

2023Na1017 Injunction against Patent Infringement

Procedural History

Procedural History

■ At the District Court

2022. 12. 21.

- The Plaintiff filed a lawsuit with the Seoul Central District Court seeking **an injunction for patent infringement** against the Defendant:
 1. *The Defendant shall not produce, use, transfer, lend, import, or exhibit the Defendant's Product (Model: Turtle1017).*
 2. *The Defendant shall bear the total cost arising from the lawsuit.*
 3. *Paragraph 2 may be enforced provisionally.*

2023. 6. 13.

- **Decision in favor of the Defendant** (Seoul Central District Court Decision 2022Gahap2034)

2023. 6. 19.

- **The Plaintiff appeals to the IP High Court** (2023Na1017)

2023. 6. 30.

- The Plaintiff requested that the appeal be heard before **the International Division**

Procedural History

■ At the IP High Court

2023. 8. 31.

- The pre-trial hearing (by video conference)
 - ✓ Identified the issues on dispute
 - ✓ Held technical presentation sessions
 - ✓ Asked to present evidence (including witness testimony)

2023. 9. 20.

- The 1st trial date (in court)
 - ✓ Oral arguments
 - ✓ Witness examination

2023. 10. 17.

- The Sentencing date (in court)

Pre-trial hearing via video trial: E-litigation Court



Technical explanatory session via video trial

Display Record

The screenshot displays a video trial interface. The main window shows a presentation slide titled "Objective Nature of the Patented Product (1)". The slide contains the following text:

- The patented product interacts with the Plaintiff's article packaging device, and the essential element of the product is the magnet in the core tube.
- The invention in question aims to measure the rotation angle of the roll paper and thereby adjust the braking force applied to the roll holder in order to prevent packaging sheet from sagging.

Below the text is a diagram illustrating the concept of "sagging". It shows a horizontal strip of material that is straight on the left, then curves downwards in a wavy pattern in the middle, and continues as a straight strip on the right. A label "sagging" is placed above the wavy section.

At the bottom of the interface, there are four video feeds of participants:

- Judge (leftmost, female)
- Technical Advisor (second from left, male)
- Attorney (third from left, female)
- Attorney (rightmost, male)

Technical explanatory session via video trial




2023Na1017 Injunction against Patent Infringement

Technical Presentation Material

September 20, 2023

Plaintiff: Pony Corp.
Attorney: Sang-Wook Han

Contents

- I. Gist of the Subject Patent**
 - II. The Defendant's Product and Infringement Action**
 - III. The Subject Patent to the Defendant's Product Has Not Been Exhausted**
 - IV. Conclusion**
- 

