treatment for the hands, forearm treatment unit 622a, which gives a treatment for the forearms, and elbow treatment unit 623a, which gives a treatment for the elbows and surrounding areas. Each

unit is controlled by control circuit 84a depending on the target treatment part that a massage recipient desires, so that compression and repetitive expansion/contraction, randomized expansion/contraction, or holding of compression and expansion/contraction, etc. for a specified period, and other expansion/contraction movements can be performed and the treatment for a massage recipient will create the optimal effects. For example, each unit is controlled by control circuit 84a based on the configured treatment course or selected treatment course that are configured by an appropriate configuration program or an acquired program, and therefore compression and repetitive expansion/contraction, randomized expansion/contraction, or holding of compression and expansion/contraction, etc. for a specified period, and other expansion/contraction movements can be performed automatically or can be selected and performed.

[0074]

As shown in FIG. 21, when a massage recipient's elbows are inserted into elbow insertion concave grooves 61a and backrest unit 5a is reclined backwards while maintaining the massage recipient's elbows in an expansion and contraction state by elbow sandwiching mechanism 62a, as shown in extension W in FIG. 21, the entire arms of the massage recipient can be stretched within the range of extension W. If it is used in combination with underarm holding mechanism 53a and underarm lifting-up mechanism 54a, various treatment actions from the synergistic effects thereof can be given in addition to the actions of mechanisms 62a, 53a, and 54a.

[0075]

Furthermore, as described above, according to FIG. 16 through FIG. 20, upper arm and shoulder insertion concave grooves 63a that are located near a massage recipient's upper arms and shoulders on both the right and left sides of backrest unit 5a are provided respectively; upper arm and shoulder insertion concave groove 63a has upper arm and shoulder sandwiching mechanism 64a (means of sandwiching upper arms and shoulders) that holds the area near a massage recipient's upper arms and shoulders by sandwiching them and can give treatment; as shown in FIG. 17, it is configured so that when a massage recipient wants to receive a treatment for the area near the upper arms or shoulders, he/she can receive a treatment only by inserting the areas near the upper arms or shoulders into upper arm and shoulder insertion concave grooves 63a of upper arm and shoulder sandwiching mechanism 64a.

[0076]

Upper arm and shoulder sandwiching mechanism 64a (means of sandwiching upper arms and shoulders) is provided with expansion/contraction bags, etc., which expand

and contract by air supply device 7a, in upper arm and shoulder insertion concave groove 63a. As shown in FIG. 18, compression and holding treatment, or compression and expansion/contraction treatment can be performed for the area around the upper arms and near the shoulders.

[0077]

In the embodiment shown in FIG. 16 and FIG. 17, upper arm and shoulder sandwiching mechanism 64a is shown by dividing it into shoulder treatment unit 641a, which gives a treatment for near a massage recipient's shoulders, and upper arm treatment unit 642a, which gives a treatment for a massage recipient's upper arms; each unit is also controlled by control circuit 84a depending on the target treatment body part that a massage recipient desires, so that compression and repetitive expansion/contraction, randomized expansion/contraction, or holding of compression and expansion/contraction, etc. for a specified period, and other expansion/contraction movements can be performed and the treatment for a massage recipient will create the optimal effects; for example, each unit is controlled by control circuit 84a based on the configured treatment course or selected treatment course that are configured by an appropriate configuration program or an acquired program, and therefore compression and repetitive expansion/contraction, randomized expansion/contraction, or holding of compression and expansion/contraction, etc. for a specified period, and other expansion/contraction movements can be performed automatically or can be selected and performed.

[0078]

In cases where elbow sandwiching mechanism 62a and upper arm and shoulder sandwiching mechanism 64a are not used, there are no protruding objects and walls on top of armrest units 6a and on the front surface of backrest unit 5a, in the same way as regular chairs; therefore, the mechanisms are not obstacles. A massage recipient can easily place his/her elbows on the top surface and he/she can be relaxed; and the mechanisms do not come into contact with the back of a massage recipient or give discomfort and shock when sitting and the treatment machine is maintained in good appearance and clean.

(B) According to the statements in (A) above, it is found that the following are disclosed in Exhibit Otsu C19.

a. An existing chair-type treatment machine, wherein a pair of engagement convex units, which do not give treatment at a massage recipient's underarm position, are provided at a fixed position on both sides of the backrest unit surface in a state where they are always protruded, has the following problems: it is highly possible that the engagement

convex units strike a massage recipient's back or waist, etc. and cause discomfort from pain, etc. or cause serious injury; its appearance is not good and had a problem in terms of design; and the engagement convex units cannot respond to the differences in seating heights of massage recipients. An existing treatment machine with a hand kneading function, wherein rising walls are provided on the top surface of the armrest units of the chair body to keep a massage recipient's arms or elbows by sandwiching them and to give treatment, may give discomfort since the rising walls become an obstacle in cases where a massage recipient does not want to receive treatment for the arms or elbows or where a massage recipient just wants to place the elbows on the armrest units; its appearance is not good and it had a problem in terms of design ([0002] through [0007] and [0009]).

b. In light of the aforementioned problems, the "present invention" aims to provide an excellent treatment machine that solves these problems, gives treatment that can respond to individual differences between massage recipients, and has new, additional treatment effects and convenience. As a means to solve the problems, the treatment machine as defined in Claim 2 of the "present invention" adopted a structure wherein the treatment machine is provided with a chair body, wherein the armrest units are provided on both sides of the seat unit and a back rest unit at the rear of the seat unit; wherein elbow insertion concave grooves are provided inside both armrest units of the chair body; and wherein elbow insertion concave grooves are provided with a means of sandwiching elbows that can hold the elbows by sandwiching them and give treatment ([0010] and [0012]).

As a result, when a massage recipient wants to receive a treatment for the elbows, arms, and hands, the treatment machine as defined in Claim 2 of the "present invention" enables the massage recipient to receive effective pressing treatment, finger pressing treatment, and kneading treatment for the target treatment body parts that are stabilized by the means of sandwiching elbows by inserting his/her elbows, arms, and hands into the elbow insertion concave grooves. In addition, elbow insertion concave grooves are provided inside both armrest units and it is not necessary for a massage recipient to lift up the elbows and arms to the upper part of the armrest units to receive treatment as in the past; pressing treatment, finger pressing treatment, and kneading treatment can be given as necessary for the target treatment parts of the elbows, arms, and hands of a massage recipient in a relaxed posture. Furthermore, the treatment machine is provided with elbow insertion concave grooves inside both armrest units and conventional rising walls and other obstacles are not provided on top of the armrest units. Therefore, the "present invention" has an effect that when a massage recipient just wants to place

his/her elbows on the armrest units, he/she can place the elbows, arms, and hands in a relaxed seating posture in the same way as regular chairs ([0021] through [0023]).

B. Statements in Exhibit Otsu C20

There are the following statements in Exhibit Otsu C20 (Unexamined Patent Application Publication No. 2005-28045) (for FIG. 1 through FIG. 12 that are cited in the following statements, see Attachment 7).

(A) [Claims]

[Claim 1]

A massage machine that is characterized by being comprised of a chair body including a seat unit and a backrest unit,

and armrest units provided on the sides of the seat unit;

wherein tunnel supports are erected from the armrest units so that a massage recipient's hands that are placed on the armrest units can be inserted into the tunnel supports; and

wherein massage air cells are provided inside the tunnel supports and expand and contract.

(B) [Technical field]

[0001]

The present invention is related to a massage machine, a massage device, and a massage method.

[Background art]

[0002]

The massage machine includes a pneumatic device equipped with air cells that expand and contract by supply and exhaust of air. Air cells are generally located at the backrest unit, seat unit, or foot-rest units of the chair.

There are statements in Patent Document 1 that a concertina expansion/contraction tube that expands and contracts with air is provided on the upper part of each of the armrest units. In this case, a massage recipient's hands will be pressed upward.

[Problem to be solved by the invention]

[0003]

Since the hands are lighter in weight than the body, when they are pressed upwards from the armrest units, the hands may move upward and a massage recipient may not be able to feel that he/she received a sufficient massage.

Therefore, the present invention aims to solve this problem and give a steady massage to the hands.

(C) [Means to solve the problem]

[0004]

The present invention is a massage chair that is characterized by being comprised of a chair body including a seat unit and a backrest unit, and armrest units provided on the sides of the seat unit; wherein tunnel supports are erected from the armrest units so that a massage recipient's hands placed on the armrest units can be inserted in the tunnel supports; and wherein massage air cells are provided inside the tunnel supports and expand and contract. Since tunnel supports are provided on the armrest units, the hands can be easily inserted inside the tunnel supports. In addition, since a massage is given to the hands inserted in the tunnel supports by air cells that are provided inside the tunnel supports, it is possible to prevent the hands from moving upwards and to ensure a steady massage given to the hands.

[0005]

It is preferable that both sides of the tunnel supports in the front-rear direction are open, so that the hands can be inserted from the opening at the rear, and fingertips can reach out through the opening at the front. In this case, since the fingertips can reach out through the front of the tunnel supports, the fingertips can be moved freely and this can reduce the feeling of restraint.

[0006]

It is preferable that the massage air cells can press the hands against the armrest units by expanding. By giving a massage to the hands by pressing them against the armrest units from the inside of the tunnel supports, it is possible to prevent the hands from moving upwards and give a steady massage using a simple structure.

[0007]

It is preferable for the armrest units to have finger pressure elements to give finger pressure to the hands that are pressed by the massage air cells. Giving finger pressure using the pressing force of the air cells can give effective finger pressure to the hands.

[0008]

It is preferable for the armrest units to have vibration generators to give a vibration massage to the hands that are pressed by the massage air cells. If a vibration is generated when the hands are pressed by the air cells, the vibration is effectively communicated to the hands and it increases the vibration massage effects.

[0009]

It is preferable that the tunnel support includes an outer tunnel component and an inner component that is provided inside the outer component while maintaining the space between the inner component and the outer component, and that the massage air cells are provided on the inner component and the space between the outer component

and inner component is a space for piping where pipes are installed to supply air to the massage air cells. In this case, the space for passing the pipes to the air cells can be secured inside the tunnel support.

[0010]

It is preferable for the tunnel support to be provided so that it can move in the front-rear direction. If the tunnel support can move in the front-rear direction, its position can be changed as a massage recipient desires.

The tunnel support may be movable relative to the armrest unit, or the armrest unit provided with the tunnel support may be movable relative to the seat unit.

[0011]

More specifically, it is preferable that the armrest units are provided so that they move backward in conjunction with the backrest unit when it reclines, and the armrest units move forward in conjunction with the backrest unit when it rises forward; and the tunnel supports move forward and backward in conjunction with the forward-backward movement of the armrest units. Since the backrest unit reclines, the position of the hands also moves backward. Therefore, by moving the armrest units forward and backward in conjunction with the reclining and rising of the backrest, the massage position can be kept nearly at the specified position regardless of the backrest unit's reclining.

[0012]

It is preferable that the length of the tunnel supports in the front-rear direction is set to the extent that the part from a massage recipient's wrists to the fingertips alone can be located inside the tunnel supports and that the massage air cells are for the palms or the back of the hands.

[0013]

According to other perspectives, the present invention is a chair-type massage machine including armrest units and is characterized by having air cells that are provided to the upper part of the armrest units and that expand and contract by supplying and exhausting air; wherein the air cells are provided so that they press the hands placed on the armrest units against the armrest units by expanding downward. The air cells expand downward towards the armrest units and press the hands against the armrest units, and therefore the hands can be prevented from moving upwards by the armrest units and can be pressed by the air cells.

[0014]

The present invention related to a hand massage device is a hand massage device, which is used by attaching it to the armrest units of a chair, and it is characterized by including tunnel supports that are attached to the armrest units; wherein a massage

recipient's hands placed on the armrest units can be inserted inside the tunnel supports, and air cells that are provided inside the tunnel supports and give a massage to the hands by expanding and contracting. In this case, air cells that are provided on the tunnel supports can give a steady massage without moving the hands.

(D) [Best embodiment of the invention]

[0016]

The embodiment of the present invention is explained below based on figures.

FIG. 1 shows chair-type massage machine 1. Chair-type massage machine 1 is provided with chair body 5, which includes seat unit 2; backrest unit 3 that is provided at the rear of seat unit 2; and footrest units 4 that are provided at the front of the seat unit.

[0020]

Both the right and left sides of seat unit 2 are provided with armrest units 7 and 7. A massage recipient can place his/her hands on the armrest units 7 and 7 and can relax. The rear parts of armrest units 7 are attached respectively on the right and left sides of backrest 3, and armrest units 7 are extended to the front respectively at the right and left sides of seat unit 2. The rear parts of armrest units 7 are pivotally mounted on a backrest frame (not shown in the figure), which serves as the framework of the backrest unit inside backrest unit 3, and can pivot freely around axis 9 in the right and left direction. In other words, the rear part of each of armrest units 7 is a pivot base. On the other hand, the front part of each of armrest units 7 is not attached to any other parts and is a pivot-free end. Accordingly, each of armrest units 7 can pivot around the pivot base (axis 9). As shown in FIG. 1 and FIG.2, its front part can nearly face the front; or as shown in FIG. 3, the rear part pivots backward and rises so that the front part faces the upper side. Right and left armrest units 7 and 7 can pivot independently; however, both armrest units 7 and 7 may pivot in a unified manner, or only either of armrest units 7 may pivot.

[0021]

As shown in FIG. 1 and FIG. 2, the range of the backward pivot of armrest unit 7 around the pivot base unit (axis 9) is limited from the state where armrest unit 7 is located on the side of seat unit 2 (first position) to the state, shown in FIG. 3, where armrest unit 7 is located on the side of (raised) backrest unit 3 (second position).

[0022]

The first position is the regular use position of armrest unit 7. A massage recipient can place his/her hand on armrest unit 7 in the first position. On the other hand, in cases where armrest unit 7 is an obstacle or where a massage recipient wants to sit on or leave

the seat from the side of seat unit 2 (hereinafter, sitting on or leaving the seat from the side of the seat unit is referred to as "side seating and unseating"), as shown in FIG. 3, armrest unit 7 is pivoted to the second position so that armrest unit 7, which is an obstacle for side seating and unseating, is absent on the side of seat unit 2 and the massage recipient can easily perform side seating and unseating.

[0023]

As shown in FIG. 4 and FIG. 5, the front part of armrest unit 7, which is a free end, is supported by guide mechanism 11. Guide mechanism 11 guides the movement of armrest unit 7 in conjunction with the reclining of backrest unit 3.

Guide mechanism 11 is composed of guide body 12 that is provided on the side of seat unit 2, and guided unit 13 that is provided in armrest unit 7 so that guided unit 13 is guided by guide body 12. Since armrest unit 7 is provided so that its front part pivots downward under its own weight, guide body 12 and guided unit 13 are naturally maintained to come into contact, unless armrest unit 7 is lifted against its own weight. In addition, armrest unit 7 may be biased so that it pivots downwards by a spring or other biasing device, in lieu of or in addition to having a structure wherein the front part pivots downward under its own weight.

[0026]

As shown in FIG. 6, when backrest unit 3 is reclined, armrest unit 7, which is attached to backrest unit 3 via axis 9, moves backward by being pulled by backrest unit 3, while its front part faces the front. At the same time, since armrest unit 7 can freely pivot against backrest unit 3 and the front part of armrest unit 7 is only supported by roller 12 in a freely movable state in the front and rear direction, armrest unit 7 is not hindered from moving backwards.

In addition, since axis 9 position also moves downward when backrest unit 3 reclines, the entire armrest unit 7 also moves downward (in particular, the rear side).

[0028]

The rear side of guided unit 13 is thick in the up and down directions and the front side is thin. Contact guide surface 13a slopes upward to the front. For this reason, when armrest unit 7 moves backward and the front part of contact guide surface 13a comes into contact with roller 12, the front part of armrest unit 7 moves slightly down so that a massage recipient can easily place his/her hand when in a lying position.

Upper surface 7a of armrest unit 7 is always positioned higher than seat unit top surface 2a in the entire range of the front and rear movement. For this reason, a massage recipient can place his/her hand in an appropriate condition regardless of sitting or lying.

(E) [0029]

FIG. 7 through FIG. 12 show hand massage device 20 that is provided on the right and left of armrest units 7 respectively. Hand massage device 20 may be provided only on either of armrest units 7.

Massage device 20 is appropriate for massaging the part from the wrist to the end (the hand). In particular, it is appropriate for massaging the part from the wrist to the end and excluding fingers. Massage device 20 has tunnel support 22, into which the hand placed on armrest unit 7 can be inserted. Massage device 20 may be used for massaging the part of the arm from the wrist up to the shoulder.

[0030]

Tunnel support 22 is provided with side surface units 24, which are located on both sides in the width direction of armrest unit 7 and extend to the upper part of armrest unit 7, and top surface unit 25, which connects right and left side surface units 24 and 24 above armrest unit 7. Top surface unit 25 of the support is located at the height to the extent that a massage recipient's hand can be placed in the space between top surface unit 25 and armrest unit top surface 7a. In addition, clearance between the right and left side surface units 24 is set to the extent where a massage recipient's hand can be placed between them. Side surface units 24 and top surface 25 are formed in a consecutive circular arc so that the entire support 22 forms an arch and the border between 24 and 25 is not clear. They may be in a shape where the border between 24 and 25 can be defined.

[0031]

Support 22 has both sides 27 and 28 in the front and rear direction (the longitudinal direction of armrest unit 7) open; into which a massage recipient's hand can be inserted from opening 27 at the rear into support 22, and the inserted hand (fingertips) can be extended through opening 28 on the front side. Support 22 is designed to be the length in the front and rear direction to the extent that the back of the hand (or the palm) is located inside support 22 and the part from wrist to the shoulder side and fingertips are located outside support 22; and it is of an appropriate size for massaging the back of the hand or the palm. Support 22 is attached in a position where the back of the hand or a palm is located when the hand is placed on armrest unit 7, in other words, on the front part of armrest unit 7.

[0032]

Support 22 is located slightly further to the rear than the front-end of armrest unit 7 so that fingertips coming out from opening 28 on front side of support 22 can be placed on armrest unit top surface 7a. Joints of fingers coming out of opening 28 on the front side can be bent to the inside. In other words, the front-end of upper surface 7a of

armrest unit 7 is downward slope 7b that slopes downward. When fingers are placed on the downward slope surface, fingers can be bent and a massage recipient can receive a massage to the palm and the back of the hand in a relaxed state.

Moreover, even though there is no downward slope surface 7b at the front end of armrest unit 7, in cases where fingers reach out through front opening 28 while a massage recipient's palm or the back of the hand is placed in support 22, if the position of support 22 is configured so that the base position of the fingers can be placed and fingertips are located in front of the front end of armrest unit 7, the fingers can be bent.

In either case, support 22 is provided in a position where the fingers can be bent so that a massage recipient can receive a massage in a relaxed state.

[0033]

Support 22 has a dual inner and outer structure through the combination of outer component 30 that is located outside, and inner component 31 that is located inside outer component 30.

Outer component 30 is formed of hard materials such as resin or metal, etc. In addition, outer component 30 is formed in an arch shape. Since it is a component located on the outermost surface of massage device 20, it functions as a finishing cover. Outer component 30 functions as a mounting component for attaching the entire massage device 20 to armrest unit 7. Lower units 30a and 30b of outer component 30 are extended inside armrest unit 7 toward the lower part and lower units 30a and 30b are fixed at armrest unit 7 by securing jigs, such as screws, etc. (not shown in the figure).

[0034]

Inner component 31 is formed of hard materials, such as resin, metal, etc.; it is located so that a space is created between inner component 31 and outer component 30; and both lower ends are installed on the inner surface of outer component 30. Air cells 33, 34, and 35 that press the hand by expanding and contracting through supplying and exhausting air are provided on the inner surface of arch-shaped inner component 31. Air cells include first air cell (upper air cell) 33 that is attached near the top of inner component 31, and second air cells (side air cells) 34 and 35 that are attached near the right and left sides of inner component 31.

[0035]

As shown in FIG. 10, first air cell 33 is provided so that it expands downward and can press the hand downward. Second air cells 34 and 35 are provided where they partially overlap with first air cell 33. Their lower parts are respectively attached to inner component 31 with securing jigs (screws, pins, etc.). The upper parts of second air cells 34 and 35 are not attached to inner component 31 and they are free ends for

expansion. For this reason, the upper part of second air cells 34 and 35 expands larger than the lower part. The sides of second air cells 34 and 35 are formed in a concertina so that the expansion volume can increase. Second air cells 34 and 35 can press the hand downwards from right and left. In addition, as shown in FIG. 10, when first air cell 33 and second air cells are expanded at the same time, the downward pressing amount can be increased.

[0041]

In the range of armrest unit top surface 7a that falls under the bottom surface of the tunnel formed by support 22, vibration generator 48 to give a vibration massage to the hand is provided. Armrest unit top surface 7a is formed in a concave shape and vibration generator 48 is embedded in the armrest unit. Vibration generator 48 is provided with finger pressure elements 49 that protrude against armrest unit top surface 7a and vibrations are locally communicated via finger pressure elements 49 to the hand placed in support 22. As shown in FIG. 9, finger pressure elements 49 are provided on an angle to the right and left direction against the center position in the right and left width direction of armrest unit 7. More specifically, finger pressure elements 49 are provided on an angle to the position near seat unit 2 against the center position in the right and left width direction of armrest unit 7 (for armrest unit 7 for the left hand, to the right side; for armrest unit 7 for the right hand, to the left side). Finger pressure elements 49 are provided at an angle near seat unit 2 against the center position and thereby finger pressure can be applied to the acupuncture point on the palm "Rokyu" and its vicinity (the range near the thumb on the palm) without fail.

[0042]

When desiring to give vibrations evenly to the broad range of the hands, finger pressure elements 49 do not have to be provided. Even when no vibration is generated, finger pressure element 49 can give finger pressure to the hands.

[0043]

As shown in FIG. 11 and FIG. 12, the hand will be placed with the palm down on armrest unit top surface 7a, which is the bottom surface of the tunnel that is formed by support 22. As described above, armrest unit upper surface 7a is nearly flat to place the palm. When air cells 33, 34, and 35 that are provided on inner component 31 (support 22), which is arranged at an interval above the palm placement surface 7a, expand downward (see FIG. 12), air cells 33, 34, and 35 come into contact with the back of the hand and give a pressure massage while pressing the hand against palm placement surface 7a. Since a massage is given while pressing the hand against palm placement surface 7a, it prevents the hand from escaping.

When air cells 33, 34, and 35 press the hand downward, the hand is sandwiched between the air cells and armrest unit top surface 7a from top and bottom. That is, a massage can be given to the hand by compressing in top and bottom direction.

(F) [0064]

Air cells do not have to be separate bodies from inner component 31 (support 22). Air cells may have a structure wherein air is supplied to the space surrounded by the inner surface of inner component 31 (support 22) and the fabric that is attached to the inner surface of inner component 31 (support 22), and the fabric expands and contracts thereby.

The length in the front and rear direction of support 22 can be configured arbitrarily. The massage part is not limited to the palm or the back of the hand but may include the range from the fingers or the wrist on a single side.

The layout and number of air cells that are provided on support 22 may be changed as appropriate.

C. Whether Invention C-1 could have been easily conceived of by a person skilled in the art

(A) According to the statements in Exhibit Otsu C19 in A. (A) above, it is found that Exhibit Otsu C19 Invention (No. 3, 4. (Allegation of the Appellee) (1) A. above) as alleged by the Appellee is stated in Exhibit Otsu C19.

Comparing Invention C-1 and Exhibit Otsu C19 Invention, "the hollow unit" in Invention C-1 "is formed with an outer rising wall and an inner rising wall respectively provided on the left and right sides in the width direction of the armrest unit, as well as with a bottom unit" (Constituent Feature [C]). On the other hand, it is found that "elbow insertion concave groove 61a" in Exhibit Otsu C19 Invention is "formed with the outer rising unit, bottom unit, and top surface unit" (structure c.) and there are no "inner rising walls." Therefore, both inventions are different at least on the point that Exhibit Otsu C19 Invention does not have the structure of an "inner rising wall" of the "hollow unit" in Invention C-1 (hereinafter referred to as "Difference α ").

(B) The Appellee alleged as follows: [i] In Exhibit Otsu C20 Invention, tunnel support 22 of the massage machine is formed with right and left side units 24 and 24, top surface unit 25, and armrest unit top surface 7a; right and left side units 24 and 24 correspond to the "outer rising wall" and the "inner rising wall" in Invention C-1, and armrest unit top surface 7a corresponds to the "bottom unit" in Invention C-1, respectively; therefore, the massage machine in Exhibit Otsu C20 Invention has the structure of Invention C-1 related to Difference α (the "inner rising wall" of the "hollow unit"); and [ii] Exhibit Otsu C19 Invention and Exhibit Otsu C20 Invention are common in the technology field

of "an invention related to a chair-type massage machine," and the problem "to give an effective massage to hands," and they also share the function and effect: in Exhibit Otsu C19 Invention, elbow insertion concave groove 61a that has elbow holding mechanism 62a will effectively give massage by pressing, finger pressing, and kneading of hands, while Exhibit Otsu C20 Invention has the effect to massage hands for sure by tunnel support 22 that has air cells 33, 34, and 35. Concerning tunnel support 22, whether to surround the hand unit on all four sides of the bottom unit (armrest unit top surface 7a) by providing an outer rising wall, inner rising walls (side units 24 and 24), and top surface unit (top surface unit 25) as shown in Exhibit Otsu C20 Invention, or whether to surround the hand unit on three sides of the bottom unit by providing an outer rising wall and top surface unit as shown in Exhibit Otsu C19 Invention were both publicly known structures and they were selective structures for a person skilled in the art before the filing of Application C. Based on the above, it can be said that there is the motivation to apply the structure of Exhibit Otsu C20 Invention to elbow insertion concave groove 61 in Exhibit Otsu C19 Invention based on Exhibits Otsu C19 and C20; therefore, the structure of Invention C-1 related to Difference α could have been easily conceived of by a person skilled in the art.

However, the Appellee's allegation is groundless as stated below.

a. According to the statements in Exhibit Otsu C20 in B. above, it is found that Exhibit Otsu C20 Invention (No. 3, 4. (Allegation of the Appellee) (1) B. (B) above) as alleged by the Appellee is stated in Exhibit Otsu C20.

Exhibit Otsu C20 has the following statements concerning tunnel support 22: "wherein tunnel supports are erected from the armrest units so that a massage recipient's hands placed on the armrest units can be inserted into the tunnel supports" (Claim 1); "It is preferable that both sides of the tunnel supports in the front-rear direction are open, so that the hands can be inserted from the opening at the rear, and fingertips can reach out through the opening at the front." ([0005]); "the tunnel support includes an outer tunnel component and an inner component that is provided inside the outer component while maintaining the space between the inner component and the outer component" ([0009]); "It is preferable that the length of the tunnel supports in the front-rear direction is set to the extent that the part from a massage recipient's wrists to the fingertips alone can be located inside the tunnel supports and that massage air cells are for the palms or the back of the hands." ([0012]); "The present invention related to a hand massage device is a hand massage device, which is used by attaching it to the armrest units of a chair, and it is characterized by including tunnel supports that are attached to the armrest units; wherein a massage recipient's hands placed on the armrest

units can be inserted inside the tunnel supports, and air cells that are provided inside the tunnel supports and give a massage to the hands by expanding and contracting. In this case, air cells that are provided on the tunnel supports can give a steady massage without moving the hands." ([0014]); "Massage device 20 is appropriate for massaging the part from the wrist to the end (the hand). In particular, it is appropriate for massaging the part from the wrist to the end and excluding fingers. Massage device 20 has tunnel support 22, into which the hand placed on armrest unit 7 can be inserted." ([0029]); "Tunnel support 22 is provided with side surface units 24, which are located on both sides in the width direction of armrest unit 7 and extend to the upper part of armrest unit 7, and top surface unit 25, which connects right and left side surface units 24 and 24 above armrest unit 7. Top surface unit 25 of the support is located at the height to the extent that a massage recipient's hand can be placed in the space between top surface unit 25 and armrest unit top surface 7a. In addition, clearance between the right and left side surface units 24 is set to the extent where a massage recipient's hand can be placed between them. Side surface units 24 and top surface 25 are formed in a consecutive circular arc so that the entire support 22 forms an arch and the border between 24 and 25 is not clear. They may be in a shape where the border between 24 and 25 can be defined." ([0030])

According to the aforementioned statements, FIG. 1, and FIG. 7 through FIG. 12, tunnel support 22 as stated in Exhibit Otsu C20 is erected from armrest unit 7 and is for inserting and maintaining a massage recipient's "hand" inside tunnel support 22. Tunnel support 22 has side surface units 24, which are located on both sides of armrest unit 7 in the width direction and extend to the upper part of armrest unit 7; armrest unit top surface 7a; and top surface unit 25, which connects right and left side surface units 24 and 24 on the upper side of armrest unit 7. Right and left side surface units 24 and 24 correspond to the "outer rising wall" and the "inner rising wall," and armrest unit top surface 7a corresponds to the "bottom unit," respectively.

Then, since it can be said that tunnel support 22 as stated in Exhibit Otsu C20 has a structure "formed with an outer rising wall and an inner rising wall respectively provided on the left and right sides in the width direction of the armrest unit, as well as with a bottom unit" (Constituent Feature [C]), it is construed to have a structure corresponding to Invention C-1 related to Difference α (the "inner rising wall" of the "hollow unit").

b. Based on Claim 2, [0012], [0070], FIG. 16, FIG. 17, and FIG. 20 in Exhibit Otsu C19, it can be understood that Exhibit Otsu C19 Invention is an embodiment of the invention stated in Claim 2 of Exhibit Otsu C19 ("the treatment machine characterized

by including a chair body wherein armrest units are provided on both sides of the seat unit and a back rest unit at the back of the seat unit; wherein elbow insertion concave grooves are provided inside both the armrest units of the chair body; and wherein elbow insertion concave grooves are provided with a means of sandwiching elbows that can hold the elbows by sandwiching them and give treatment thereto").

Exhibit Otsu C19 has the following statements concerning the "elbow insertion concave groove": "FIG. 16 through FIG. 21 show another embodiment. They show an embodiment, where ...; elbow insertion concave grooves 61a are provided inside armrest units 6a, which are provided on the right and left of chair body 2a; and ..., respectively." ([0070]); "Elbow insertion concave grooves 61a are provided with elbow sandwiching mechanism 62a (means of sandwiching elbows) that can sandwich and hold the elbows, arms, and hands of a massage recipient and give treatment. As shown in FIG. 17, they are configured so that when a massage recipient wants to receive a treatment for the elbows, arms, and hands, he/she can receive a treatment only by inserting the elbows or other target treatment parts into elbow insertion concave grooves 61a." ([0071]); "Elbow sandwiching mechanism 62a (means of sandwiching elbows) is provided with expansion/contraction bags at elbow insertion concave grooves 61a and said bags expand and contract by air supply device 7a ... ; a comfortable treatment can be given by compressing and holding or by compressing, expanding, and contracting the elbows, arms, and hands, and their surrounding areas as shown in FIG. 20, by elbow sandwiching mechanism 62a." ([0072]). In addition, in FIG. 20, on the inside of armrest unit 6a, C-shaped elbow insertion concave groove 61a, which is formed with an outer surface rising unit, bottom unit, and top surface unit, and which is surrounded in three directions, is shown.

However, there are no statements or suggestions in Exhibit Otsu C19 to provide an inner rising wall in C-shaped elbow insertion concave groove 61a.

Conversely, Exhibit Otsu C19 has the following statement: "in the conventional treatment machine with a hand kneading function as described in Patent Document 2 above, a rising wall is provided to give treatment for human arms or elbows by holding and sandwiching them on the top surfaces of the armrest units of the chair body, and therefore comfortable treatment can be given for the arms or elbows. However, in cases where massage recipients do not want to receive treatment for the arms or elbows or where they simply want to place their elbows on the armrest unit, the rising wall may be an obstacle and give discomfort. Additionally, its appearance is poor and it has a design problem." ([0009]); and FIG. 38 shows existing treatment machine with a hand kneading function provided with rising wall 211 on the top surface of the armrest unit

and has the following statement: "the treatment machine as defined in Claim 2 of the present invention is provided with elbow insertion concave grooves inside of both of the armrest units but there are no obstacles, such as previous rising walls, on top of the armrest units. Therefore, even if a massage recipient simply wants to place his/her elbows on the armrest units, he/she can place the elbows, arms, and hands in a relaxed seating posture in the same way as in a regular chair." ([0023]). Based on the above, it is found that Exhibit Otsu C19 disclosed as follows: in the invention described in Claim 2, the rising wall that is provided on the top part of the armrest unit of the existing treatment machine with a hand kneading function may be an obstacle and give discomfort in cases where massage recipients simply want to place their elbows on the armrest unit, and additionally, its appearance is poor and it has a design problem; therefore, the treatment machine with a hand kneading function adopted the structure wherein rising walls are not provided on the armrest unit and elbow insertion concave grooves are provided inside both the armrest units.

Next, Exhibit Otsu C20 has the following statements: "The massage machine includes a pneumatic device equipped with air cells that expand and contract by supply and exhaust of air. Air cells are generally located at the backrest unit, seat unit, or footrest units of the chair. There are statements in Patent Document 1 that a concertina expansion/contraction tube that expands and contracts with air is provided on the upper part of each of the armrest units. In this case, a massage recipient's hands will be pressed upward." ([0002]); "Since the hands are lighter in weight than the body, when they are pressed upwards from the armrest units, the hands may move upward and a massage recipient may not be able to feel that he/she received a sufficient massage. Therefore, the present invention aims to solve this problem and give a steady massage to the hands." ([0003]); and "The present invention is a massage chair that is characterized by being comprised of a chair body including a seat unit and a backrest unit, and armrest units provided on the sides of the seat unit; wherein tunnel supports are erected from the armrest units so that a massage recipient's hands placed on the armrest units can be inserted in the tunnel supports; and wherein massage air cells are provided inside the tunnel supports and expand and contract. Since tunnel supports are provided on the armrest units, the hands can be easily inserted inside the tunnel supports. In addition, since a massage is given to the hands inserted in the tunnel supports by air cells that are provided inside the tunnel supports, it is possible to prevent the hands from moving upwards and to ensure a steady massage given to the hands." ([0004]). Based on the statements above, it is found that Exhibit Otsu C20 disclosed as follows: in the existing massage machine that gives a massage to the hands, wherein a concertina

expansion/contraction tube that expands and contracts with air is provided on the upper part of each of the armrest units, a massage recipient's hands are pressed upward and therefore, there is a problem that the hands move upward and the massage recipient cannot fully feel that he/she is massaged; as a means to solve the problem, the massage machine as stated in Exhibit Otsu C20 adopted the structure equipped with tunnel supports, thereby making it possible to prevent the hands from escaping and to show the effect that a steady massage can be given to the hands.

On the other hand, it cannot be found that elbow insertion concave groove 61a in Exhibit Otsu C19 Invention is provided to the inside of the armrest unit and has a C-shaped structure surrounding three directions, and therefore that problems arise, such as that the hand moves upward due to expansion and contraction of an expansion/contraction bag in elbow sandwiching mechanism 62a (elbow sandwiching means) and a massage recipient cannot fully feel that he/she is massaged, etc. In addition, it is understood that elbow insertion concave grooves 61a in Exhibit Otsu C19 Invention have a C-shaped structure surrounding three directions and the inside of the massage recipient's side is open, and "they are configured so that when a massage recipient wants to receive treatment for the elbows, arms, and hands, he/she can receive the treatment only by inserting the elbows or other target treatment parts into elbow insertion concave grooves 61a" ([0071]). Therefore, the motivation to form a structure surrounding all four directions of all or part of elbow insertion concave groove 61a cannot be found.

Based on the above, it cannot be found that a person skilled in the art who comes across Exhibits Otsu C19 and C20 is motivated to apply the structure of tunnel support 22 as described in Exhibit Otsu C 20 to elbow insertion concave groove 61a in Exhibit Otsu C19 Invention and to create a structure providing inner rising walls to surround a massage recipient's hands in the four directions. Therefore, it cannot be found that a person skilled in the art could have easily conceived of the structure of Invention C-1 related to Difference α .

Therefore, the Appellee's allegation above is groundless.

(C) As described above, it cannot be found that a person skilled in the art could have easily conceived of the structure of Invention C-1 related to Difference α . Therefore, without the need to make determinations on the remaining issues, it cannot be found that a person skilled in the art could have easily conceived of Invention C-1 based on Exhibits Otsu C19 and C20.

D. Whether Inventions C-2 through C-5 could have been easily conceived of by a person skilled in the art

Inventions C-2 through C-5 include the statements of the claims of Invention C-1 directly or indirectly in the particulars for identifying the invention (Constituent Features [J], [M], [O], and [Q]).

However, as stated in C. above, it cannot be found that a person skilled in the art could have easily conceived of Invention C-1. Therefore, without the need to make determinations on the remaining issues, it cannot be found that a person skilled in the art could have easily conceived of Inventions C-2 through C-5 based on Exhibits Otsu C20 through C22 and well-known art at the time when Application C was filed. The Appellee's allegation against the above is groundless.

E. Summary

Based on the above, Grounds for Invalidation 1 alleged by the Appellee are groundless.

(2) Grounds for Invalidation 2 (Violation of clarity requirements)

The Appellee alleged as follows: [i] according to the statements in the claims (Claim 1) of Invention C-1 and the statements in Description C, the areas of the "hollow unit" and "forearm insertion opening unit" in Invention C-1 are distinguished by the fact that there are the "hollow unit," provided with an inner rising wall, on the "front part," and the "forearm insertion opening unit," not provided with an inner rising wall, on the "rear part"; and [ii] if it is construed, based on the statements in [0046] and FIG. 14 of Description C, that regarding the "hollow unit" in Invention C-1, it suffices that there is a part with an outer rising wall, an inner rising wall, and a bottom unit, and that the "hollow unit" refers to the entirety including a part without an inner rising wall, the difference between the "hollow unit" and the "forearm insertion opening unit" becomes extremely unclear; therefore, the statements of the claims (Claim 1) of Invention C-1 are not clear and do not conform to the clarity requirements; the same applies to the statements in the claims (Claim 1) of Inventions C-2 through C-5.

However, as stated in 3. (2) B. (B) a. above, it is construed that the "forearm insertion opening unit" in Invention C-1 is an opening unit that is provided at the "armrest unit" "to insert the forearm of a massage recipient from the inner rear side" and that is the part constituting part of the "hollow unit." In addition, the claims (Claim 1) of Invention C-1 specified that the armrest unit has a "forearm insertion opening unit" and a "hollow unit"; the "forearm insertion opening unit" is a structure to insert the forearm of a massage recipient from the inner rear side" and the "hollow unit" is a structure where "it is extended from the forearm insertion opening unit to insert and hold the forearm, including the hand, of a massage recipient in the inside of the armrest unit." Therefore, the details of the "forearm insertion opening unit" and "hollow unit"

are clear.

Consequently, the aforementioned allegation of the Appellee cannot be accepted, and therefore Grounds for Invalidation 2 are groundless.

(3) Grounds for Invalidation 3 (Violation of amendment requirements as defined in Article 17-2, paragraph (3) of the Patent Act)

The Appellee alleged as follows: [i] the "hollow unit" in Invention C-1 means one with an "inner rising wall" that extends at least to part of the forearm of a massage recipient; [ii] working examples, etc. stated in the Original Description for Application C (Exhibit Otsu C9) only disclosed the structures wherein an inner rising wall is not provided in the "center part" of the armrest unit and wherein the hollow unit, which has an inner rising wall, an outer rising wall, and a bottom unit at the "front part," can give treatment only to a massage recipient's hand; and there is no statement or suggestion about the structures wherein the "hollow unit" of which the "center part" is formed in a "C-shape" and which is formed with an inner rising wall, an outer rising wall, and a bottom unit so as to insert and hold the "forearm, including the hand"; and [iii] the Amendment includes the addition of Invention C-2 (Claim 2) which has a treatment unit that is formed in a "C-shape" without having an inner rising wall at its "center part" (Exhibits Otsu C12 and C13); the Amendment is to add new matters and does not conform to the requirements as defined in Article 17-2, paragraph (3) of the Patent Act; and therefore, Patent C has grounds for invalidation that violate said paragraph.

However, as explained in 3. (2) B. (A) b. above, according to the statements in the claims (Claim 1) of Invention C-1 and the statements in Description C, it cannot be construed that the "hollow unit" in Invention C-1 is one with a structure wherein the "inner rising wall" is provided around the entirety thereof nor that it has the "inner rising wall" that extends at least to cover part of the forearm of a massage recipient. Therefore, the aforementioned allegation of the Appellee lacks the premises ([i] above) and cannot be accepted.

Consequently, Grounds for Invalidation 3 as alleged by the Appellee are groundless.

(4) Grounds for Invalidation 4 (Violation of support requirements related to Invention C-2)

The Appellee alleged as follows: [i] according to the statements in the claims (Claim 2) of Invention C-2, it is construed that Invention C-2 forms the "center part" of the armrest unit in a C-shape and has the "hollow unit" that is formed with the bottom unit, the outer rising wall, and the inner rising wall at the "front part," and that the forearm, including the hand, can be inserted and held in the "hollow unit" and the "hollow unit" can also massage the "forearm"; [ii] the "hollow unit" as defined in Claim 1 (Invention

C-1) as cited in Constituent Feature [J] means one with an "inner rising wall" that extends at least to part of a massage recipient's forearm; [iii] in the detailed explanation of the invention in Description C, the structure wherein the "center part" is a C-shape is disclosed; however, there is only a statement concerning a working example where only the "hand" can be inserted and held at the "front part" that is a hollow unit and which includes three surfaces, a bottom unit, an outer rising wall, and an inner rising wall, and expansion/contraction bags to give treatment to the "hand" are provided; and there is no statement or suggestion that the "forearm" can be inserted and held and treatment can be given to the "forearm," including the "hand," using expansion/contraction bags, etc.; and [iv] then, a person skilled in the art cannot recognize that the problems of Invention C-2 can be solved based on the statements in the detailed explanation of the invention in Description C and common general technical knowledge at the time when Application C was filed; and therefore, the statements in the detailed explanation of the invention in Description C do not conform to the support requirements.

However, as explained in 3. (2) B. (A) b. above, according to the statements in the claims (Claim 1) of Invention C-1 and the statements in Description C, it cannot be construed that the "hollow unit" in Invention C-1 is one with a structure wherein the "inner rising wall" is provided around the entirety thereof nor that it has the "inner rising wall" that extends at least to cover part of a massage recipient's forearm. Therefore, the aforementioned allegation of the Appellee lacks the premises ([ii] above) and cannot be accepted.

Consequently, Grounds for Invalidation 4 as alleged by the Appellee are groundless.
(5) Summary

Based on the above, Grounds for Invalidation 1 through 4 as alleged by the Appellee are groundless, and therefore, the Appellee's allegation of the patent invalidity defense is groundless.

5. Issue 3 (Amount of damages, etc. that should be compensated or returned by the Appellee) (Issue related to Patent C)

(1) The Appellee's export or sale of Defendant's Products 1 and 2

A. According to the evidence (Exhibits Ko C20 through C37 and Otsu C212 and C273) and the entire import of oral arguments, it is found, as stated in the column of "Defendant's Product 1" of Attachment 9, that the Appellee exported ●●●●●● pieces in total of Defendant's Product 1 for the period from May 2014 through March 2021 to the destination countries, including the U.S.A., Canada, U.K., Germany, Russia, South Africa, United Arab Emirates (UAE), Saudi Arabia, Australia, Vietnam,

Philippines, Korea, etc., and that the export volume by destination country is as stated in the column of "Defendant's Product 1 (pieces)" of Attachment 15.

B. According to the evidence (Exhibits Otsu C31, C47, and C246) and the entire import of oral arguments, it is found, as stated in the column of "Defendant's Product 2" of Attachment 9, that the Appellee sold ●● pieces in total (excluding ● pieces of returned products) of Defendant's Product 2 through online shopping, etc. for the period from November 25, 2011 through October 2016 inside and outside Japan.

C. As described in 3. (4) above, Defendant's Products 1 and 2 fall within the technical scope of Inventions C and therefore, the Appellee's export or sale of Defendant's Products 1 and 2 falls under an infringement of Patent Right C.

(2) Amount of damages based on Article 102, paragraph (2) of the Patent Act

A. The appropriateness of application of Article 102, paragraph (2) of the Patent Act

(A) If a patentee claims compensation for damages in tort under Article 709 of the Civil Code due to patent infringement, the patentee needs to prove the infringer's intention or negligence, the occurrence of damages to the patentee, the causal relationship between the infringement and the damages, and the amount of damages. Article 102, paragraph (2) of the Patent Act stipulates that if a patentee files a claim for compensation for damages that the patentee personally incurs due to infringement, against a person that, intentionally or due to negligence, infringes the patent, and the infringer has made a profit from the infringement, the amount of that profit is presumed to be the value of damages incurred by the patentee.

Given that it is generally difficult for the patentee to prove the value of damages, and that this could result in causing an inconvenience that reasonable damage compensation would not be achieved, the purport of this provision is to reduce the patentee's difficulty of proof by presuming the amount of profit gained by the infringer from the infringement to be the value of the damage, if the infringer has gained such profit. Thus, if there are any circumstances suggesting that the patentee could have gained profits if no patent infringement had been made by the infringer, it should be construed that the application of Article 102, paragraph (2) of the Patent Act would be allowed by deeming that the patentee has incurred damage due to that infringement (see the judgment of the Special Division of the Intellectual Property High Court rendered on February 1, 2013 and the judgment of the Special Division of the Intellectual Property High Court rendered on June 7, 2019). In light of the purport of that paragraph, if the patentee was exporting or selling a product which is of the same type as the infringing product, targeting the same consumers, and which is in such a competitive relationship (a competing product) in the market that it could have been exported or

sold if no patent infringement had been made by the infringer, it can be evaluated that the sales of the patentee's competing product decreased due to the infringement; therefore, it is reasonable to construe that there are circumstances suggesting that the patentee could have gained profits if no patent infringement had been made by the infringer. Moreover, it should be construed that the patentee's product does not necessarily need to be a product working the patented invention or need to demonstrate the same function and effect as the patented invention in order to say that such circumstances exist.