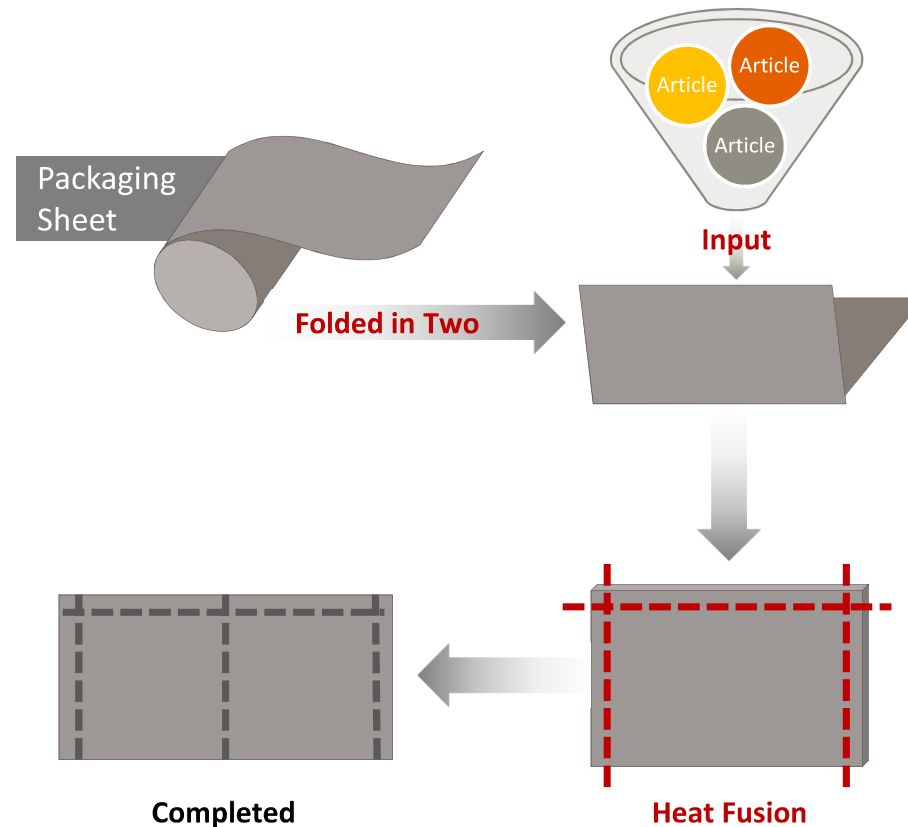
I. Gist of the Subject Patent



Technical Field of the Subject Patent - Article Packaging Device (1/2)

- **Article packaging device** draws out a heat-sealable packaging sheet from a roll paper attached to a rotatable roll holder and wraps an article.

[Packaging Process of Article Packaging Device]



Technical Field of the Subject Patent - Article Packaging Device (2/2)

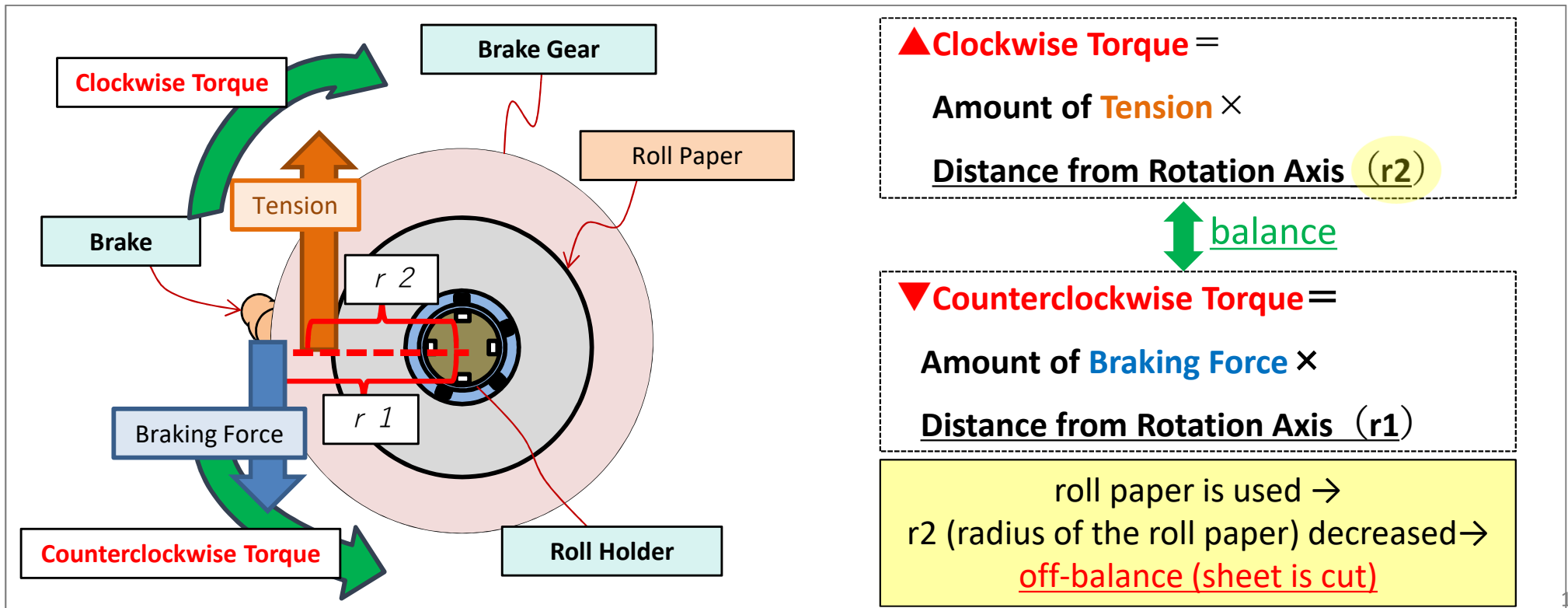
- **Article packaging device** draws out a heat-sealable packaging sheet from a roll paper attached to a rotatable roll holder and wraps an article.

[Roll Paper Combined in Article Packaging Device]



Problems to be Solved by the Invention (1/3)

- **Braking force to the rotation of the roll holder is required**
 - It allows the packaging sheet to be drawn out with an appropriate tension.
- **Braking force needs to be reduced as the outer diameter of the roll paper decreases**
 - Where the braking force is constant, as the outer diameter of the roll paper decreases, the braking force becomes excessive relative to the torque by the tension, and **it may cause the roll paper to stop and the sheet to be cut.**

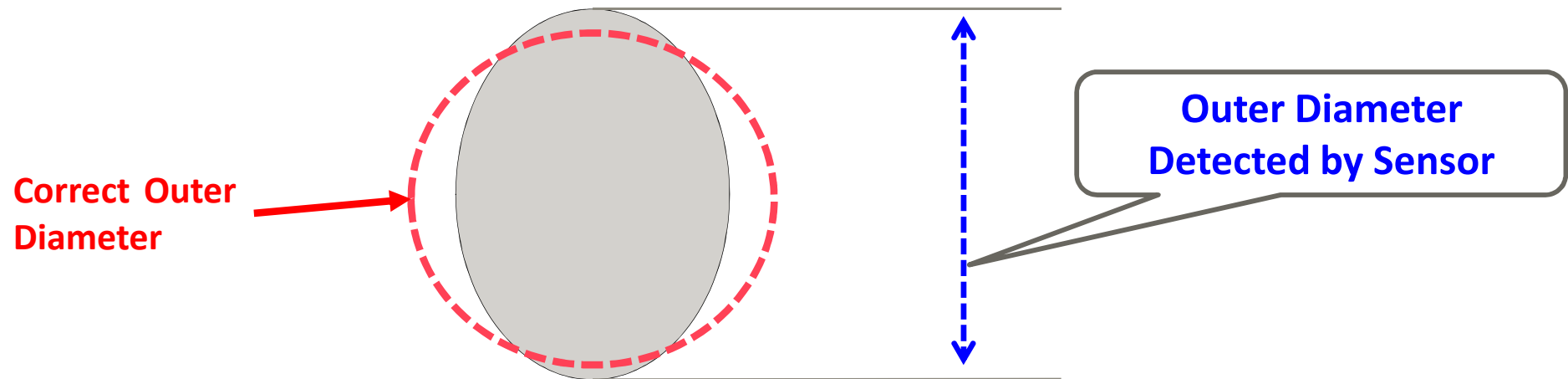


Problems to be Solved by the Invention (2/3)

■ Problems of the Prior Art (1)

- **A sensor for detecting the outer diameter of the roll paper** is disposed on the side of the roll paper.
- Braking force for rotation of the roll paper is adjusted according to the detected signal of the sensor.

However, the correct outer diameter cannot be detected due to the distortion of the roll paper.