(B) a. When applying the above to this case, [i] according to 3. (1) above, Description C disclosed the following: the technical field of Inventions C "relates to a chair-type massage machine including a forearm treatment mechanism in an armrest unit" among chair-type massage machines ([0001]); in the existing chair-type massage machine, which has been commercialized on the market, includes a forearm treatment mechanism on top of the armrest units provided on both right and left sides of a seat unit, and gives a massage to a seated massage recipient's arms, there are the disadvantages that the inner rising wall provided on the armrest unit as a forearm treatment mechanism applies compression near the massage recipient's elbow joint on the upper arm inside and gives discomfort to the massage recipient and hinders the insertion and removal of the arm; in addition, there was a problem when a massage recipient attempts to stand up holding the hand-rest units, he/she receives compression applied by the inner rising walls around the elbow joints on the upper arms inside, which gives discomfort to the massage recipient; Inventions C solve the aforementioned problems so that a massage recipient can smoothly insert and remove the forearms in the forearm treatment mechanism, and show the effect that the massage recipient can stand up and sit comfortably ([0002] through [0008] and [0013]); [ii] in consideration of the fact that the body part to which a chair-type massage machine can give a massage is a particular point of focus when a consumer selects a product (Exhibit Otsu C50), it is found that consumers of chair-type massage machines include those who desire to have a forearm treatment mechanism in the armrest unit and a function to massage a seated massage recipient's forearms and those who do not always require said functions.

b. According to the evidence (Exhibits Ko 11 through 17, 38 through 41; and Ko C8 through C17, C20, and C65) and the entire import of oral arguments, it is found that, as stated in Attachment 14, the Appellant exported the Appellant's Product 1 (EC-2700, EC-2800, EC-3700, EC-3800, EC-3850, EC-3900, JP-1000, JP-1100, JP-870, Premium 4.0, Premium 4D, Premium 4S and 4D-970) that is "a chair-type massage machine which has a forearm treatment mechanism in the armrest units to give massages to the

forearms of a massage recipient" for the period from January 1, 2011 through December 31, 2021 to ●●●●●●●●●●●●●●●●●● as destination countries; and the export volume to the destination countries common to Defendant's Product 1 during the period from 2014 through 2021 is ●●●● pieces in total as stated in the column of "Appellant's Product 1 (pieces)" of Attachment 15.

In this case, it is reasonable to decide whether the patentee's products and infringing products are in the competitive relationship on the market that the patentee's products could have been exported if there had been no infringement by the infringer for each market in the destination countries. The Appellant's allegation against the above cannot be accepted.

In addition, according to the facts found in this case as stated above and the facts found in (1) A. above: [i] as stated in the column of "Appellant's Product 1 (pieces)" of Attachment 15, the Appellant exported ●●●● pieces in total of Appellant's Product 1 to ●●●●●●●● as destination countries common to Defendant's Product 1 for the period from 2014 through 2021; and [ii] Appellant's Product 1 is the same type of product as Defendant's Product 1, targeting the same consumers, in that it is "a chair-type massage machine having armrest units each provided with a forearm treatment mechanism for massaging a massage recipient's forearms." In light of the commonality in the function of being capable of massaging a massage recipient's forearms, Appellant's Product 1 is found to be a product in such a competitive relationship (a competing product) in the respective markets in the common destination countries mentioned above that it could have been exported if Defendant's Product 1 had not been exported. Therefore, it is found that, regarding Appellant's Product 1, there are circumstances suggesting that the Appellant could have gained profits if no infringement of Patent Right C had been made by the Appellee.

Accordingly, Article 102, paragraph (2) of the Patent Act is applied to the calculation of the amount of the damages incurred by the Appellant in relation to the export of Defendant's Product 1.

c. Next, according to the evidence (Exhibits Ko C3 through C7, C56, C57, and Otsu C55 through C59) and the entire import of oral arguments, it is found that, as stated in Attachment 16, the Appellant sold ●●●●●●●● pieces in total of Appellant's Product 2 (AS-760, AS-830, AS-840, AS-1000, and AS-1100) that is "a chair-type massage machine which has a forearm treatment mechanism in the armrest units to give massages to the forearms of a massage recipient" for the period from January 1, 2011 through December 31, 2021 in Japan.

According to the facts found in this case as stated above and the facts found in (1)

B. above, Appellant's Product 2 is the same type of product as Defendant's Product 2, targeting the same consumers, in that it is "a chair-type massage machine having armrest units each provided with a forearm treatment mechanism for massaging a massage recipient's forearms." In light of the commonality in the function of being capable of massaging a massage recipient's forearms, Appellant's Product 2 is found to be a product in such a competitive relationship (a competing product) in the respective markets in the common destination countries mentioned above that it could have been sold if Defendant's Product 2 had not been sold. Therefore, it is found that, regarding Appellant's Product 1, there are circumstances suggesting that the Appellant could have gained profits if no infringement of Patent Right C had been made by the Appellee.

Accordingly, Article 102, paragraph (2) of the Patent Act is applied to the calculation of the value of the damages incurred by the Appellant in relation to the sale of Defendant's Product 2.

(C) On the other hand, the Appellee alleged as follows: [i] in order to say that there are circumstances where the patentee would have been able to gain profits if there had been no patent infringement by the infringer, it should be construed that it is necessary for the patentee to have sold a substitute competing product (for which the selling time on the market overlaps with the infringing product) that has the same function and effect as the patent in question and does not infringe the patent right of another party whose infringement is alleged by the patentee; [ii] in the structure of the forearm treatment mechanism of Appellant's Products 1 and 2, there is a C-shaped armrest unit without an inner rising wall or an armrest unit formed in a concave shape that has a pair of inner rising walls on the entire right and left areas, and neither of Appellant's Products 1 and 2 shows the same function and effect as Inventions C; therefore, they cannot be deemed to be substitute competing products; in addition, all of EC-2700, EC-2800, EC-3700, JP-1000, JP-1100, and Premium 4S among Appellant's Product 1, and Appellant's Product 2 are infringing products of Unrelated Patent 2 or Unrelated Patent 3 held by the Appellee and they could not have been exported or sold; therefore, there was no relationship that they could have been exported or sold if there had been no export or sale of Defendant's Products 1 and 2; and [iii] in this case, since the Appellant has no circumstances as stated in [i] above, the application of Article 102, paragraph (2) of the Patent Act should not be approved.

However, if the patentee has exported or sold a product which is of the same type as the infringing product, has consumers in common with the infringing products, and is under a competitive relationship on the market that they could have been exported or sold if there had been no infringement by the infringer (competing product), it is found

that the patentee has circumstances where the patentee would have been able to gain profits if there had been no patent infringement by the infringer. In order to say that there are said circumstances, as explained in (A) above, it is not always necessary that the patentee's products be products working the patented invention or demonstrate the same function and effect as the patented invention.

In addition, it has not become final and binding by the judgment in a patent infringement lawsuit that Appellant's Products 1 and 2 are infringing products of the Appellee's Unrelated Patents 2 and 3. Even if the aforementioned competing product is determined to be an infringing product of another person ex-post facto, as long as it is actually found that said competing product was distributed on the market in the same period as the infringing product, it is found that there is a relationship that demand for the infringer's infringing product is shifted to the competing product, and therefore, it cannot be denied that there are circumstances where the patentee would have been able to gain profits if there had been no patent infringement by the infringer.

Consequently, the aforementioned allegation of the Appellee cannot be accepted in the premise thereof.

B. Profits of the Appellee (marginal profit)

(A) Related to Defendant's Product 1

a. Sales amount

(a) According to Exhibit Otsu C47, the sales amount of Defendant's Product 1 for the period from November 2011 through March 2021 is found to be ●●●●●●●●●●●●●● yen in total as stated in the column of "Defendant's Product 1" of Attachment 8.

(b) In this regard, the Appellee alleged that "component costs, etc." and "marketing support costs" should be deducted from the sales amount of Defendant's Product 1.

However, the component costs, etc. as alleged by the Appellee are the amount equivalent to the price of components in order to respond to initial failures after the goods are sold and the costs of international mail EMS to send said components. Therefore, they correspond to the costs related to after-sale service and have no relationship with the sales amount of Defendant's Product 1.

In addition, the marketing support costs as alleged by the Appellee are included as "discounts" under internal accounting processing of the Appellee in order to support dealers in the U.S.A. in the implementation of various sales promotions in the U.S.A. Therefore, they correspond to the sales promotion costs and have no relationship with the sales amount of Defendant's Product 1.

Consequently, the aforementioned allegations of the Appellee cannot be accepted.

b. Expenses

The Appellee alleged concerning Defendant's Product 1 that the following costs are additionally required expenses directly related to the manufacturing and export of Defendant's Product 1 (●●●●●●●●●● yen in total): [i] purchasing costs (purchasing in Shanghai) (●●●●●●●●●● yen); [ii] material costs (●●●●●●●●●● yen); [iii] manufacturing loss costs (●●●●●●●● yen); [iv] assembly costs at Daisen Factory (●●●●●●●●● yen); [v] manufacturing and logistics costs (●●●●●●●●● yen); [vi] design costs (●●●●●●●● yen); [vii] compensating deposit (●●●●●●●● yen); [viii] WEEE (●●●●●●●● yen); [ix] certification (●●●●●●●● yen); [x] trademark registration, etc. (●●●●●●●● yen); and [xi] L/C usance (●●●●●●●● yen).

(a) There are no disputes between the parties that [i] purchasing costs (purchasing in Shanghai), [ii] material costs, and [v] manufacturing and logistics costs correspond to the expenses to be deducted (●●●●●●●●● yen in total).

Whether the following costs alleged by the Appellee correspond to additionally required expenses directly related to the manufacturing and export of Defendant's Product 1 is determined below: [iii] manufacturing loss costs; [iv] assembly costs at Daisen Factory; [vi] design costs; [vii] compensating deposit; [viii] WEEE; [ix] certification; [x] trademark registration, etc.; and [xi] L/C usance.

[iii] Manufacturing loss costs

Based on the fact that it is generally unavoidable that defective products occur in the manufacturing process, the manufacturing loss costs can be substantively considered to be part of the manufacturing costs. Therefore, it is found that manufacturing loss costs (●●●●●●●● yen) (Exhibits Otsu C129, C140 through C145, and C273) correspond to additionally required expenses directly related to the manufacturing and export of Defendant's Product 1.

[iv] Assembly costs at Daisen Factory

According to the Appellee's allegation, these costs are the labor costs of the Appellee's employees. However, in consideration of the fact that the concrete details of the operation of the Appellee's employees who work at Daisen Factory and working status related to the manufacturing of Defendant's Product 1 are not clear, it cannot be found that assembly costs at Daisen Factory correspond to additionally required expenses directly related to the manufacturing and export of Defendant's Product 1.

[vi] Design costs

There is no evidence that objectively supports that the Appellee paid the design

costs (●●●●●●●● yen) and it is not clear whether the design costs are necessary for the manufacturing and export of Defendant's Product 1 per piece. Therefore, it cannot be found that the design costs correspond to additionally required expenses directly related to the manufacturing and export of Defendant's Product 1.

[vii] Compensating deposit

First, the amount of the compensating deposit per piece as alleged by the Appellee is found to be the amount that is conveniently allocated internally by the Appellee (Exhibits Otsu C140 through C145) and the amount cannot be deemed to be additionally required expenses directly related to the manufacturing and export of Defendant's Product 1.

Next, among the costs for creating the users' manual that the Appellee alleged to have paid from the compensating deposit, ●●●●●●● yen related to Defendant's Product 1 for payments around March 2016 (total sum of ●●●●●●● yen that correspond to one fourth of translation fees for four products and ●●●●●●● yen of inDesign editing costs related to Defendant's Product 1) (Exhibits Otsu C182 and C183) is found to fall under additionally required expenses directly related to the manufacturing and export of Defendant's Product 1 in fiscal year 2015.

In addition, concerning the amount that the Appellee paid to the US Food and Drug Administration (FDA) (Exhibits Otsu C173 through C177), it is not clear whether it was paid only for the manufacturing and export of Defendant's Product 1, and the same applies to other costs that the Appellee alleged to have paid from the compensating deposit. Therefore, none of them are found to be additionally required expenses directly related to the manufacturing and export of Defendant's Product 1.

[viii] WEEE

Based on the fact that WEEE is the costs for registration with the U.K. Government pursuant to the Waste Electrical and Electronic Equipment Recycling Directive in the U.K. and the costs to be paid by the Appellee for exporting Defendant's Product 1 to the U.K. under laws and regulations depending on the total export weight (Exhibits Otsu C189 and C190), it is found that WEEE corresponds to additionally required expenses directly related to the manufacturing and export of Defendant's Product 1.

In addition, based on the fact that the Appellee paid ●●●●●●● US dollars (●●●●●●● yen; calculated at an exchange rate of approximately 106 yen/US dollar) as WEEE based on ●●● pieces in total of Defendant's Product 1 (Exhibit Otsu C189), it is reasonable to find to be ●●● yen per piece (●●●●●●● yen/●●●).

Then, among the amount of WEEE alleged by the Appellee (●●●●●●●●●●)

yen), the amount to the extent of ●●●●●●● yen (export volume to "U.K." as stated in Attachment 15: ●●● pieces × ●●● yen) is found to correspond to additionally required expenses directly related to the manufacturing and export of Defendant's Product 1.

[ix] Certification

Concerning the certification (●●●●●●● yen) as alleged by the Appellee, it is found that the Appellee paid ●●●●●●●● US dollars (●●●●●●● yen; calculated at an exchange rate of 102.86 yen/US dollar) around March 2014 in order to acquire CB-LVD, CB-EMC, and other certifications that are necessary for selling Defendant's Product 1 at export destination countries (Exhibits Otsu C193 through C196); however, there is no evidence to objectively support that the Appellee paid an amount exceeding said amount. Then, among the amount of certification alleged by the Appellee, the amount to the extent of ●●●●●●● yen is found to correspond to additionally required expenses directly related to the manufacturing and export of Defendant's Product 1 in fiscal year 2014.

[x] Trademark registration, etc.

It is not found that trademark registration, etc. is necessary for the manufacturing and export of Defendant's Product 1 per piece. Therefore, it cannot be found that costs for trademark registration, etc. correspond to additionally required expenses directly related to the manufacturing and export of Defendant's Product 1.

[xi] L/C usance

There is no evidence to find that L/C usance is necessary for the manufacturing and export of Defendant's Product 1 per piece. Therefore, it cannot be found that costs for L/C usance correspond to additionally required expenses directly related to the manufacturing and export of Defendant's Product 1.

(b) Based on the above, as stated in 2. (2) of Attachment 17, it is found, concerning Defendant's Product 1, that the following costs correspond to additionally required expenses directly related to the manufacturing and export of Defendant's Product 1 (●●●●●●● yen in total): [i] purchasing costs (purchasing in Shanghai) (●●●●●●● yen); [ii] material costs (●●●●●●● yen); [iii] manufacturing loss costs (●●●●●●● yen); [v] manufacturing and logistics costs (●●●●●●● yen); [vii] compensating deposit (●●●●● yen); [viii] WEEE (●●●●● yen); and [ix] certification (●●●●● yen).

None of the allegations of the Appellee and the Appellant against the above can be accepted.

c. Marginal profit

(a) According to a. and b. above, the marginal profit amount that the Appellee received from the export of Defendant's Product 1 is, as stated in the column of "Marginal profit amount" in 2. (1) of Attachment 17, ●●●●●●●●●● yen in total, after deducting ●●●●●●●●●● yen of expenses as stated in b. above from ●●●●●●●●●● yen of the total sales amount as stated in a. above.

(b) In this regard, the Appellant alleged that, according to the main sentence and (2) of 5-2-5 of the Consumption Tax Act Basic Instructions, "in cases of an infringement of an intangible property right, compensation for damages that the intangible property right holder receives from the infringer" is considered to fall under the value of the asset transfer, etc., and the "profit" as used in "if ...the infringer has profited from the infringement" as defined in Article 102, paragraph (2) of the Patent Act should be construed to include the portion equivalent to the consumption tax; and since this also applies to the case where the infringement mode is export, the portion equivalent to the consumption tax should be added to the amount of marginal profit.

However, consumption tax is exempted for export (Article 7, paragraph (1), item (i) of the Consumption Tax Act). Defendant's Product 1, which is a product to be exported, is not subject to the consumption tax. The Appellee does not receive payment of the amount equivalent to the consumption tax upon transfer, etc. of Defendant's Product 1, and therefore, has not "made a profit from the infringement." Therefore, the aforementioned allegation of the Appellant cannot be accepted.

(B) Related to Defendant's Product 2

a. Sales amount

The discount amount and refund amount for returned products of Defendant's Product 2 are not compensations for sale of Defendant's Product 2, and therefore it is reasonable to find that they are not included in the sales amount of Defendant's Product 2.

According to Exhibit Otsu C47, the sales amount of Defendant's Product 2 for the period from November 2011 through March 2021 is found to be ●●●●●●●●●● yen in total as stated in the column of "Defendant's Product 2" of Attachment 8.

b. Marginal profit

The Appellee alleged concerning Defendant's Product 2 that the following costs are additionally required expenses directly related to the manufacturing and export of Defendant's Product 2 (●●●●●●●●●● yen in total): [i] purchasing costs (purchasing in Shanghai) (●●●●●●●●●● yen); [ii] material costs (●●●●●●●●●● yen); [iii] manufacturing loss costs (●●●●●●●●●● yen); [iv] assembly costs

at Daisen Factory (●●●● yen); [v] manufacturing and logistics costs (●●●●●●● yen); [vi] design costs (●●●●●●● yen); and [vii] transportation costs and assembly costs (●●●●●●● yen).

There are no disputes between the parties that the following costs correspond to additionally required expenses directly related to the manufacturing and sale of Defendant's Product 2: [i] purchasing costs (purchasing in Shanghai); [ii] material costs; [v] manufacturing and logistics costs; and [vii] transportation costs and assembly costs (●●●●●●● yen in total).

Then, the expenses to be deducted (●●●●●●● yen in total) are greater than ●●●●●●● yen of the sales amount of Defendant's Product 2 (a. above). Therefore, without the need to make determinations on the remaining issues, the marginal profit amount that the Appellee gained from the sale of Defendant's Product 2 is nil.

(C) Summary

Based on the above, the marginal profit amount that the Appellee received from the export of Defendant's Product 1 is ●●●●●●● yen. The marginal profit amount is presumed to be the amount of damages to the Appellant pursuant to Article 102, paragraph (2) of the Patent Act (hereinafter the presumption is referred to as the "Presumption"). On the other hand, the marginal profit amount that the Appellee received from the sale of Defendant's Product 2 is nil. Therefore, the presumption as defined in said paragraph does not apply.

C. Rebuttal of presumption

(A) The Appellee alleged that the following matters fall under grounds for rebuttal of the Presumption: [i] the fact that the patented inventions are worked only in a part of Defendant's Product 1; [ii] the existence of competing products in the markets; [iii] the non-identity of the markets; [iv] the Appellee's marketing efforts (the brand power and advertising); and [v] the performances of Defendant's Product 1 (functions, designs, and other characteristics other than Inventions C). Therefore, these allegations are examined below.

a. The fact that the patented inventions are worked only in a part of Defendant's Product 1

(a) Defendant's Product 1 is, as shown in FIG. 1 through FIG. 5 in No. 1 of Attachment 1 "Descriptions of Defendant's Products 1 through 8," a massage chair that has a chair body including a seat unit and a backrest unit that is provided at the rear of the seat unit, and arm units (rest units) on both sides of the chair body. The seat unit is provided with a thigh airbag for massaging a user's thighs and a hip airbag for massaging a user's hips;

the backrest unit is provided with a waist airbag for giving treatment to a user's waist; the arm unit has an opening so that a massage recipient's forearm can be inserted from the inner rear thereof and has a forearm holding unit that is extended from the opening for inserting and holding a massage recipient's forearm, including the hand, inside the arm unit. The arm unit is provided so as to be movable in the front-rear direction in relation to the chair body in conjunction with the reclining movement of the backrest unit while maintaining a predetermined amount of movement, which corresponds to the reclining angle of the backrest unit.

According to the evidence (Exhibits Otsu C40 and C54) and the entire import of oral arguments, it is found that Defendant's Product 1 has a function to measure the body using unique infrared scanning technology and give a massage to the specific area of the finger pressing point (finger pressure point sensor); "Young course" program function for children; and a function to enable a massage recipient to select from 16 different pre-programmed massage sessions and a combination of various manual massages (Attachments 2-1 and 2-2 to the brief (the Appellee, the 17th)) only by clicking buttons; and Defendant's Product 1 has "massage mechanisms" for the neck (finger pressure, pulling and kneading), shoulders (variety of finger pressure, kneading ball massage), arms (full-arm function), back (kneading ball massage), side press (air finger pressure), seat surface (air and vibration), waist (kneading ball and air finger pressure), calves (air finger pressure), and toes (air finger pressure).

(b) According to the statements in Description C, the technical meaning of Inventions C is as follows: in cases of an existing chair-type massage machine, which includes a forearm treatment mechanism on top of the armrest units provided on both right and left sides of a seat unit, and gives a massage to a seated massage recipient's arms, there are disadvantages that the inner rising wall provided on the armrest unit as a forearm treatment mechanism applies compression near the massage recipient's elbow joint of the upper arm inside and gives discomfort to the massage recipient and hinders insertion and removal of the arm; in addition, there was a problem when a massage recipient attempts to stand up by holding the hand-rest units, he/she receives compression applied by inner rising walls at around the elbow joints of the upper arms inside, which gives discomfort to the massage recipient; Inventions C solve the aforementioned problems so that a massage recipient can smoothly insert and remove the forearms in the forearm treatment mechanism, and show the effect that the massage recipient can stand up and sit comfortably ((2) A. (B) a. above).

Then, it is found that Inventions C are inventions related to the "forearm treatment mechanism of the armrest unit" among the structures of a chair-type massage machine

and they are worked only for the part related to the "arm unit" (armrest unit) and armrest (hand-rest unit) in Defendant's Product 1.

(c) According to the evidence (Exhibit Otsu C50) and the entire import of oral arguments, elements that consumers focus on when selecting a chair-type massage machine are found to be as follows: [i] massage function (e.g., whether it is a product corresponding to the body part where the consumer wants to receive a massage; whether it has a function to automatically adjust the positions of kneading balls or rollers based on a user's body; how many automatic courses with combinations of massage menus based on the user's objectives are equipped, etc.); [ii] convenient functions and equipment (e.g., whether it has a leg massage function, electric reclining function, remote controller storage, wheels, timer, remote controller equipped with a liquid crystal panel, folding storage function, or heating function); [iii] size and weight (e.g., what is the optimal size or weight for the desired installation site or storage site); and [iv] design, etc.

However, the effects demonstrated by the forearm treatment mechanism of Inventions C that the forearms can be inserted and removed smoothly and a massage recipient can stand up and sit comfortably are not basic functions of a chair-type massage machine, i.e., massage functions, but only incidental effects when giving a massage to the "arms."

In addition, a catalog for Defendant's Product 1 (Exhibit Otsu C40) and a catalog for Defendant's Product 2 that has the same structure as Defendant's Product 1 (Exhibit Otsu C54) do not introduce that Defendant's Products 1 and 2 have effects that the forearms can be inserted and removed smoothly in the forearm treatment mechanism and a massage recipient can stand up and sit comfortably.

Considering the above together, the technical meaning of Inventions C is not high, and the contribution of Inventions C to forming the motivation to purchase Defendant's Product 1 is limited. Therefore, it is found that the marginal profit amount that the Appellee gained from the export of Defendant's Product 1 (B. (C) above) includes parts to which Inventions C do not contribute.

Therefore, the fact that Inventions C are worked only in a part of Defendant's Product 1 is found to fall under grounds for rebuttal of the Presumption.

b. Existence of competing products in the markets

The Appellee alleged as follows: many manufacturers other than the Appellant (Panasonic, etc.) have been exporting overseas a "chair-type massage machine that has a forearm treatment mechanism in the armrest unit to give massages to the forearms," which is a competing product with Defendant's Product 1, since before Application C

was filed (Exhibits Otsu C79 through C81, etc.); in particular, in the U.S.A., products of LITEC Jiugong and Dr. Fuji that are separate companies of the Appellant (10 models), Osaki Massage Chair (OEM supplied by the Appellant) (39 models), Panasonic (6 models), Fujita (12 models), Infinity (19 models), and Kyota (5 models) are also sold, in addition to the products of the Appellant and the Appellee; models of Appellant's Product 1 were only 7 out of 94 models of "a chair-type massage machine that has a forearm treatment mechanism in the armrest unit to give massages to the forearms" whose sales periods overlap with the sales period of Defendant's Product 1 (Exhibits Ko C39 through C41, and C43, and Otsu C268, etc.); based on the above, it is obvious that even if Defendant's Product 1 were not sold, the demands of consumers and traders (including overseas agencies) in overseas markets will shift to competing products of other companies, but not to Appellant's Product 1, and the existence of the competing products of other companies falls under grounds for rebuttal of the Presumption.

The allegation above is examined below. Based on Exhibits Otsu C79 through C81, it is found that Panasonic and Daito EMC, in addition to the Appellant, exported overseas a chair-type massage machine that has a forearm treatment mechanism in the armrest unit; Panasonic's products are sold in the U.S.A., Canada, and Hong Kong, and Daito EMC's products are sold by its locally incorporated subsidiary in China. In addition, "Self-Managed Healthcare and Fitness Equipment Market 2017]" issued by Yano Research Institute Ltd. (Exhibit Otsu C51) contains statements that, concerning overseas development, Panasonic, the Appellant, the Appellee, and other companies focus on development into Asia, such as China and that Daito EMC developed OEM in Europe, U.S.A., and China. Moreover, Exhibit Ko C43 contains the statement that in the luxury massage chair market in the U.S.A., for the period from 2014 through 2018, the Appellant, the Appellee, Osaki Massage Chair, and Panasonic were major vendors.

However, in this case, there is no appropriate evidence to find the market share of chair-type massage machines in the U.S.A. and other destination countries to which Defendant's Product 1 was exported for the period from 2014 through 2021 and the sales status, etc. of a product of "a chair-type massage machine that has a forearm treatment mechanism in the armrest unit to give massages to the forearms" of companies other than the Appellant (manufacturers inside and outside Japan).

Then, the existence of competing products of other companies as alleged by the Appellee does not fall under the circumstances to deny a corresponding causal relationship between the marginal profit amount of Defendant's Product 1 and the amount of damages to the Appellant, and therefore, it cannot be found that it falls under grounds for rebuttal of the Presumption.

Consequently, the aforementioned allegations of the Appellee cannot be accepted.

c. Non-identity of the markets

Considering the facts found in this case as stated in (1) A. above and A. (B) b. above together, is the following are found as stated in Attachment 15: Defendant's Product 1 was exported to 17 countries and areas, including the U.S.A., as destinations for the period from May 2014 through March 2021 and the export volume is ●●●●● pieces; Appellant's Product 1 was exported to the destination countries in common with Defendant's Product 1 for said period and the export volume is ●●●● pieces; and the volume of Defendant's Product 1 that was exported to destination countries to which Appellant's Product 1 was not exported among the aforementioned export volume of Defendant's Product 1 is ●●●● pieces.

In the markets in the aforementioned destination countries to which Appellant's Product 1 was not exported, it cannot be said that Appellant's Product 1 has a competing relationship that it could have been exported if Defendant's Product 1 had not been exported, but it should be said that they were not in a relationship where the sales of Appellant's Product 1 decreased due to the export of Defendant's Product 1. Therefore, it is found that Defendant's Product 1 and Appellant's Product 1 did not have the same markets to the extent that the destination countries are different.

Based on the above, it is found that the fact that exports of Defendant's Product 1 for the period from May 2014 through March 2021 contain a portion exported to destination countries to which Appellant's Product 1 was not exported (●●●● pieces in total) falls under grounds for rebuttal of the Presumption.

d. The Appellee's marketing efforts (the brand power and advertising)

According to the evidence (Exhibits Otsu C51, C62, C67, and C69), the following are found: [i] the Appellee is one of the leading companies in the massage chair industry in Japan, in that the Appellee accounted for 15% of the market on the basis of price in 2004 (Exhibit Otsu C51); [ii] in 2004 through 2006, a product of the Appellee, which is other than Defendant's Product 1, received the Good Design Award in Japan (Exhibit Otsu C62) and the Appellee also received the Excite Award in the U.S.A. (Exhibit Otsu C67); and [iii] in September 2014, a local agency in the U.S.A. of the Appellee advertised that the Appellee was selected as one of 5,000 fast-growing companies in the U.S.A. on an electronic signboard in Times Square in New York (Exhibit Otsu C69).

On the other hand, it is found that the Appellant and the Appellee are positioned as market leaders in the massage device market in the U.S.A. (Exhibit Ko C43) and the Appellant also received the Good Design Award in 2003 (Exhibit Ko C59).

Based on the above, according to circumstances [i] through [iii] above, it cannot be

found that the Appellee's brand power and advertisement of Defendant's Product 1 contributed to the extent of forming the motivation to purchase Defendant's Product 1. There is no other evidence sufficient to find such contribution.

Consequently, the Appellee's marketing efforts (the brand power and advertising) as alleged by the Appellee cannot be found to fall under grounds for rebuttal of the Presumption.

e. The performances of Defendant's Products 2 (functions, designs, and other characteristics other than Inventions C)

The Appellee alleged that Defendant's Product 1 has the following points of appeal: 16 different pre-programmed massage courses that can be selected only by clicking a button; simple operation; convenience without a complicated remote controller that requires manual operation; award-winning design with the cooperation of a world famous designer P; and, in particular, a function where unique body scanning technology measures a user's body, detects finger pressure points, and gives a massage conforming to the form of a user's back shape (Exhibit Otsu C40); the Appellee has many patents related to the points of appeal of Defendant's Product 1 (Exhibits Otsu C222 through C238); the design of Defendant's Product 1 has been registered in many countries (Exhibits Otsu C213 through C221) and its design is excellent; and, as described above, the performances (functions, designs, and other characteristics other than Inventions C) of Defendant's Product 1 fall under grounds for rebuttal of the Presumption.

The Appellee's allegation above is examined below. A catalog for Defendant's Product 1 (Exhibit Otsu C40) has the following statement (Attachments 2-1 and 2-2 to the brief (the Appellee, the 17th)) concerning the "design": "Award-winning design: World famous designer P collaborated with acupuncture massage specialist Q and developed DreamWave. It resulted in a beautiful chair that has received multiple awards for its innovation and design." In addition, a catalog for Defendant's Product 2 that has the same structure as Defendant's Product 1 (Exhibit Otsu C54) has a caption for a photograph of Defendant's Product 2 that "It is designed so that it can be used as a multifunctional interior piece without a feeling out of place."

However, even in consideration of the Appellee's award-winning record as stated in the catalogs above and as it was found in d. above and the fact of design registration as alleged by the Appellee, it cannot be found that the design of Defendant's Product 1 contributed to the extent of forming the motivation to purchase Defendant's Product 1. There is no other evidence sufficient to find such contribution.

In addition, there is no evidence sufficient to find that performances, etc. related to

Defendant's Product 1 as alleged by the Appellee contributed to forming the motivation to purchase Defendant's Product 1.

Consequently, the aforementioned allegations of the Appellee cannot be accepted.

(B) As described above, Inventions C are inventions related to a "forearm treatment mechanism of the armrest unit" among the structures of a chair-type massage machine. Concerning Defendant's Product 1, Inventions C are worked only for the part related to the "arm unit" (armrest unit) and the armrest (hand-rest unit). Exports of Defendant's Product 1 for the period from May 2014 through March 2021 contain a portion exported to destination countries to which Appellant's Product 1 was not exported (●●●● pieces in total) (non-identity of the markets). The aforementioned circumstances fall under grounds for rebuttal of the Presumption. The effects that the forearms can be inserted and removed smoothly in the forearm treatment mechanism of Inventions C and a massage recipient can stand up and sit comfortably are not basic functions of a chair-type massage machine, i.e., massage functions, but only incidental effects when giving a massage to the "arms." The technical meaning of Inventions C is not high, and the contribution of Inventions C to forming the motivation to purchase Defendant's Product 1 is limited. The portion of the exports to destination countries to which Appellant's Product 1 was not exported (●●●● pieces in total) is equivalent to 7% of the export volume of Defendant's Product 1 (●●●●●● pieces). In consideration of the aforementioned circumstances together, it is reasonable to find that the contribution rate of Inventions C to forming the motivation to purchase Defendant's Product 1 is 10%. For the portion exceeding the aforementioned contribution rate, it is found that there is no corresponding causal relationship between the marginal profit amount of Defendant's Product 1 and the amount of damages to the Appellant.

Therefore, the Presumption is found to be rebutted to the aforementioned extent. The amount of damages to the Appellant based on Article 102, paragraph (2) of the Patent Act is found to be ●●●●●●●●●● yen in total, which is equivalent to 10% of the marginal profit amount of Defendant's Product 1, as stated in the column of "Amount after the rebuttal of presumption" in 3. of Attachment 17.

D. Amount of damages based on Article 102, paragraph (3) of the Patent Act related to the portion of rebuttal of presumption (alternative claim)

(A) Article 102, paragraph (3) of the Patent Act stipulates that the patentee may fix the value of the damages that the patentee has personally incurred as being equivalent to the amount of money the patentee would have been entitled to receive for the working of the patented invention, and may claim compensation for this against a person that, intentionally or due to negligence, infringes the patent. Meanwhile, the main clause of

paragraph (5) of that Article (the main clause of paragraph (4) of said Article before the Amended Patent Act 2019) stipulates that the provisions of paragraph (3) of said Article do not preclude any claim to compensation for damages in excess of the amount provided for therein. Given that a patent right has an effect to prohibit a third party's act of working the patented invention in the course of trade without obtaining a license from the patentee, and to eliminate that working (see Article 68 of the Patent Act), it is construed that provisions of Article 102, paragraph (3) of the Patent Act allow the patentee to claim compensation for damages against the infringer by deeming the amount equivalent to the royalty for the patented invention as the minimum value of damages incurred by the patentee, regardless of whether or not the patentee is working or is capable of working the patented invention, and that the amount of the damages referred to in that paragraph is equivalent to the lost profits as the minimum guarantee for the loss of an opportunity to grant a license (hereinafter referred to as "licensing opportunity"; the same applies hereinafter).

On the other hand, in light of the fact that the amount of "profit" gained by the infringer from the infringement (the marginal profit amount) as defined in Article 102, paragraph (2) of the Patent Act is calculated by multiplying the price of the infringing product by the quantity sold or otherwise worked so as to obtain the sales amount, and deducting expenses from that amount, the amount of the damages incurred by the patentee as presumed pursuant to the provisions of said paragraph is construed to be equivalent to the lost profits resulting from a decrease in the sales of the product working the patented invention or the competing product which the patentee could have sold or otherwise worked if no patent infringement had been made by the infringer.

Given that the patentee can gain profits not only by directly working the patented invention, but also by granting a license for the patented invention to a third party, it is construed that the damages incurred by the patentee due to the infringement by the infringer can be considered to be the lost profits resulting from a decrease in the sales of the product working the patented invention or the competing product which the patentee could have sold or otherwise worked if no patent infringement had been made by the infringer and the lost profits resulting from the loss of a licensing opportunity.

It follows that, even where the presumption under Article 102, paragraph (2) of the Patent Act is partially rebutted, if the patentee is found to have been able to grant a license for the rebutted portion of the presumption, it should be construed that application of paragraph (3) of said Article would be allowed.

Grounds for rebuttal of the presumption under Article 102, paragraph (2) of the Patent Act are construed to include, as in the case of paragraph (1) of said Article,

grounds for rebuttal due to the quantity of sales, etc. of the infringing product exceeding the patentee's ability to sell or otherwise work the patented invention, and grounds for rebuttal due to circumstances under which the patentee could not sell or otherwise work the patented invention for any other reason. It is construed that, with regard to the rebutted portion of the presumption relating to the abovementioned grounds for rebuttal due to the quantity exceeding the patentee's ability to work the patented invention, the patentee is found to have been able to grant a license unless there are special circumstances, but with regard to the rebutted portion of the presumption relating to the abovementioned grounds for rebuttal due to circumstances under which the patentee could not sell or otherwise work the patented invention, whether or not the patentee could have granted a license under the facts of those circumstances should be determined individually.

(B) When applying the above to this case, the grounds for rebuttal of the Presumption as found in C. above are the fact that the patented inventions are worked only in a part of Defendant's Product 1 and the non-identity of the markets. Neither of them is on the grounds that they exceed the patentee's ability to work the patented invention.

However, the rebutted portion of the presumption relating to the grounds for rebuttal due to the non-identity of the markets is based on the finding that, in the period when the Appellee exported Defendant's Product 1 to the respective destination countries, Appellant's Product 1 was not exported to those destination countries, and therefore, Appellant's Product 1 is not found to be in such a competitive relationship in the respective markets of those destination countries that it could have been exported if Defendant's Product 1 had not been exported (C. (A) c. above). Although it can be said that the Appellant had circumstances under which it could not directly make exports regarding the export volume related to said rebutted portion of the presumption, the Appellant is found to have been able to grant a license for such export.

On the other hand, with regard to the rebutted portion of the presumption relating to the grounds for rebuttal due to the reason that Inventions C are only worked in a part of the infringing product, the Presumption is rebutted because Inventions C do not contribute to each individual Defendant's Product 1 for the entirety of the export volume related to the rebutted portion of the presumption. It cannot be found that the Appellant could have granted a license for such part to which Inventions C have not contributed.

It follows that, in this case, it is reasonable to allow application of Article 102, paragraph (3) of the Patent Act only for the rebutted portion of the presumption relating to grounds for rebuttal due to the non-identity of the markets.

(C) a. On the other hand, the Appellant alleged as follows: since the grounds for rebuttal

due to the fact that the patented invention is worked only in a part of the infringing product is only one of the factors forming a demand and is a factor to judge whether all the circumstances related to the infringing product shift to the products of the patentee, there is no reason to distinguish it from the grounds for rebuttal due to non-identity of the markets, etc.; distinguishing whether to apply Article 102, paragraph (3) of the Patent Act for each of the grounds for rebuttal makes calculation of the royalty rate troublesome and is not appropriate; various factors are tangled together compositely to form the demand for a product. It is practically difficult to find the rebuttal percentage for each of the grounds for rebuttal and to find and determine whether lost profits due to the loss of a licensing opportunity are found for the relevant rebutted part; based on the above, Article 102, paragraph (3) of the Patent Act should be applied also to the portion of rebuttal of presumption related to the grounds for rebuttal due to the fact that Inventions C are worked only in a part of the infringing product.

However, as explained in (B) above, concerning the aforementioned portion of rebuttal of presumption, the Presumption is rebutted because Inventions C do not contribute to each individual Defendant's Product 1. It cannot be found that the Appellant could have granted a license for those parts to which Inventions C have not contributed. Therefore, the aforementioned allegation of the Appellant cannot be accepted.

b. The Appellee alleged as follows: [i] in Article 102, paragraph (1) of the Patent Act, the parts that could have been licensed (item (ii)) can be distinguished and recognized separately from the parts presumed to have been able to be worked by the patentee (item (i)) because said paragraph adopted a method of calculating the amount of damages related to the right holder's lost profits based on the "volume" that the infringer sells; on the other hand, paragraph (2) of said Article adopted a method of calculating the amount of damages by presuming the "profits" of the infringer as the patentee's lost profits. It is the amount of damages as a result of the final calculation for which the presumption in said paragraph is rebutted. Part of the quantity of infringing products, which is the numerical value still in the calculation process, is not deducted from the basis of the calculation; it should be said that, in the process of rebuttal of presumption under said paragraph, all lost profits, including lost profits due to loss of the right holder's licensing opportunities, are evaluated completely; and therefore, the application of paragraph (3) of said Article to the portion of rebuttal of presumption results in duplicated evaluation of damages to the right holder and it is not allowed; [ii] the Amended Patent Act 2019, for which paragraph (1), item (ii) of said Article was newly established, does not stipulate the damages in an amount equivalent to royalties

in the provisions of paragraph (2) of said Article, but this is construed to be based on the aforementioned purport; and [iii] even if it is logically possible that there is a case where double application of paragraph (3) of said Article is approved for the portion of rebuttal of presumption, concerning the portion of rebuttal of presumption related to the grounds for rebuttal due to "non-identity of the markets" of Defendant's Product 1, the compensation to be received from business operators in overseas markets for export is profits that are only based on overseas markets; construing that the presumption as defined in Article 102, paragraph (2) of the Patent Act also covers such profits in overseas markets, and monopolizing said profits from overseas markets based on the patent right in Japan deviates from the range of protection under the patent right and is not scheduled by law; it is difficult to imagine an actual case of licensing only for export to the designation countries based on the patent right in Japan, and it is difficult to say that the profits that could have been received in the amount equivalent to the royalties from licensing were not received in such a case; and therefore, paragraph (3) of said Article cannot be applied to the portion of rebuttal of presumption regarding the Presumption.

However, concerning [i] and [ii] above, as explained in (A) above, given that the patentee can gain profits not only by directly working the patented invention, but also by granting a license for the patented invention to a third party, it is construed that the damages incurred by the patentee due to the infringement by the infringer can be considered to be the lost profits resulting from a decrease in the sales of the product working the patented invention or the competing product which the patentee could have sold or otherwise worked if no patent infringement had been made by the infringer and the lost profits resulting from the loss of a licensing opportunity. The amount of the damages incurred by the patentee as presumed pursuant to the provisions of Article 102, paragraph (2) of the Patent Act is regarded to be equivalent to the lost profits resulting from a decrease in the sales of the product working the patented invention or the competing product which the patentee could have sold or otherwise worked if no patent infringement had been made by the infringer. On the other hand, if it is found that the patentee could have granted a license for the portion of rebuttal of presumption regarding the presumption pursuant to said paragraph, it can be considered that the patentee has incurred damages of an amount equivalent to the royalties due to the loss of a licensing opportunity in addition to the lost profits due to decreases in sales. Therefore, it does not result in counting damages to the patentee twice. In addition, the Amended Patent Act 2019, for which paragraph (1), item (ii) of said Article was newly established, did not amend the provisions of paragraph (2) of said Article in the same

way as paragraph (1), item (ii) of said Article; however, it does not immediately become a reason to deny the application of paragraph (3) of said Article for the portion of rebuttal of presumption regarding the presumption pursuant to paragraph (2) of said Article.

Next, concerning [iii], as stated in (B) above, the Appellant could have granted a license for Patent C for the export volume related to the portion of rebuttal of presumption due to non-identity of the markets.

Consequently, the aforementioned allegations of the Appellee cannot be accepted. (D) Then, the amount of damages based on Article 102, paragraph (3) of the Patent Act is determined for the portion of rebuttal of presumption related to the grounds for rebuttal of the Presumption due to non-identity of the markets.

[i] "Survey and Study Report on the Use of Patent, etc. based on the Intellectual Property Value Assessment - Identifying Actual Status of Intellectual Property (Asset) Value and Royalty Rate -" created by Teikoku Databank, Ltd. (the Report) has the following statements: in "(3) Questionnaire Survey Results" in "1. Royalty Rate by Technical Field (Questionnaire Survey in Japan)," "overall average royalty rate for patent rights is 3.7%." (page 50); in Table II-3, the average, maximum, and minimum values of "Personal product or household product" (13 cases) are 3.5%, 7.5%, and 0.5%, respectively, and the average, maximum, and minimum values of "Instruments" (63 cases) are 3.5%, 9.5%, and 0.5%, respectively (page 52); in Table III-12 of "4. Royalty Rate by Judicial Determination," concerning the "Royalty rate by judicial determination by industry (2004 through 2008)," the average, maximum, and minimum values of the royalty rate by judicial determination for the "Industry field" of "Machines" (12 cases) are 3.9%, 10.0%, and 1.0%, respectively (page 109); [ii] as stated in C. (B) above, Inventions C are inventions related to a "forearm treatment mechanism of the armrest unit" among the structures of a chair-type massage machine and are worked only in a part of Defendant's Product 1; the effects of Inventions C that the forearms can be inserted and removed smoothly in the forearm treatment mechanism and a massage recipient can stand up and sit comfortably are not basic functions of a chair-type massage machine, i.e., massage functions, but only incidental effects when giving a massage to the "arms"; and the technical meaning of Inventions C is not high, and the contribution of Inventions C to forming the motivation to purchase Defendant's Product 1 is limited; and [iii] there may be cases where the royalty is determined by including the amount equivalent to the consumption tax when granting a license; in consideration of the aforementioned facts and other circumstances that appeared in this case together, it is reasonable to find that the amount of damages based on Article 102, paragraph (3)

of the Patent Act related to the aforementioned portion of rebuttal of presumption is the amount obtained by multiplying the sales amount of Defendant's Product 1 by the royalty rate of 1%.

According to C. (B) above and Attachment 8, the sales amount of Defendant's Product 1 equivalent to the aforementioned portion of rebuttal of presumption is found to be ●●●●●●●●●● yen (●●●●●●●●●● yen × 7%; rounded off to the closest whole number; the same applies hereinafter), which is equivalent to 7% of the export volume of Defendant's Product 1. The amount of damages based on Article 102, paragraph (3) of the Patent Act is, as stated in the column of "Amount equivalent to the royalty for the rebutted portion " in 3. of Attachment 17, ●●●●●●●● yen in total (●●●●●●●●●● yen × 1%).

None of the allegations of the Appellant and the Appellee against the above can be accepted.

E. Summary

Based on the above, total sum of the amount of damages to the Appellant concerning Defendant's Product 1 based on Article 102, paragraph (2) of the Patent Act and the amount of damages based on paragraph (3) of said Article related to the portion of rebuttal of presumption as defined in paragraph (2) of said Article is as stated in the column of "Amount of damages (total)" in 3. of Attachment 17, ●●●●●●●●●● yen.

(3) Amount of damages based on Article 102, paragraph (3) of the Patent Act

A. Defendant's Product 1

(A) According to the facts found in this case in (2) D. (D) above, it is reasonable to find that the amount of damages to the Appellant based on Article 102, paragraph (3) of the Patent Act is the amount obtained by multiplying the sales amount of Defendant's Product 1 by the royalty rate of 1%.

Then, the amount of damages to the Appellant based on Article 102, paragraph (3) of the Patent Act is ●●●●●●●●●● yen in total, as stated in the column of "Amount equivalent to the royalty" in 4. "Defendant's Product 1" of Attachment 17.

None of the allegations of the Appellant and the Appellee against the above can be accepted.

(B) The total sum, ●●●●●●●●●● yen, of the amount of damages to the Appellant based on Article 102, paragraph (2) of the Patent Act and the amount of damages based on paragraph (3) of said Article related to the portion of rebuttal of presumption as defined in paragraph (2) of said Article, as was found in (2) E. above, is higher than the amount of damages to the Appellant based on paragraph (3) of said

Article, as was found in (A) above, ●●●●●●●● yen. Accordingly, the amount of damages to the Appellant related to Defendant's Product 1 is the aforementioned total sum.

B. Defendant's Product 2

In light of the fact that Defendant's Product 2 has the same structure as Defendant's Product 1, it is reasonable to find that the amount of damages to the Appellant concerning Defendant's Product 2 based on Article 102, paragraph (3) of the Patent Act is the amount obtained by multiplying the sales amount of Defendant's Product 2 by the royalty rate of 1%, as in the case of Defendant's Product 1.

Then, the amount of damages to the Appellant based on Article 102, paragraph (3) of the Patent Act is ●●●●●●● yen in total, as stated in the column of "Amount equivalent to the royalty" in 4. "Defendant's Product 2" of Attachment 17.

None of the allegations of the Appellant and the Appellee against the above can be accepted.

(4) Attorney's fees

Total sum of the amount of damages to the Appellant related to Defendant's Product 1 ((2) E. above) and the amount of damages related to Defendant's Product 2 ((3) B. above) is ●●●●●●●● yen, as stated in the column of "Subtotal of the amount of damages" in 5. of Attachment 17.

In consideration of the nature and details of this case, the amount found by this case, the examinations of the court of prior instance and this court, and other circumstances, it is reasonable to find the amount equivalent to attorney's fees that have a corresponding causal relationship with the tort in the infringement of Patent Right C of the Appellee to be ●●●●●●●● yen in total.