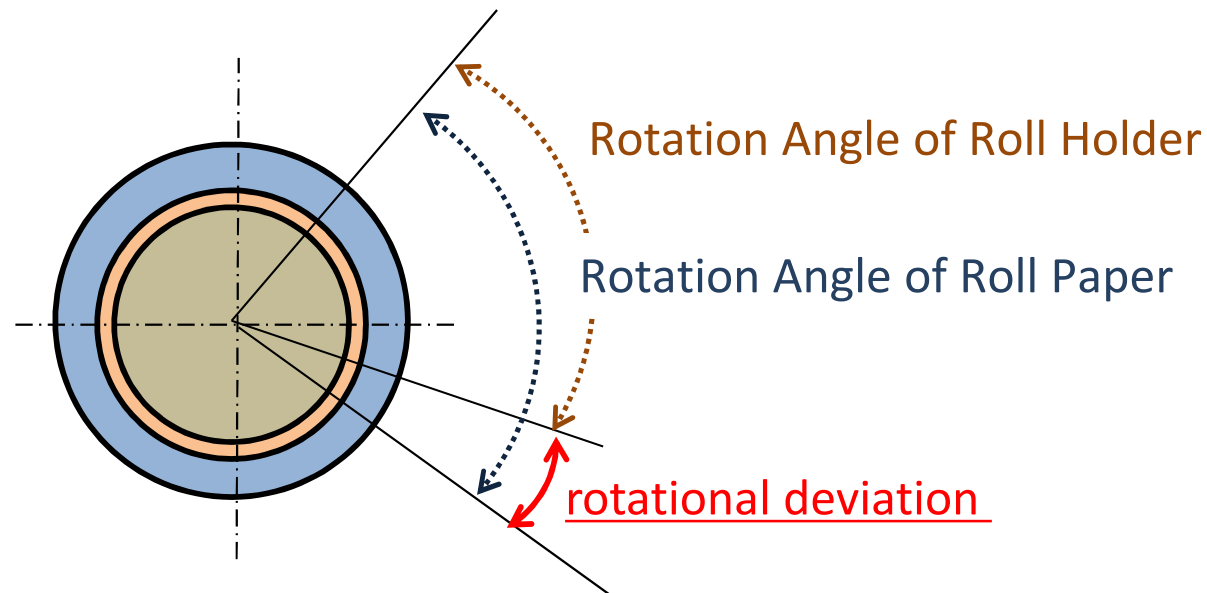


Problems to be Solved by the Invention (2/3)

■ Problems of the Prior Art (2)

- **A sensor for detecting the rotation angle of the roll holder**, to which the roll paper is attached, is provided in the vicinity of the roll holder.
- Braking force is adjusted by calculating the outer diameter of the roll paper based on the rotation angle of the roll holder and the sheet feed length.