(5) Whether the period of extinctive prescription has expired

The Appellee alleged as follows: soon after the start of the manufacture, sale, and export of Defendant's Products 1 and 2, the Appellant recognized the fact of the manufacture, sale, and export, etc. of Defendant's Products 1 and 2 and their structures, functions, etc. and also recognized that Defendant's Products 1 and 2 fell within the technical scope of Inventions C; and therefore, concerning the Appellant's right against the Appellee to claim compensation for damages based on the tort related to the infringement of Patent Right C on and before April 12, 2015, three years of the extinctive prescription period had elapsed, at the time when this lawsuit was filed (April 13, 2018), from when the Appellant learned of the damages and the infringer, and the relevant right had been extinguished by extinctive prescription.

The aforementioned allegation of the Appellee is examined below. The right to

claim compensation for damages based on the tort is extinguished by prescription when three years have elapsed from "when ... comes to know the damage and the identity of the perpetrator" (Article 724 of the Civil Code before Amendment). It is construed that the expression "when ... comes to know the damage and the identity of the perpetrator" refers to when the victim comes to know the damage and the identity of the perpetrator under circumstances where it is substantially possible for the victim to claim compensation for damages against the perpetrator, to said possible extent, and the expression "when the victim ... comes to know the damage" refers to when the victim actually recognizes the occurrence of the damages (see 1996 (O) 2607, the judgment of the Third Petty Bench of the Supreme Court of January 29, 2002, Minshu Vol. 56, No. 1, at 218).

When applying the above to this case, there is no sufficient evidence to support that the Appellant knew that Defendant's Products 1 and 2 fell within the technical scope of Inventions C soon after the start of the sale, etc. thereof.

In this regard, the Appellee listed the following as circumstances where it was obvious that the Appellant knew that Defendant's Products 1 and 2 fell within the technical scope of Inventions C: in light of the prior and existing relationship between the Appellant and the Appellee, it is considered that the Appellant had been always interested in the trend and functions of the Appellee's products and surveyed and examined them; during the negotiation for concluding a cross-licensing agreement between the Appellant and the Appellee in 2016, the Appellant listed Patent Right C in the list of target patent rights; and the Appellant filed a divisional application related to Patent C (Application C) five months after the start of the manufacture, sale, etc. of Defendant's Product 2 (May 2018). However, even if these circumstances are found, they are not sufficient to immediately find that the Appellant knew that Defendant's Products 1 and 2 fell within the technical scope of Inventions C, and it should be said that the Appellee's allegation is only speculation. Aside from this point, according to the evidence (Exhibits Ko C50 through C52, and Otsu C43 through C45), it is found that the list of patent rights presented by the Appellant on December 9, 2016 during the aforementioned negotiation includes Patent C; however, it is found that, subsequently, concerning the list of patent rights presented by both parties, when the Appellee proposed to specify products that would be considered to be targets by both parties and to examine whether each of them falls within the technical scope, the Appellant replied on January 31, 2017 that "We are not presuming to examine the technical scope and validity regarding individual cases from the beginning" and denied examinations of products as to whether they fall within the technical scope of the Inventions, and

eventually, the cross-licensing agreement was not reached. In light of the aforementioned developments, since it cannot be found that the Appellant examined whether Defendant's Products 1 and 2 fall within the technical scope of the Inventions, none of the aforementioned allegations of the Appellee can be accepted.

Consequently, the Appellee's allegation that the Appellant's right to claim compensation for damages against the Appellee based on the tort related to the infringement of Patent Right C on and before April 12, 2015 is extinguished by prescription, is groundless.

(6) Summary

Based on the above, the amount of damages to the Appellant in this case is 391,549,273 yen in total, as stated in the column of "Total" in 5. of Attachment 17.

Consequently, the Appellant may request that the Appellee pay to the Appellant 391,549,273 yen as compensation for damages based on the tort by the infringement of Patent Right C and the amount accrued on the amounts stated in the column of "Amounts found by the court" of the Attachment "List of Amounts Found by the Court" at the rate stated in the column of "Delay damage rate (per annum)" of said Attachment for the period from the dates stated in the column of "Start date of delay damages" of said Attachment until the completion of the payment.

No. 5 Conclusion

Based on the above, the Appellant's claims have grounds to the extent of the claims against the Appellee for the injunction against the sale, etc. of Defendant's Products 1 and 2 and for the disposal thereof and that the Appellee pay to the Appellant 391,549,273 yen and the amount accrued on the amounts stated in the column of "Amounts found by the court" of Attachment "List of Amounts Found by the Court" at the rate stated in the column of "Delay damage rate (per annum)" of said Attachment for the period from the dates stated in the column of "Start date of delay damages" of said Attachment until the completion of the payment. The remaining claims are groundless and therefore should be dismissed.

Therefore, the judgment in prior instance is partially unjust and the Appeal partially has grounds. Consequently, the judgment in prior instance is amended as stated in paragraph 1. of the main text of this judgment and the judgment is rendered as indicated in the main text.

Intellectual Property High Court, Special Division

Presiding judge: OTAKA Ichiro

Judge: KANNO Masayuki

Judge: HONDA Tomonari

Judge: SHOJI Tamotsu

Judge: KATSUMATA Kumiko

Attachment

List of Articles

1. Product: INADA DREAMWAVE
Model: HCP-11001
2. Product: Family Medical Chair SOGNO
Model: FMC-10000
3. Product: Family Medical Chair Lupinus
Model: FMC-LPN10000
4. Product: Family Medical Chair Double Engine Universal
Model: FMC-WU100
5. Product: Family Medical Chair 3S Takumi
Model: FMC-S8100
6. Product: Family Inada Chair Yume Robo
Model: FIC-R100
7. Product: Family Medical Chair 3A
Model: FMC-9200
8. Product: Family Medical Chair X.1
Model: FMC-730
9. Product: Family Medical Chair 3S
Model: FMC-S330
10. Product: Family Medical Chair S-Body
Model: FDX-S300
11. Product: Family Medical Chair Necessa
Model: FMC-N230
12. Product: Family Medical Chair Lupinus Light
Model: FMC-LPN9000

Attachment

List of Amounts Found by the Court

Period	Amount found by the court	Start date for calculation of delay damages	Delay damage interest (per annum)
Nov. 2011 to Mar. 2012		April 1, 2012	5%
Apr. 2012 to Mar. 2013		April 1, 2013	5%
Apr. 2013 to Mar. 2014		April 1, 2014	5%
Apr. 2014 to Mar. 2015		April 1, 2015	5%
Apr. 2015 to Mar. 2016		April 1, 2016	5%
Apr. 2016 to Mar. 2017		April 1, 2017	5%
Apr. 2017 to Mar. 2018		April 1, 2018	5%
Apr. 2018 to Mar. 2019		April 1, 2019	5%
Apr. 2019 to Mar. 2020		April 1, 2020	5%
Apr. 2020 to Mar. 2021		April 1, 2021	3%
Total	391,549,273		

Attachment

List of Claimed Amounts

Table 1

Period	Details of claimed amounts			Claimed amount	Start date for calculation of delay damages	Delay damage interest (per annum)
	Amount of damages related to Defendant's Product 1	Amount of damages related to Defendant's Product 2	Amount equivalent to the attorney's fees			
Nov. 2011 to Mar. 2012				1,500,000,000	April 1, 2012	5%
Apr. 2012 to Mar. 2013					April 1, 2013	5%
Apr. 2013 to Mar. 2014					April 1, 2014	5%
Apr. 2014 to Mar. 2015					April 1, 2015	5%
Apr. 2015 to Mar. 2016					April 1, 2016	5%
Apr. 2016 to Mar. 2017					April 1, 2017	5%
Apr. 2017 to Mar. 2018					April 1, 2018	5%
Apr. 2018 to Mar. 2019					April 1, 2019	5%
Apr. 2019 to Mar. 2020					April 1, 2020	5%
Apr. 2020 to Mar. 2021					April 1, 2021	3%
Total for the entire period						

Table 2

Period	The amount equivalent to the royalty		Amount equivalent to the attorney's fees	Claimed amount	Start date for calculation of delay damages	Delay damage interest (per annum)
	Defendant's Product 1	Defendant's Product 2				
Nov. 2011 to Mar. 2012					April 1, 2012	5%
Apr. 2012 to Mar. 2013					April 1, 2013	5%
Apr. 2013 to Mar. 2014					April 1, 2014	5%
Apr. 2014 to Mar. 2015					April 1, 2015	5%
Apr. 2015 to Mar. 2016					April 1, 2016	5%
Apr. 2016 to Mar. 2017					April 1, 2017	5%
Apr. 2017 to Mar. 2018					April 1, 2018	5%
Apr. 2018 to Mar. 2019					April 1, 2019	5%
Apr. 2019 to Mar. 2020					April 1, 2020	5%
Apr. 2020 to Mar. 2021					April 1, 2021	3%
Total for the entire period						

(Attachment 1)

Descriptions of Defendant's Products 1 through 8

No. 1 Defendant's Products 1 and 2

1. Related to Patent A

(1) Descriptions of Defendant's Products 1 and 2

A. Defendant's Product 1 is, as shown in FIG. 1 and FIG. 2, a massage chair, which includes a seat unit and a backrest unit attached to the rear part of the seat unit.

As shown in FIG. 3, the seat unit is provided with a thigh airbag for massaging a user's thighs and hip airbag A for massaging a user's hips, and the backrest unit is provided with waist airbags to give treatment to a user's waist.

Hip airbag A is placed separately on the right and left on the top surface of the seat unit, expands upward, and presses the bottom surface of the hips (Exhibit Ko 9 and Exhibit Otsu A10).

Defendant's Product 2 has the same structure as Defendant's Product 1.

B. The movement by the control means of Defendant's Product 1 is activated in the "座 [Seat]" air course from the "Manual Selection Mode" (free-choice course) and the movement by the control means of Defendant's Product 2 is activated in the "座[Seat]" air course from the "Manual Selection Mode."

(2) Structures of Defendant's Products 1 and 2 as alleged by the Appellant

a. and d. A massage chair, which includes a seat unit and a backrest unit attached to the rear part of the seat unit;

b. wherein the seat unit has a thigh airbag for massaging the thighs, and hip airbag A for massaging the hips; and

c. wherein the backrest has a waist airbag; and

e and f. a massage chair that is characterized by including a control means that activates the waist airbags when giving a treatment to a user's waist, by inflating the hip airbag A while gradually raising the height of a user's waist.

2. Related to Patent C

(1) Descriptions of Defendant's Products 1 and 2

Defendant's Product 1 is, as shown in FIG. 1, a massage chair that has a chair body including a seat unit and a backrest unit, and arm units (rest units) on both sides of the chair body.

As shown in FIG. 4 and FIG. 5, the arm unit has an opening unit to insert the forearm of a massage recipient from the inner rear side or the side of the arm unit, which has a space that is extended from the opening unit to insert and hold the forearm, including the hand, of a massage recipient inside the arm unit.

Defendant's Product 2 has the same structure as Defendant's Product 1.

(2) Structures of Defendant's Products 1 and 2 as alleged by the Appellant

A. Structure in relation to Invention C-1

a. and g. A massage chair that has a chair body including a seat unit and a backrest unit, and armrest units on both sides of the chair body, and that is characterized by the following:

b. wherein an opening unit to insert the forearm of a massage recipient from the inner rear side, and the hollow unit, which is extended from the opening unit to insert and hold the forearm, including the hand, of a massage recipient in the arm unit are provided;

c. wherein the hollow unit is formed with an outer wall surface unit and an inner wall surface unit respectively provided on the left and right sides in the width direction of the arm unit, as well as with a bottom unit;

d. wherein the rest unit is provided at the front-end of the top surface of the outer wall surface unit and the inner wall surface unit in the form of closing the upper end of the hollow unit;

e. wherein the arm unit is equipped with:

e-1. a square-shape treatment unit, for which the front unit is surrounded by the bottom unit, the outer wall surface unit, the inner wall surface unit, and the rest unit and which is located at the hollow unit; and

e-2. an L-shape treatment unit, which is formed in an L-shape at the rear part with the bottom unit and the outer wall surface unit and which is located at the opening unit; and

f. wherein air cells are provided at each treatment unit, respectively.

B. Structure in relation to Invention C-2

h. and j. A massage chair that is stated in A. above and is characterized by the following: the arm unit has a C-shape treatment unit, which is formed in a C-shape with the bottom unit, the outer wall surface unit, and the rest unit at the center; and

i. wherein the bottom unit and the rest unit have different surfaces to place a massage recipient's forearm and the surface of the rest unit is formed at a higher position than the surface of the bottom unit.

C. Structure in relation to Invention C-3

k. and m. A massage chair that is stated in A. above and is characterized by the following: air cell 1 and air cell 2 are provided respectively at the corresponding positions of two surfaces, that is, the outer wall surface unit and the bottom unit of the opening unit; and

l. lower edge 1 of air cell 1 is fixed at the lower part of the outer wall surface unit and

edge 2 of air cell 2 on the outer wall surface unit side is fixed at the outer wall surface unit side of the bottom unit.

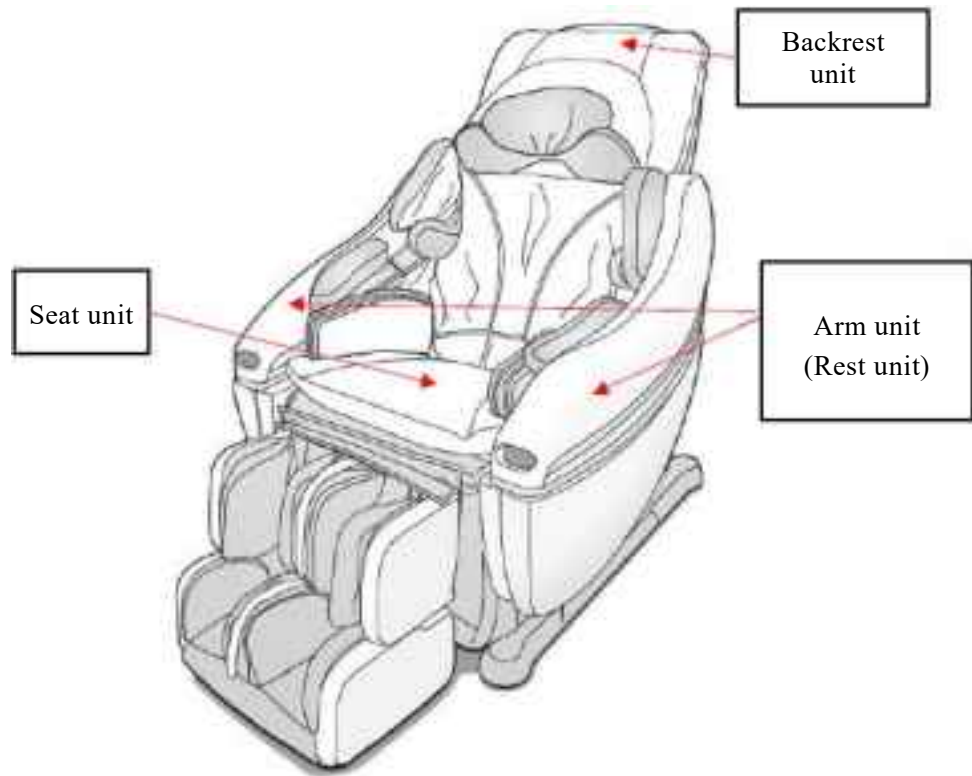
D. Structure in relation to Invention C-4

n. and o. A massage chair that is stated in C. above and is characterized by the following: edge 1 that is formed at the lower part of air cell 1 is fixed at the lower part of the outer wall surface unit of the opening unit and edge 2 that is formed at another air cell 2 on the outer wall surface unit side at the bottom unit of the opening unit is fixed at the outer wall surface unit side.

E. Structure in relation to Invention C-5

p. and q. A massage chair that is stated in A. through D. above and is characterized by the following: the arm unit is provided so as to be movable in the front-rear direction in relation to the chair body; and the arm unit moves in the front-rear direction in relation to the chair body in conjunction with the reclining movement of the backrest unit while maintaining a predetermined amount of movement, which corresponds to the reclining angle of the backrest unit.

[FIG. 1] Defendant's Products 1 and 2 (Front Perspective View)



[FIG. 2] Defendant's Product 1



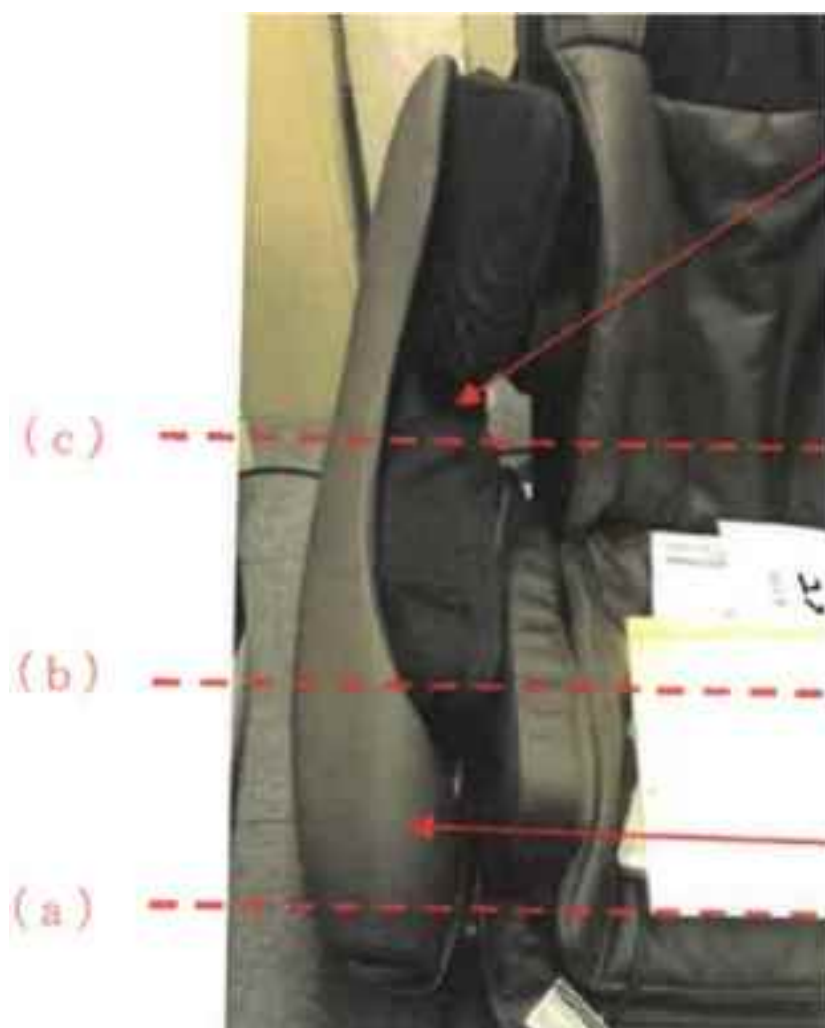
[FIG. 3] Defendant's Product 1



[FIG. 4] Defendant's Product 1



[FIG. 5] Defendant's Product 1



No. 2 Defendant's Products 3, 5, and 8 (Related to Patent A)

1. Descriptions of Defendant's Products 3, 5 and 8

(1) Defendant's Product 5 is a massage chair, which includes a seat unit and a backrest unit attached to the rear part of the seat unit. As shown in FIG. 6, the seat unit is provided with a thigh airbag for massaging a user's thighs and hip airbag A for massaging a user's hips, and the backrest unit is provided with kneading balls to give a treatment to a user's waist.

Hip airbag A is placed separately on the right and left on the top surface of the seat unit, expands upward, and presses the bottom surface of the hips (Exhibits Otsu A11 and A16).

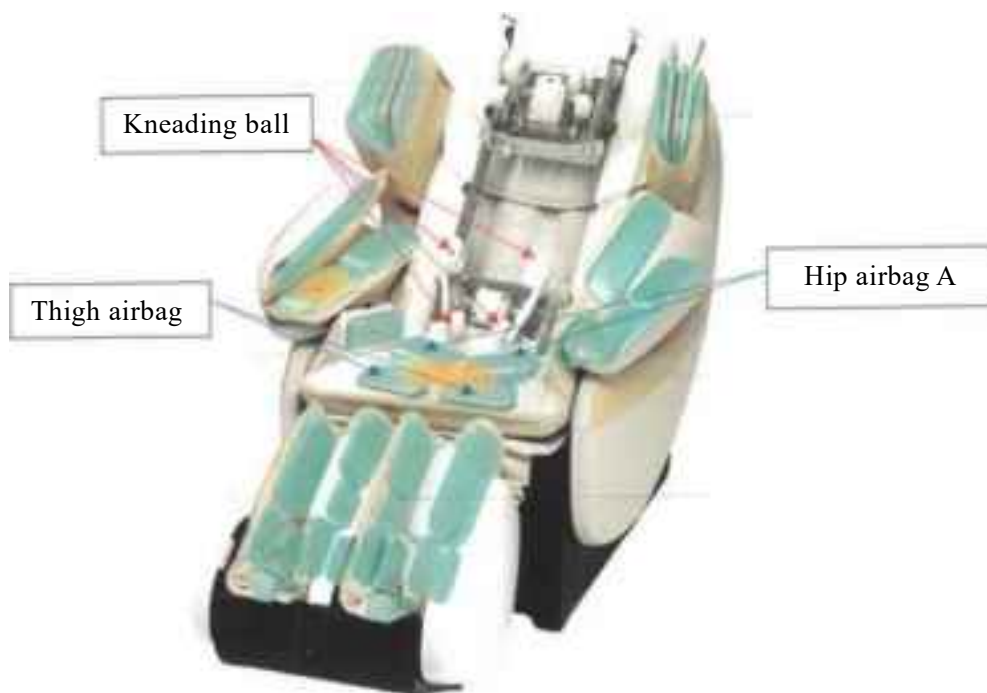
Defendant's Products 3 and 8 have the same structure as Defendant's Product 5 (Exhibits Ko 9 and Otsu A10, A14, and A16).

(2) Movement by the control means of Defendant's Product 3 is activated in the "Quick course" from the "Main course" and the "Body trunk training course" from the "Professional course"; the movement by the control means of Defendant's Product 5 is activated in the "Stretch course" and "Stress-buster course" from the "Automatic course" and in the "Body stretch course" from the "Desired course"; and the movement by the control means of Defendant's Product 8 is activated in the "Hip comfortable course" from the "Medical course," respectively.

2. Structures of Defendant's Products 3, 5, and 8 as alleged by the Appellant

- a. and d. A massage chair, which includes a seat unit and a backrest unit attached to the rear part of the seat unit;
- b. wherein the seat unit has a thigh airbag for massaging the thighs, and hip airbag A for massaging the hips; and
- c. wherein the backrest has kneading balls to give treatment to the back and waist; and
- e and f. a massage chair that is characterized by including a control means that activates the kneading balls when giving a treatment to a user's waist, by inflating the hip airbag A while gradually raising the height of a user's waist.

[FIG. 6] Defendant's Product 5



No. 3 Defendant's Products 4, 6, and 7 (Related to Patent A)

1. Descriptions of Defendant's Products 4, 6 and 7

(1) Defendant's Product 7 is a massage chair, which includes a seat unit and a backrest unit attached to the rear part of the seat unit. As shown in FIG. 7, hip airbags B are provided on both the right and left sides of the seat unit so that a massage can be given to a user's hips and, as shown in FIG. 8, the backrest unit is provided with kneading balls to give a treatment to a user's neck, back, and waist.

Hip airbags B are provided separately at both the right and left ends of the bottom unit, placed on top of the seat surface, inflate in the inner side direction, and compress the sides of the hips (Exhibit Ko 14 and Exhibit Otsu A13).

Defendant's Products 4 and 6 have the same structure as Defendant's Product 7 (Exhibits Otsu A7, A12, and A15; however, excluding the shape of the hip airbag of Defendant's Product 4).

(2) The movement by the control means of Defendant's Product 4 is activated in the "Whole-body course," "Waist-concentration course," "Centripetal course," and "Centrifugal course" from the "Medical course"; the movement by the control means of Defendant's Product 6 is activated in the "Stretch exercise course," "Rocking and massage course," and "Quick massage course" from the "Medical course"; and the movement by the control means of Defendant's Product 7 is activated in the "Whole-body fatigue recovery course," "Shoulder/muscle fatigue treatment course," and "Waist/muscle fatigue treatment course" from the "Medical course," in the "Whole-body quick course" and "Waist-concentration course" from the "Quick course," and in the "Pelvis and hips course" from the "Comfortable course," respectively.

2. Structures of Defendant's Products 4, 6, and 7 as alleged by the Appellant

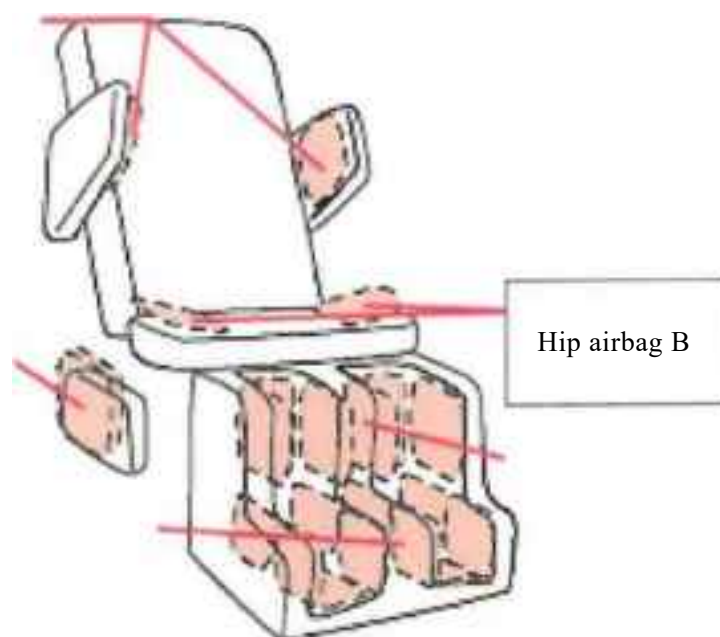
a. and d. A massage chair, which includes a seat unit and a backrest unit attached to the rear part of the seat unit;

b. wherein the seat unit has hip airbag B for massaging the hips;

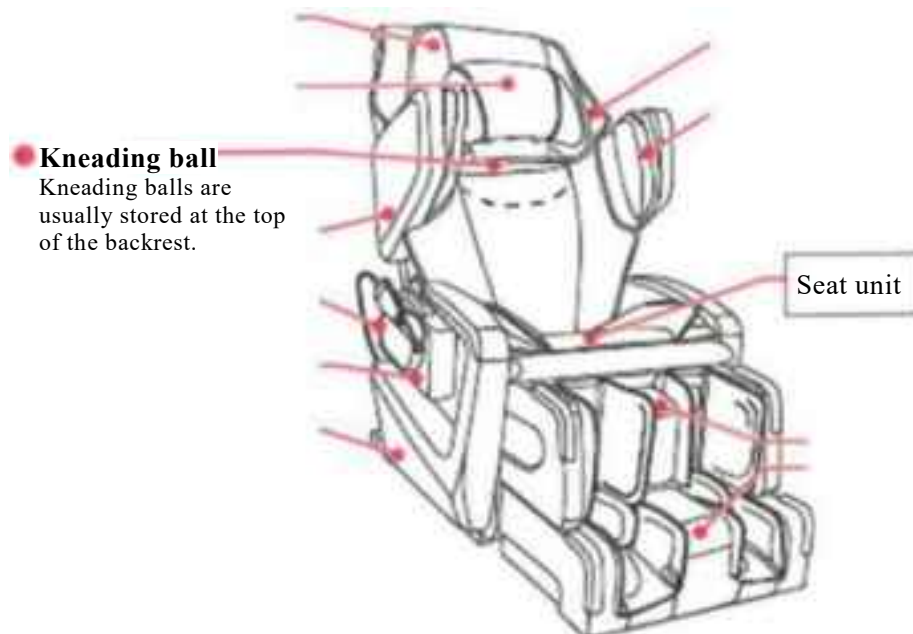
c. wherein the backrest has kneading balls to give treatment to the neck, back and waist; and

e and f. a massage chair that is characterized by including a control means that activates the kneading balls when giving a treatment to a user's waist, by inflating the hip airbag B while gradually raising the height of a user's waist.

[FIG. 7] Defendant's Product 7



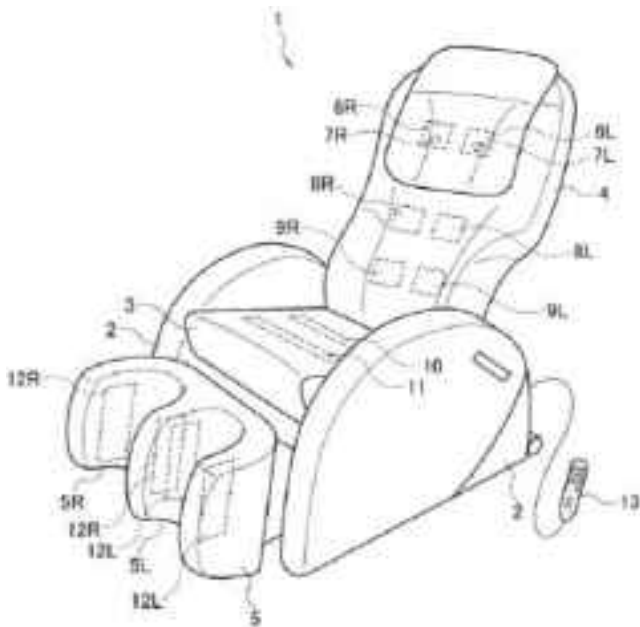
[FIG. 8] Defendant's Product 7



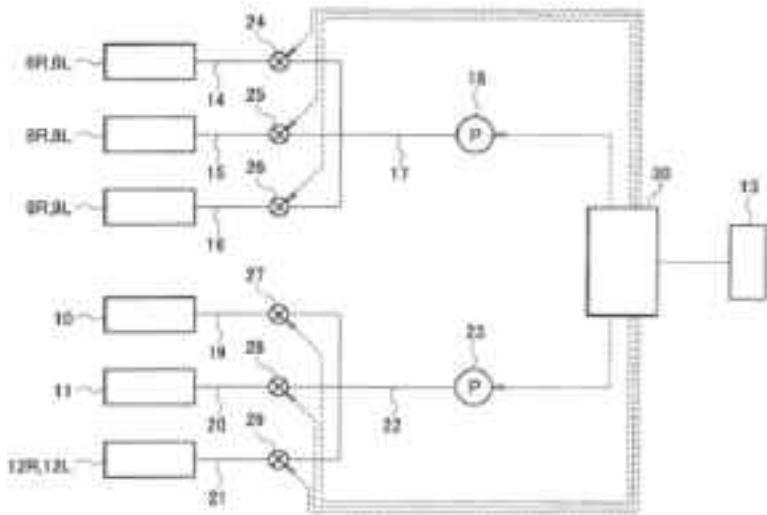
(Attachment 2)

Description A

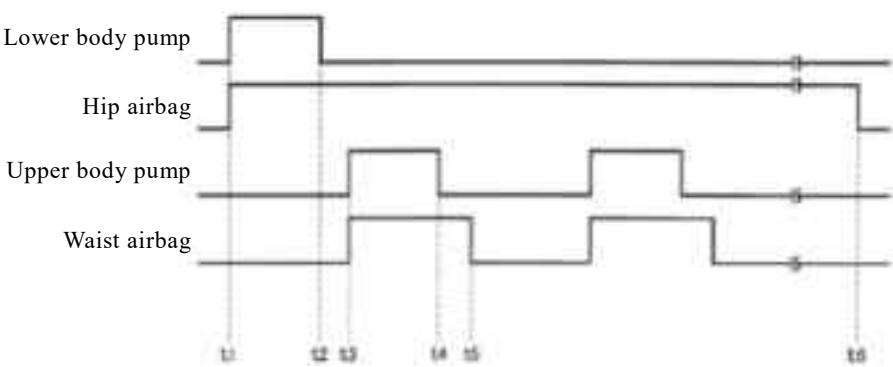
[FIG. 1]



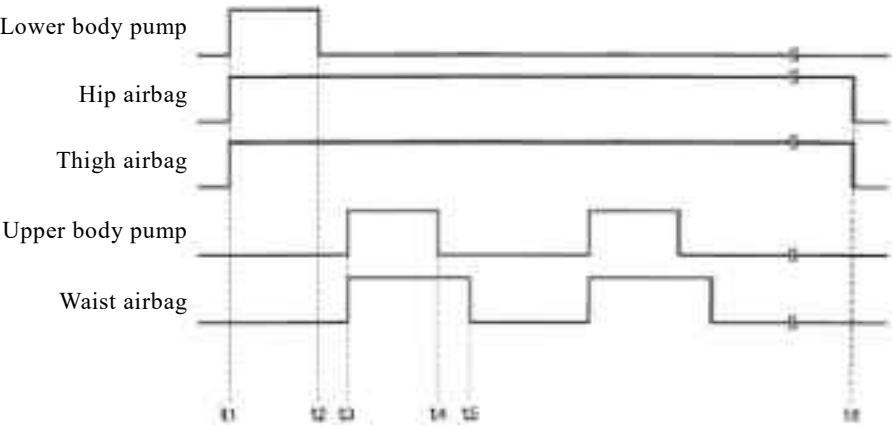
[FIG. 2]



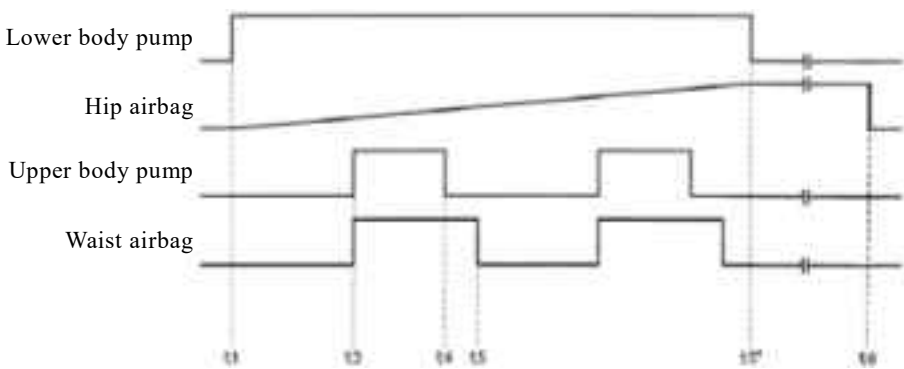
[FIG. 3]



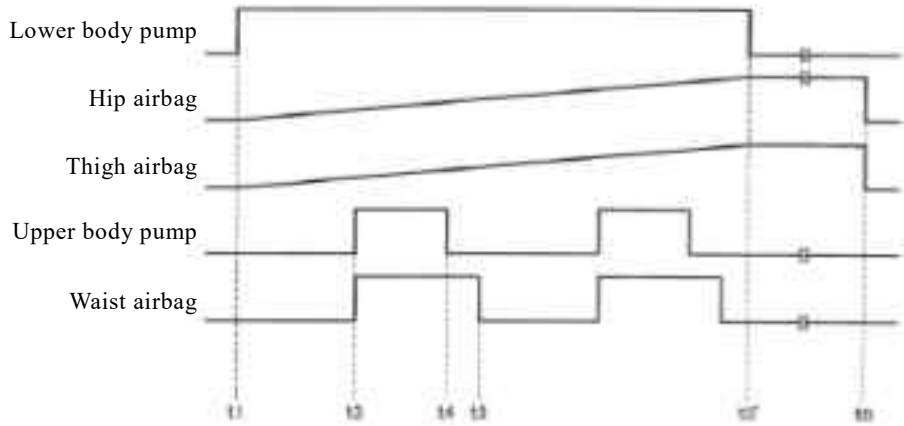
[FIG. 4]



[FIG. 5]



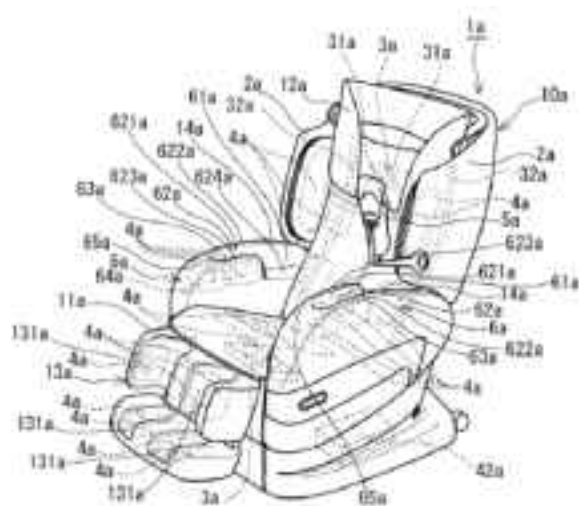
[FIG. 6]



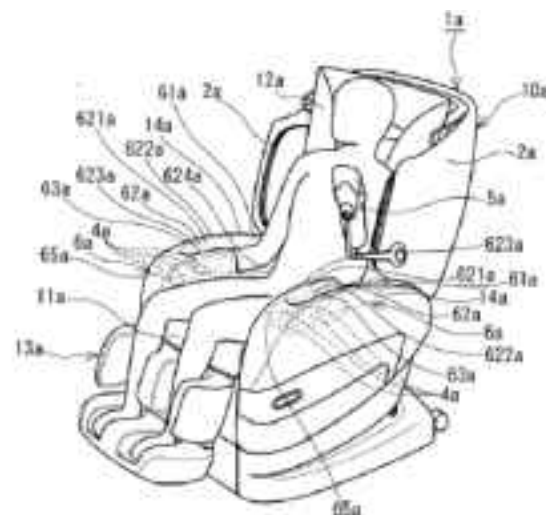
(Attachment 3)

Description C

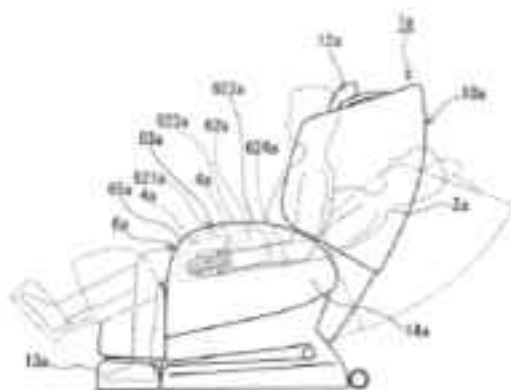
[FIG. 1]



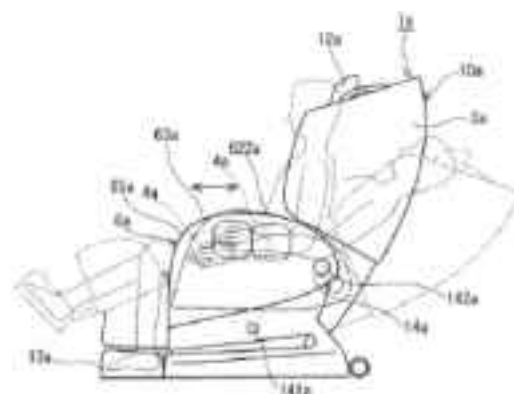
[FIG. 2]



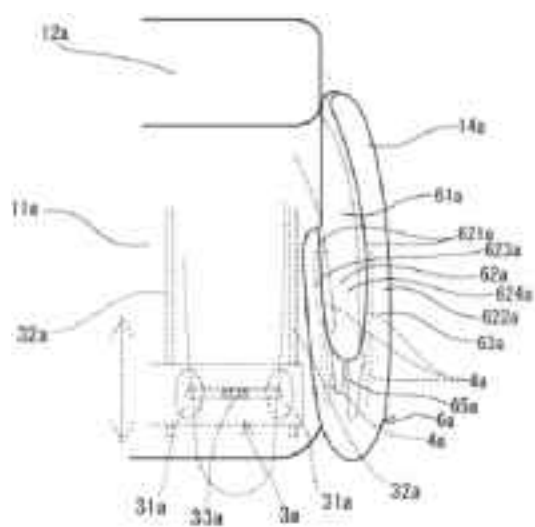
[FIG. 3]



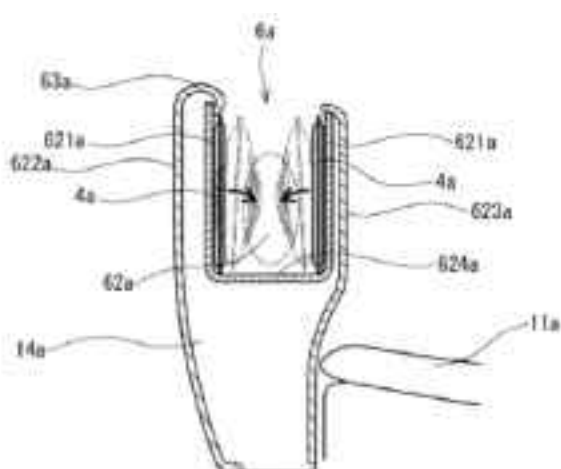
[FIG. 4]



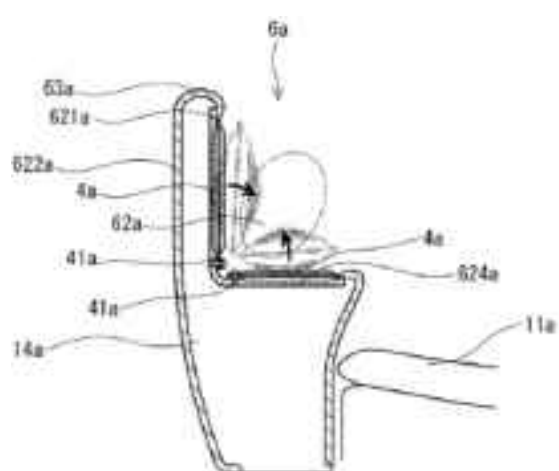
[FIG. 6]



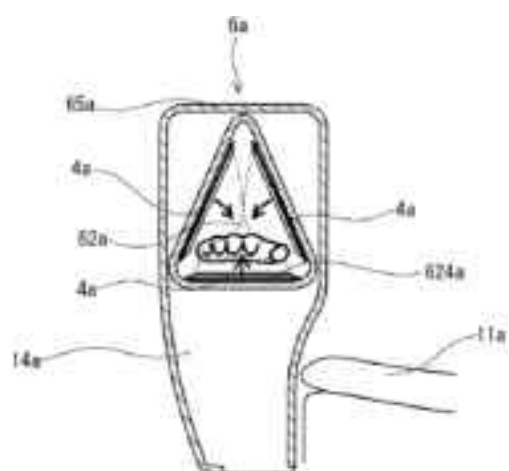
[FIG. 7]



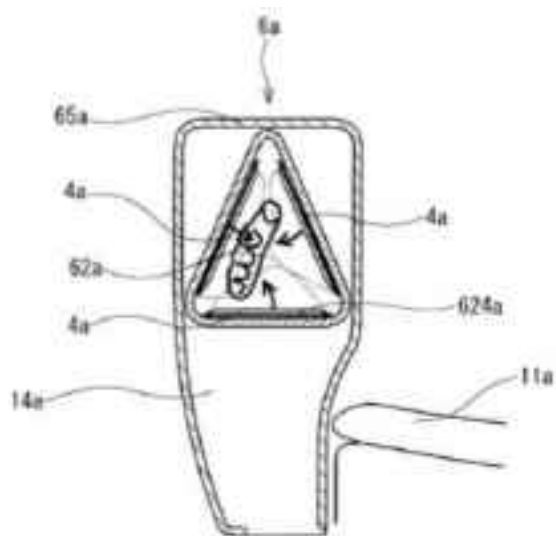
[FIG. 8]



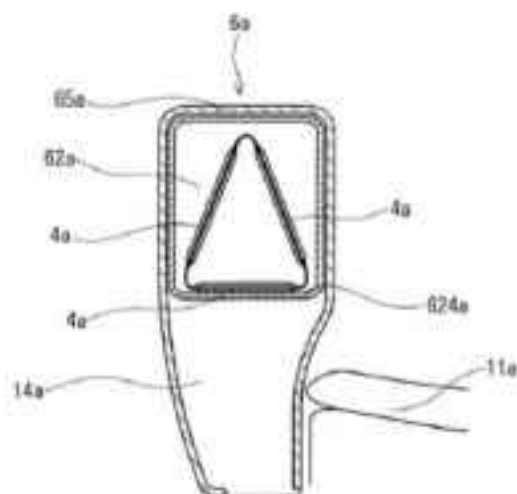
[FIG. 9]



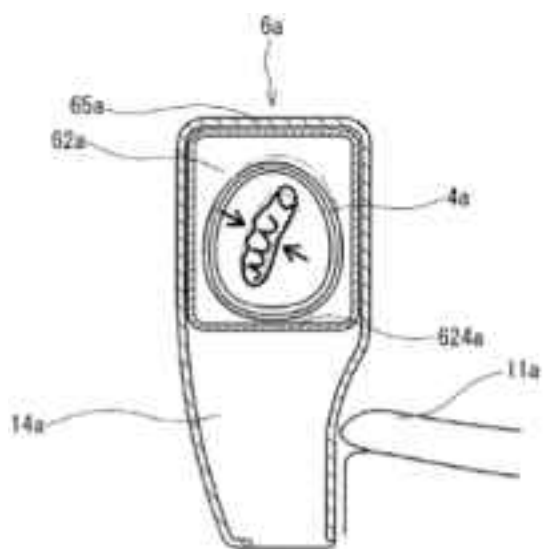
[FIG. 10]



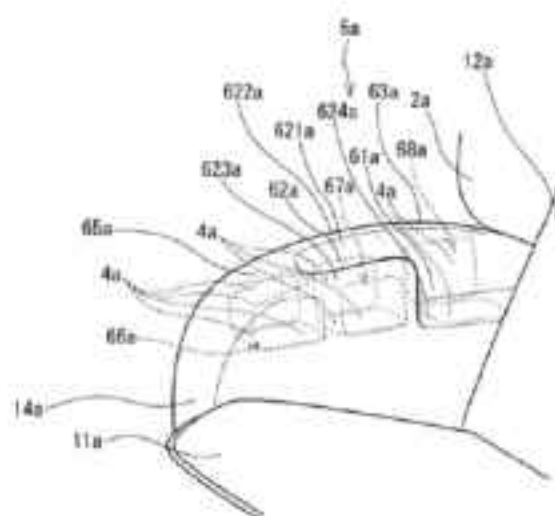
[FIG. 11]



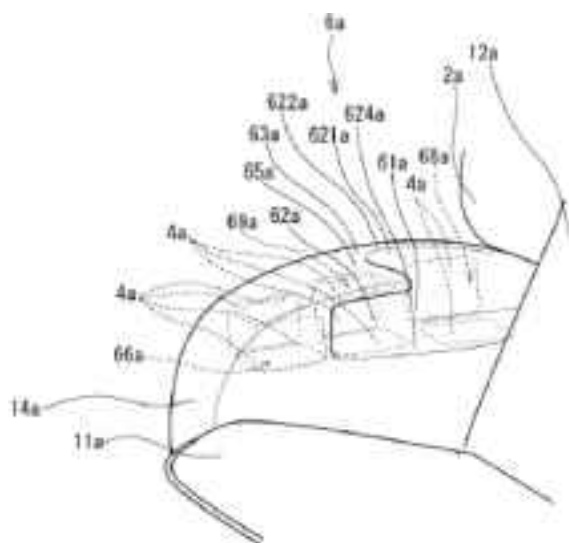
[FIG. 12]



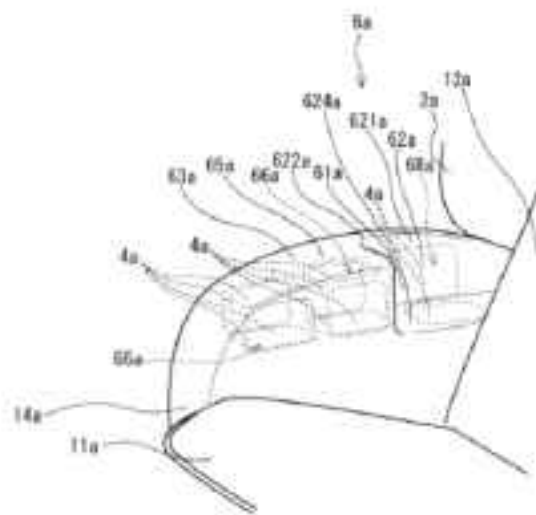
[FIG. 13]



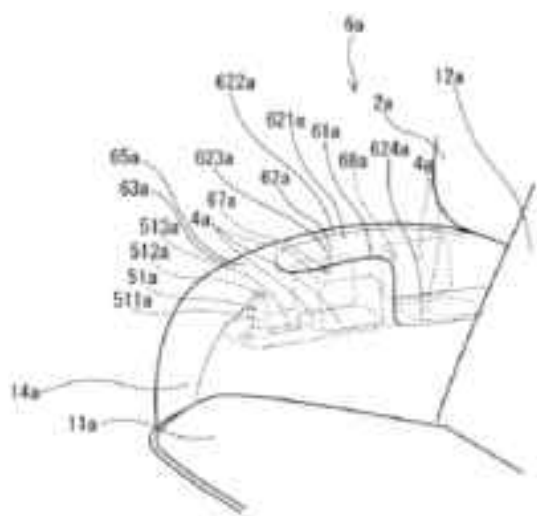
[FIG. 14]



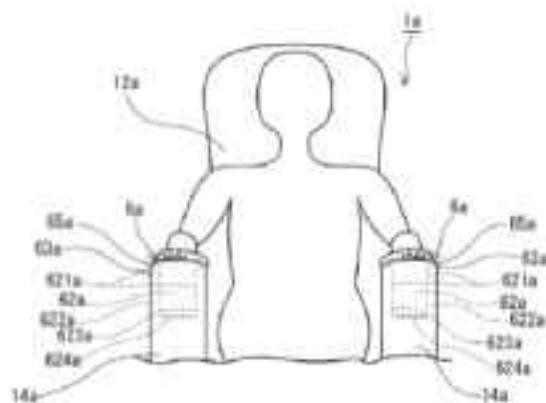
[FIG. 15]



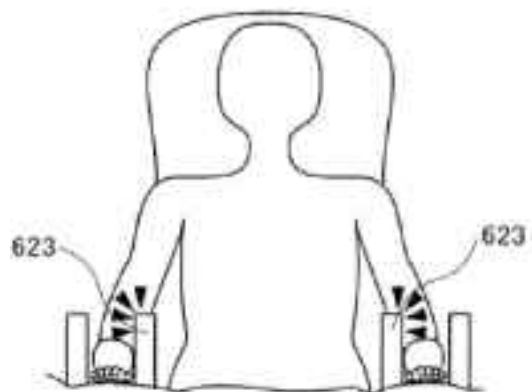
[FIG. 16]



[FIG. 17]



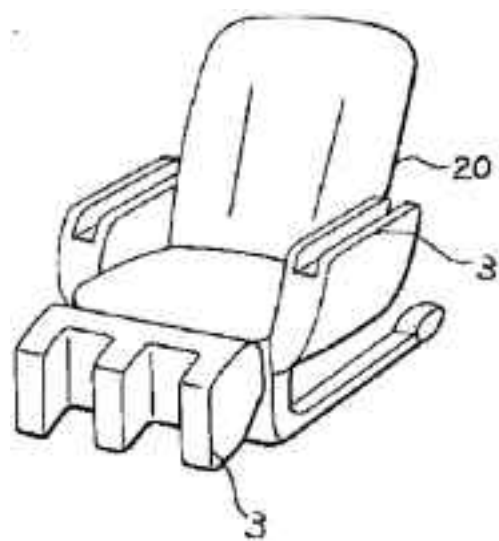
[FIG. 18]



[FIG. 19]



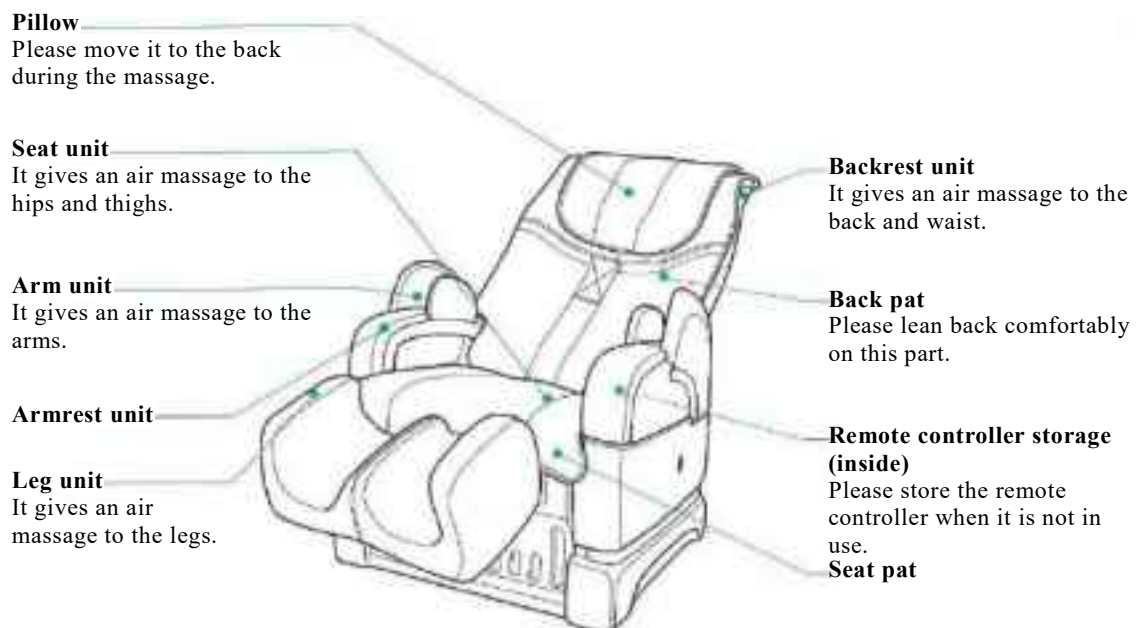
[FIG. 20]



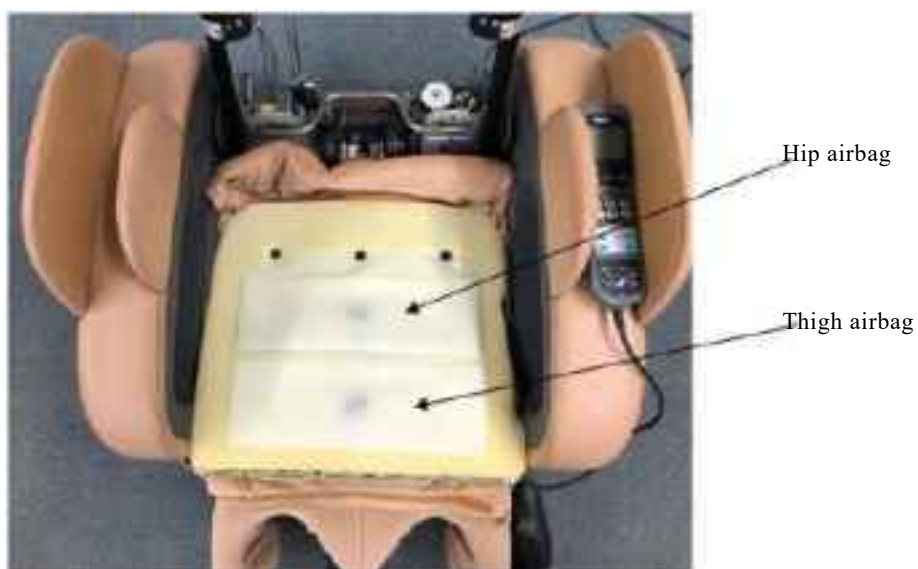
(Attachment 4)

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[FIG.1] Perspective view



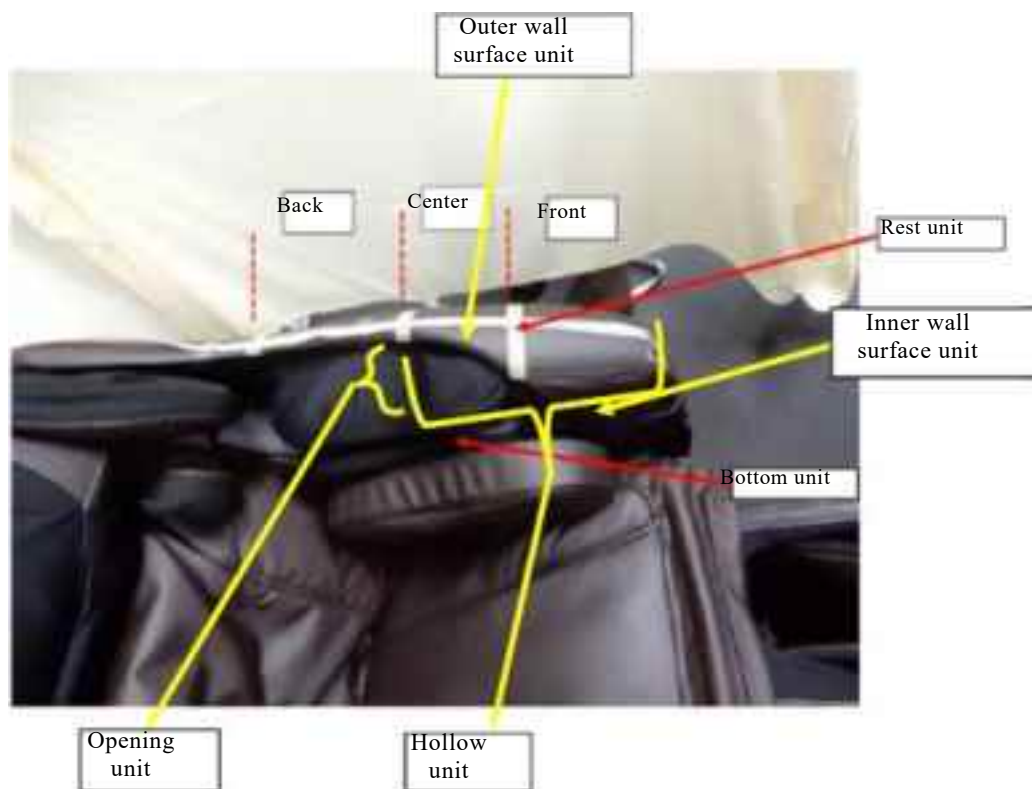
[FIG. 2] Photograph of seat (without seat cover)



(Attachment 5)

Figures for Allegation (Defendant's Products 1 and 2)

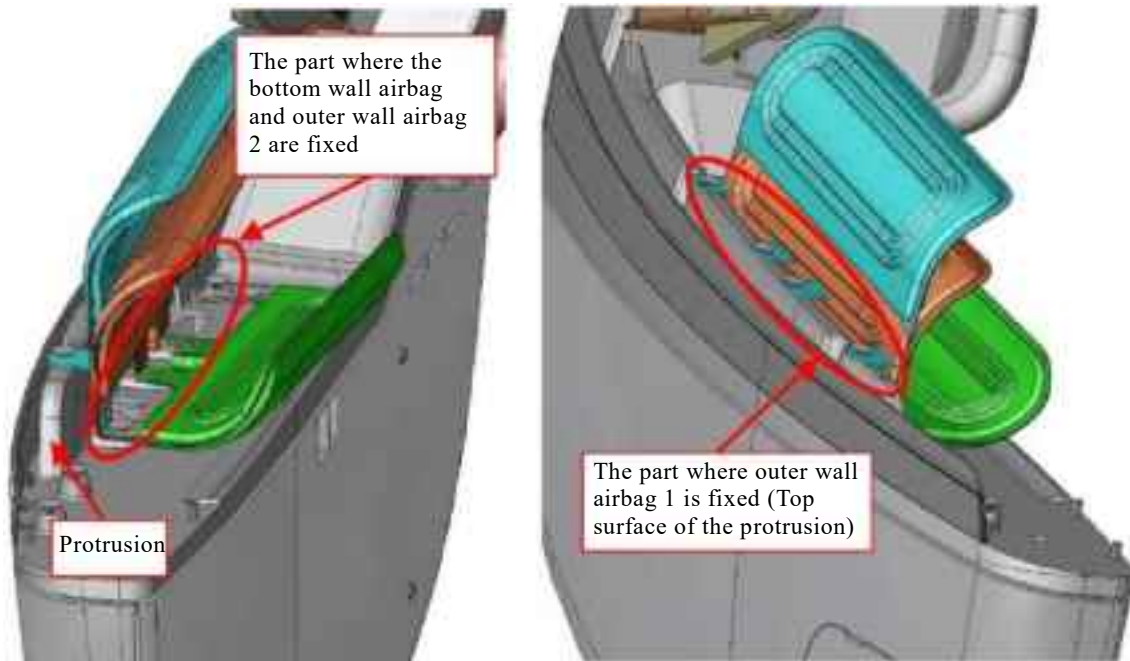
1. Arm unit (Allegation of the Appellant)



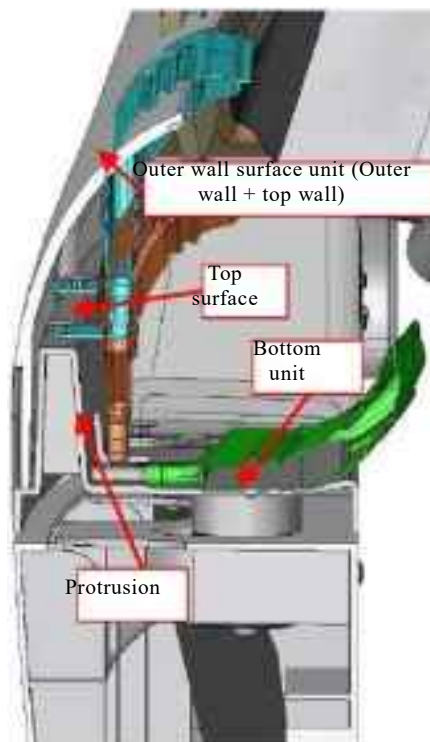
2. [Photograph 6] of Exhibit Otsu C16 ("Machine verification report" created by the Appellee) (Allegation of the Appellee)



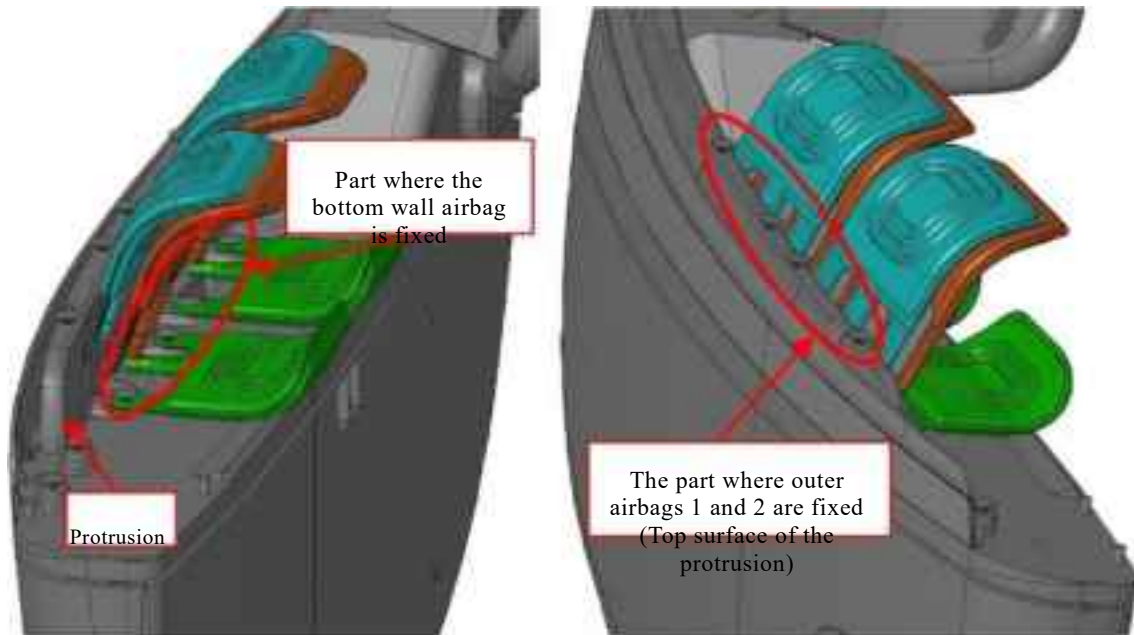
3. Enlarged view for the part where each air bag of the armrest unit of Defendant's Product 1 is fixed (Allegations of the Appellant and the Appellee)



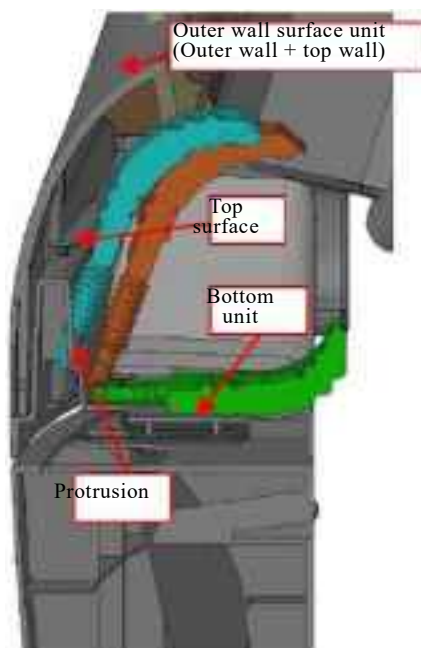
4. Cross-section view of the armrest unit of Defendant's Product 1 (Allegation of the Appellee)



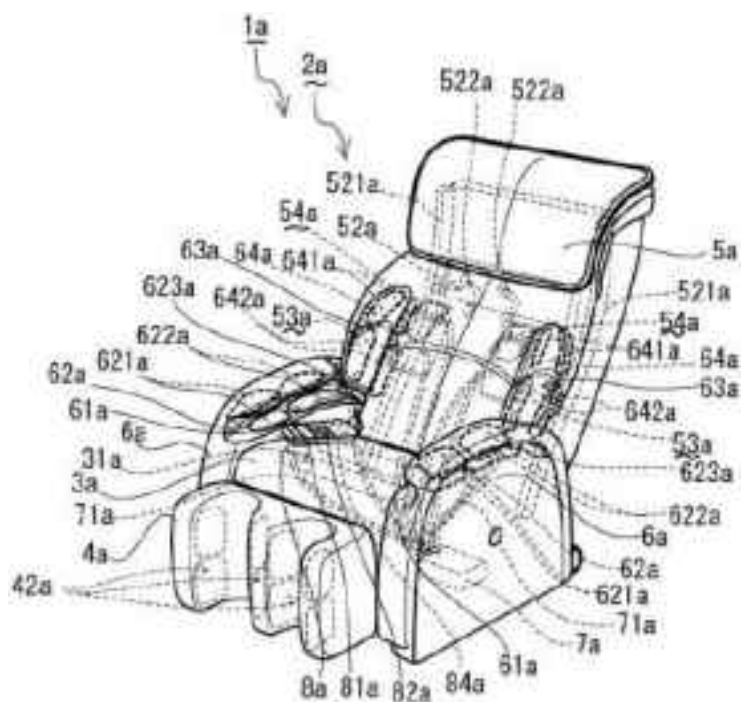
5. Enlarged view of the part where each airbag of the armrest unit of Defendant's Product 2 is fixed (Outer wall airbags 1 and 2 seem to be fixed at the point lower than the top surface of the protrusion in the Figure; however, they are actually fixed on the top surface of the protrusion; the same applies to 6. below.) (Allegations of the Appellant and the Appellee)



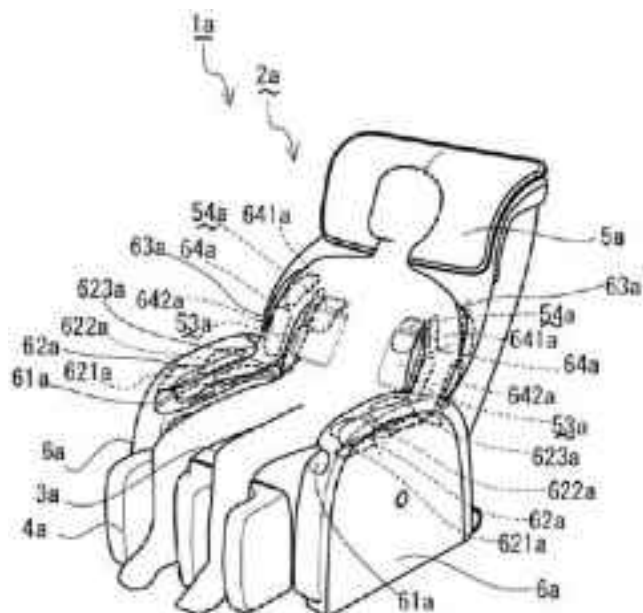
6. Cross-section view of the armrest unit of Defendant's Product 2 (Allegation of the Appellee)



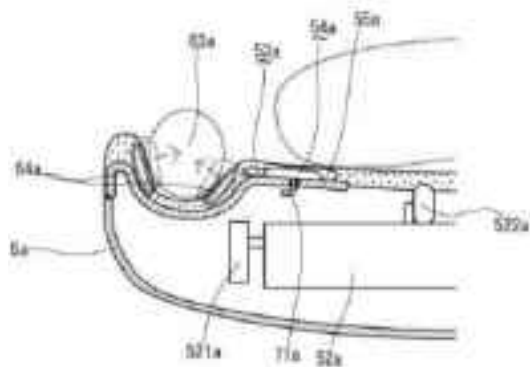
[FIG. 16]



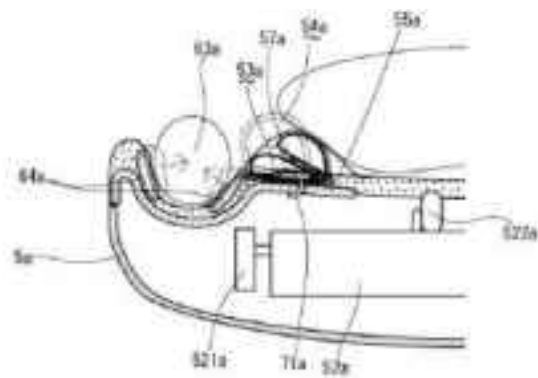
[FIG. 17]



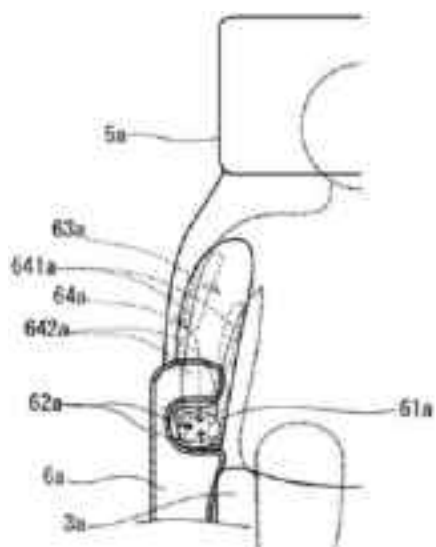
[FIG. 18]



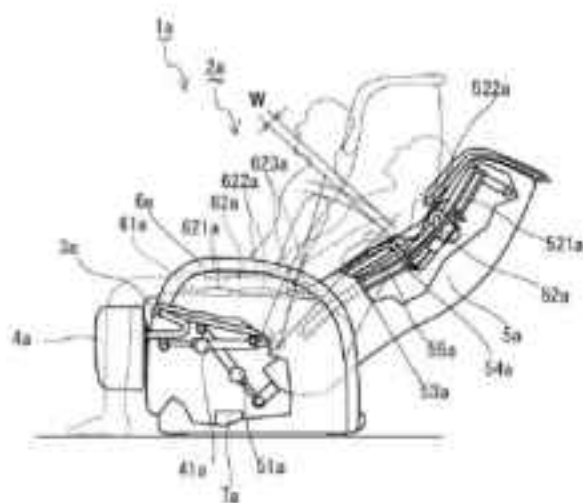
[FIG. 19]



[FIG. 20]

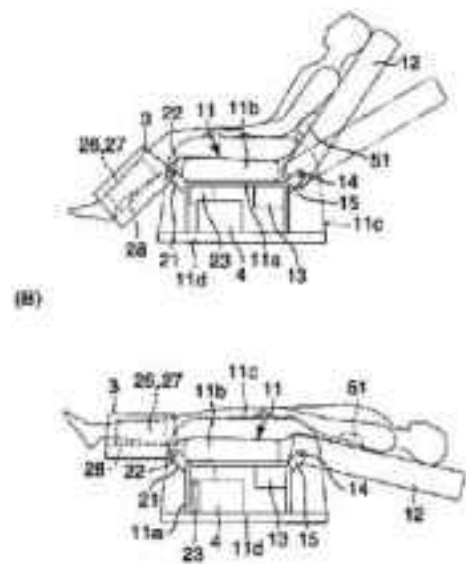


[FIG. 21]

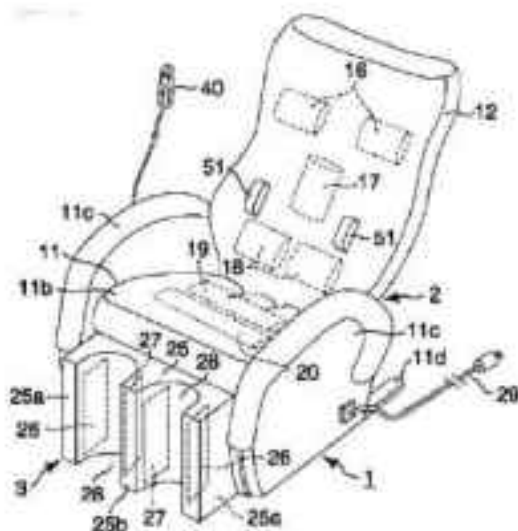


[FIG. 36]

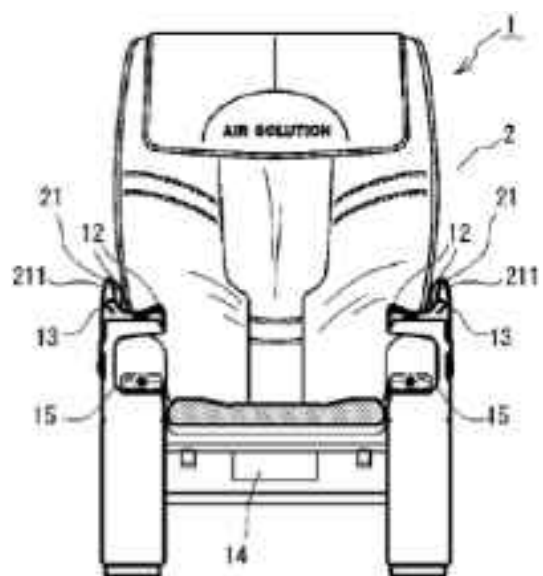
(A)



[FIG. 37]



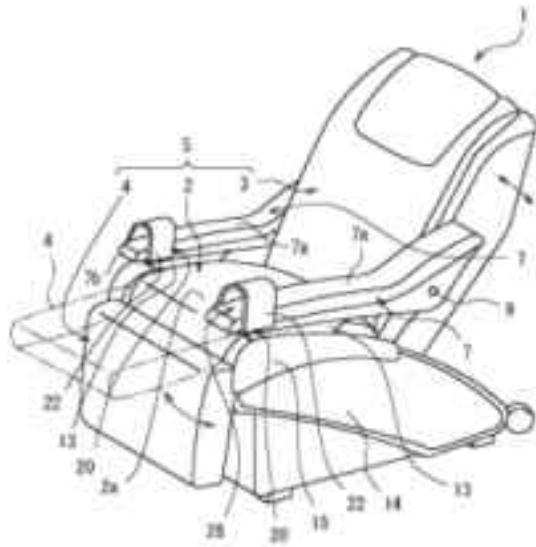
[FIG. 38]



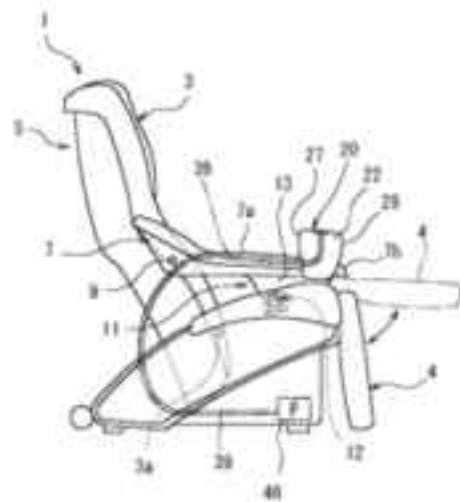
(Attachment 7)

Exhibit Otsu C20

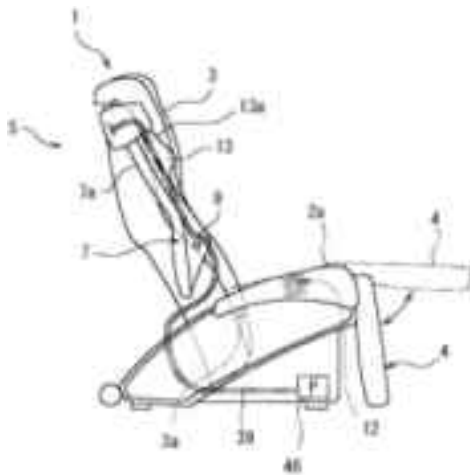
[FIG. 1]



[FIG. 2]



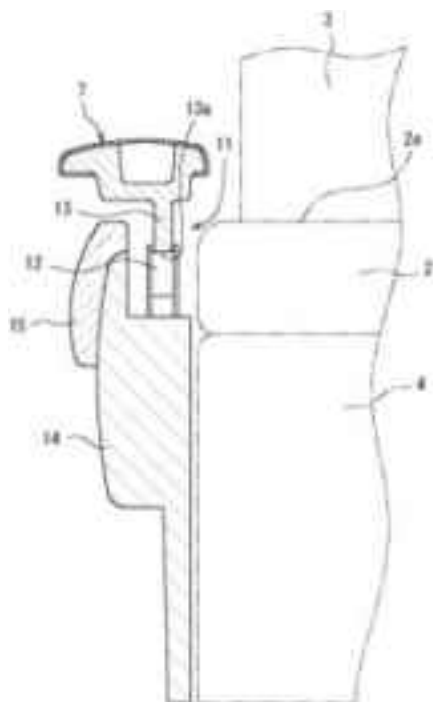
[FIG. 3]



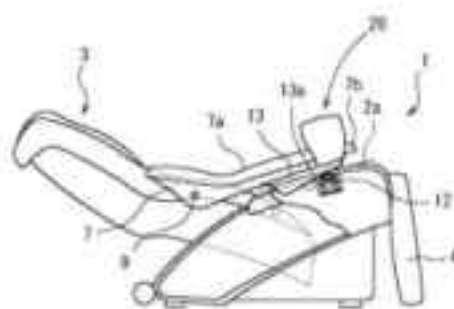
[FIG. 4]



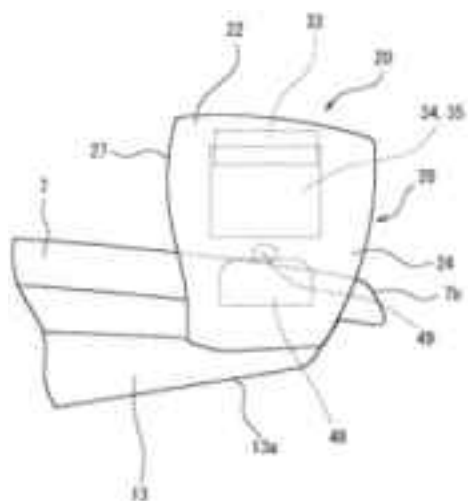
[FIG. 5]



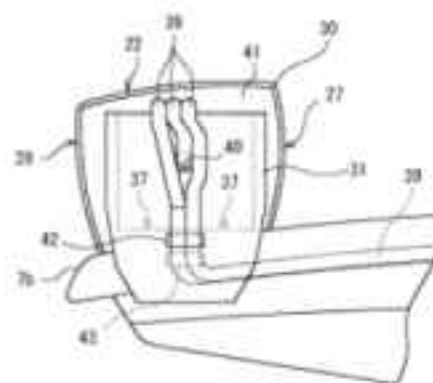
[FIG. 6]



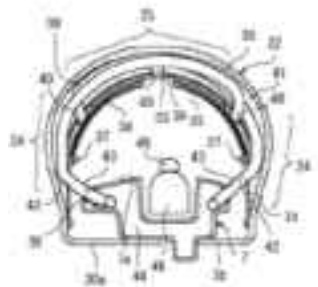
[FIG. 7]



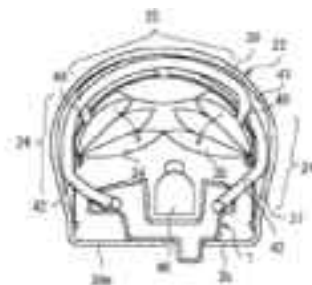
[FIG. 8]



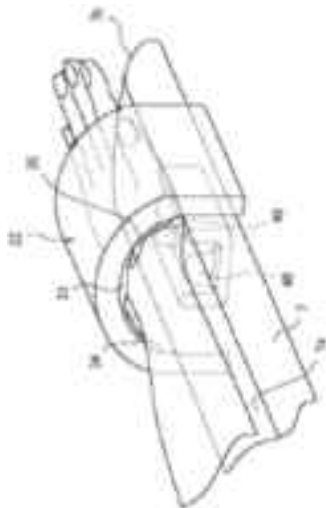
[FIG. 9]



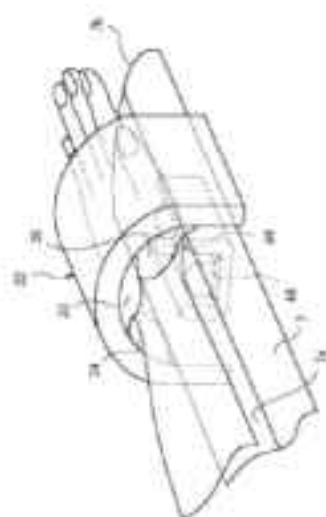
[FIG. 10]



[FIG. 11]



[FIG. 12]



(Attachment 8)

List of Sales Amounts

Period	Sales amount		
	Defendant's Product 1	Defendant's Product 2	Total
Nov. 2011 to Mar. 2012			
Apr. 2012 to Mar. 2013			
Apr. 2013 to Mar. 2014			
Apr. 2014 to Mar. 2015			
Apr. 2015 to Mar. 2016			
Apr. 2016 to Mar. 2017			
Apr. 2017 to Mar. 2018			
Apr. 2018 to Mar. 2019			
Apr. 2019 to Mar. 2020			
Apr. 2020 to Mar. 2021			
The entire period			

*The sales amount of Defendant's Product 2 does not include the discounts and the portion of returned products.

(Attachment 9)

List of Sales Volumes (export volume and sales volume)

Period		Sales volume	
Start date	End date	Defendant's Product 1	Defendant's Product 2
Nov. 2011	Mar. 2012		
Apr. 2012	Mar. 2013		
Apr. 2013	Mar. 2014		
Apr. 2014	Mar. 2015		
Apr. 2015	Mar. 2016		
Apr. 2016	Mar. 2017		
Apr. 2017	Mar. 2018		
Apr. 2018	Mar. 2019		
Apr. 2019	Mar. 2020		
Apr. 2020	Mar. 2021		
The entire period			

*The sales volume of Defendant's Product 2 does not include the portion of returned products, ■ piece(s).

(Attachment 10)

List of Marginal Profit Amounts as Alleged by the Appellant

Period	Profit amount			Consumption tax rate	Marginal profit amount (including the amount equivalent to the consumption tax)
	Defendant's Product 1	Defendant's Product 2	Total		
Nov. 2011 to Mar. 2012				5%	
Apr. 2012 to Mar. 2013				5%	
Apr. 2013 to Mar. 2014				5%	
Apr. 2014 to Mar. 2015				8%	
Apr. 2015 to Mar. 2016				8%	
Apr. 2016 to Mar. 2017				8%	
Apr. 2017 to Mar. 2018				8%	
Apr. 2018 to Mar. 2019				8%	
Apr. 2019 to Sep. 2019				8%	
Oct. 2019 to Mar. 2020				10%	
Apr. 2020 to Mar. 2021				10%	
Total for the entire period					

(Attachment 11)

List of Marginal Profit Amounts as Alleged by the Appellee

Period		Sales amount			Marginal profit amount	
		Defendant's Product 1	Defendant's Product 2	Subtotal	Defendant's Product 1	Defendant's Product 2
Nov. 2011 to Mar. 2012						
Apr. 2012 to Mar. 2013						
Apr. 2013 to Mar. 2014						
Apr. 2014 to Mar. 2015						
Apr. 2015 to Mar. 2016						
Apr. 2016 to Mar. 2017						
Apr. 2017 to Mar. 2018						
Apr. 2018 to Mar. 2019						
Apr. 2019 to Mar. 2020	Apr. 2019 to Sep. 2019					
	Oct. 2019 to Mar. 2020					
Apr. 2020 to Mar. 2021						
Apr. 2021 to Mar. 2022						
Mar. 2022 to Jun. 2022						
Total for the entire period						

(Attachment 12)

List of Amounts of Damages under Article 102, Paragraph (3) of the Patent Act as
Alleged by the Appellant

Period	Sales amount		Amount equivalent to the royalty (royalty rate: 10%)			Consumption tax rate	Amount equivalent to the royalty (including the amount equivalent to the consumption tax)
	Defendant's Product 1	Defendant's Product 2	Defendant's Product 1	Defendant's Product 2	Subtotal		
Nov. 2011 to Mar. 2012						5%	
Apr. 2012 to Mar. 2013						5%	
Apr. 2013 to Mar. 2014						5%	
Apr. 2014 to Mar. 2015						8%	
Apr. 2015 to Mar. 2016						8%	
Apr. 2016 to Mar. 2017						8%	
Apr. 2017 to Mar. 2018						8%	
Apr. 2018 to Mar. 2019						8%	
Apr. 2019 to Sep. 2019						8%	
Oct. 2019 to Mar. 2020						10%	
Apr. 2020 to Mar. 2021						10%	
Total for the entire period							

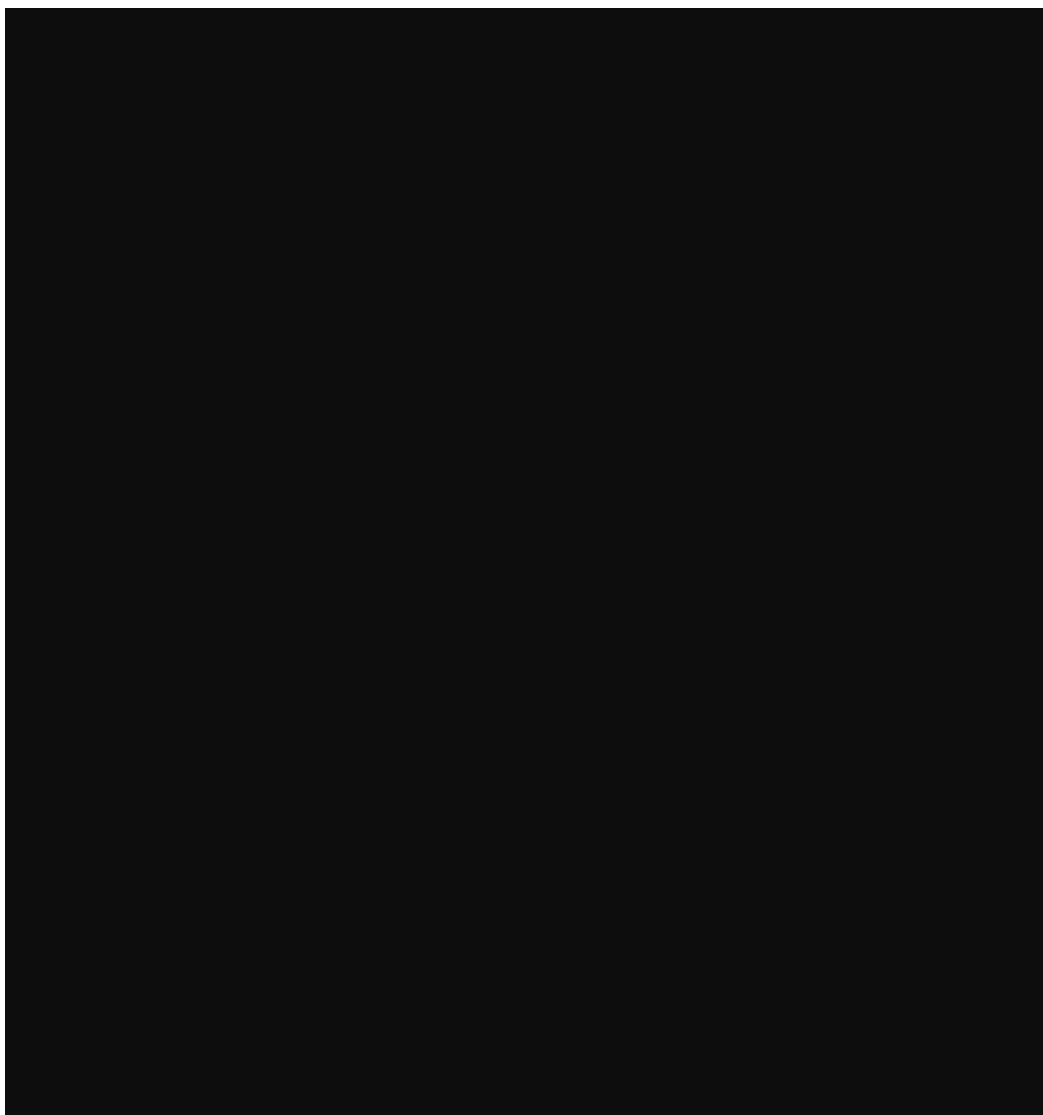
(Attachment 13)

List of Unjust Enrichments as Alleged by the Appellant

Period	Unjust enrichment amount			Start date for calculation of delay damages	Delay damage interest (per annum)
	Defendant's Product 1	Defendant's Product 2	Subtotal		
Nov. 2011 to Mar. 2012				April 26, 2018	5%
Apr. 2012 to Mar. 2013					
Apr. 2013 to Mar. 2014					
Apr. 2014 to Apr. 12, 2015					
Total for the aforementioned period					

(Attachment 14)

Export Volume of Appellant's Product 1



(Attachment 15)

Comparison Table of Export Volumes between Defendant's Product 1 and Appellant's Product 1

[illegible]

(Attachment 16)

Sales Volume of Appellant's Product 2

Model	
AS-1100	
AS-1000	
AS-840	
AS-830	
AS-760	
Total	

(Attachment 17)

Amount of Damages Calculation Table

1. Sales amount

Period		Sales amount		
Start date	End date	Defendant's Product 1	Defendant's Product 2	Total
Nov. 2011	Mar. 2012			
Apr. 2012	Mar. 2013			
Apr. 2013	Mar. 2014			
Apr. 2014	Mar. 2015			
Apr. 2015	Mar. 2016			
Apr. 2016	Mar. 2017			
Apr. 2017	Mar. 2018			
Apr. 2018	Mar. 2019			
Apr. 2019	Mar. 2020			
Apr. 2020	Mar. 2021			
The entire period				

2. Marginal profit of Defendant's Product 1

(1) Marginal profit amount

Period		Sales amount	Expenses	Marginal profit amount
Start date	End date	Defendant's Product 1		
Apr. 2014	Mar. 2015			
Apr. 2015	Mar. 2016			
Apr. 2016	Mar. 2017			
Apr. 2017	Mar. 2018			
Apr. 2018	Mar. 2019			
Apr. 2019	Mar. 2020			
Apr. 2020	Mar. 2021			
The entire period				

(2) Details of expenses

Period		Expenses							
Start date	End date	[i] Purchasing costs	[ii] Material costs	[iii] Manufacturing loss costs	[v] Manufacturing and logistics costs	[vii] Compensating deposit	[viii] WEEE	[ix] Certification	Total expenses
Apr. 2014	Mar. 2015								
Apr. 2015	Mar. 2016								
Apr. 2016	Mar. 2017								
Apr. 2017	Mar. 2018								
Apr. 2018	Mar. 2019								
Apr. 2019	Mar. 2020								
Apr. 2020	Mar. 2021								
The entire period									

3. Amount of damages based on Article 102, paragraph (2) and paragraph (3) of the Patent Act concerning Defendant's Product 1

Period		[A] Marginal profit amount	[B] Amount after the rebuttal of presumption [A] × 10%	[C] Sales amount to which paragraph (3) is applied × 7%	[D] Royalty rate	[E] Amount equivalent to the royalty for the rebutted portion [C] × [D]	Amount of damages (total) [B] + [E]
Start date	End date						
Apr. 2014	Mar. 2015				1%		
Apr. 2015	Mar. 2016						
Apr. 2016	Mar. 2017						
Apr. 2017	Mar. 2018						
Apr. 2018	Mar. 2019						
Apr. 2019	Mar. 2020						
Apr. 2020	Mar. 2021						
The entire period							

4. Amount of damages based on Article 102, paragraph (3) of the Patent Act

Period		Defendant's Product 1		Defendant's Product 2	
Start date	End date	Sales amount	Amount equivalent to the royalty (royalty rate: 1%)	Sales amount	Amount equivalent to the royalty (royalty rate: 1%)
Nov. 2011	Mar. 2012				
Apr. 2012	Mar. 2013				
Apr. 2013	Mar. 2014				
Apr. 2014	Mar. 2015				
Apr. 2015	Mar. 2016				
Apr. 2016	Mar. 2017				
Apr. 2017	Mar. 2018				
Apr. 2018	Mar. 2019				
Apr. 2019	Mar. 2020				
Apr. 2020	Mar. 2021				
The entire period					

5. Amount of damage

Period		[A]	[B]	[C]	[D]	
Start date	End date	Defendant's Product 1 Amount of damages	Defendant's Product 2 Amount of damages	Subtotal of the amount of damages [A] + [B]	Attorney's fees	Total [C] + [D]
Nov. 2011	Mar. 2012					
Apr. 2012	Mar. 2013					
Apr. 2013	Mar. 2014					
Apr. 2014	Mar. 2015					
Apr. 2015	Mar. 2016					
Apr. 2016	Mar. 2017					
Apr. 2017	Mar. 2018					
Apr. 2018	Mar. 2019					
Apr. 2019	Mar. 2020					
Apr. 2020	Mar. 2021					
The entire period						391,549,273