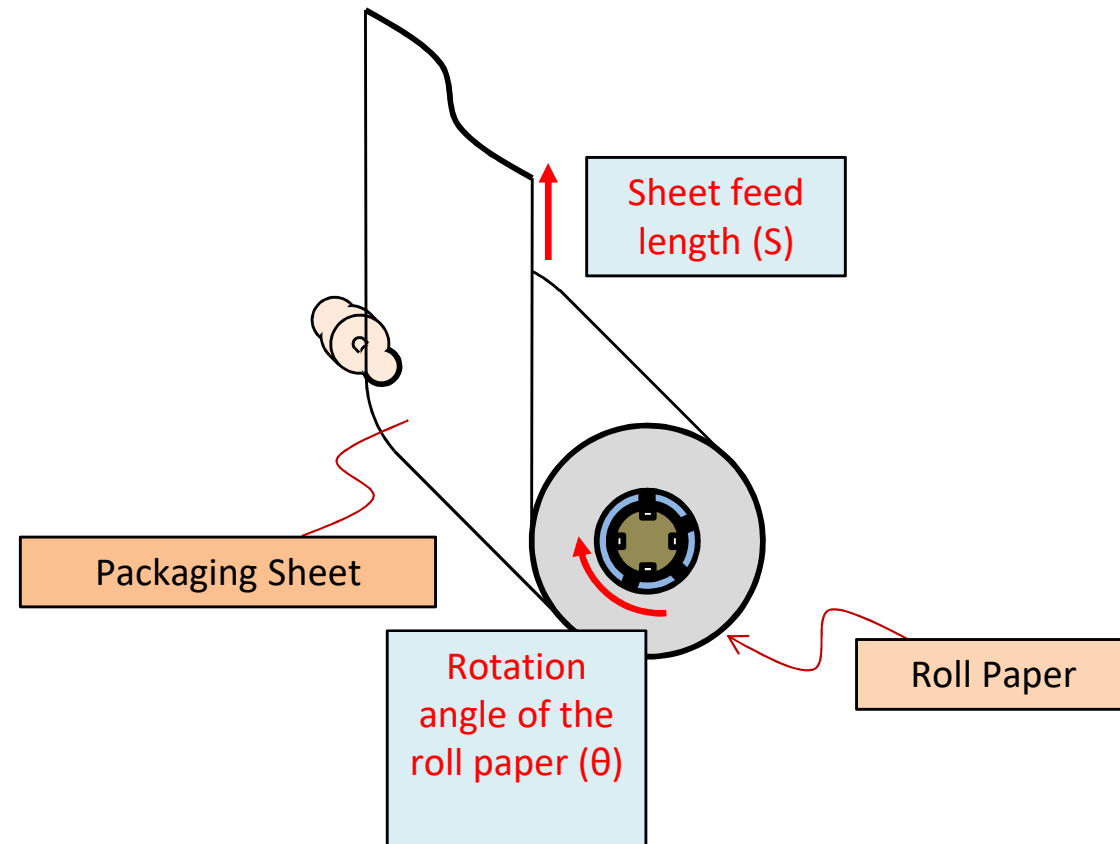
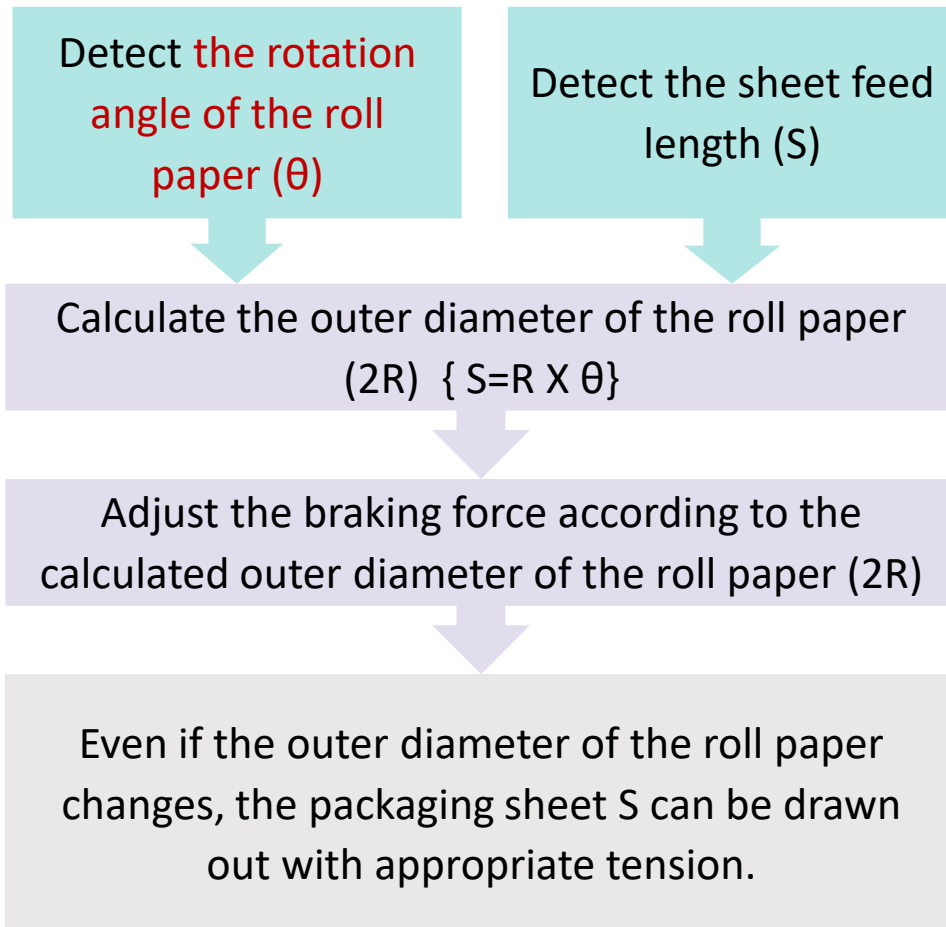
However, the correct outer diameter cannot be detected due to the rotational deviation between the roll holder and the core tube of the roll paper.



Means to Solve the Problems

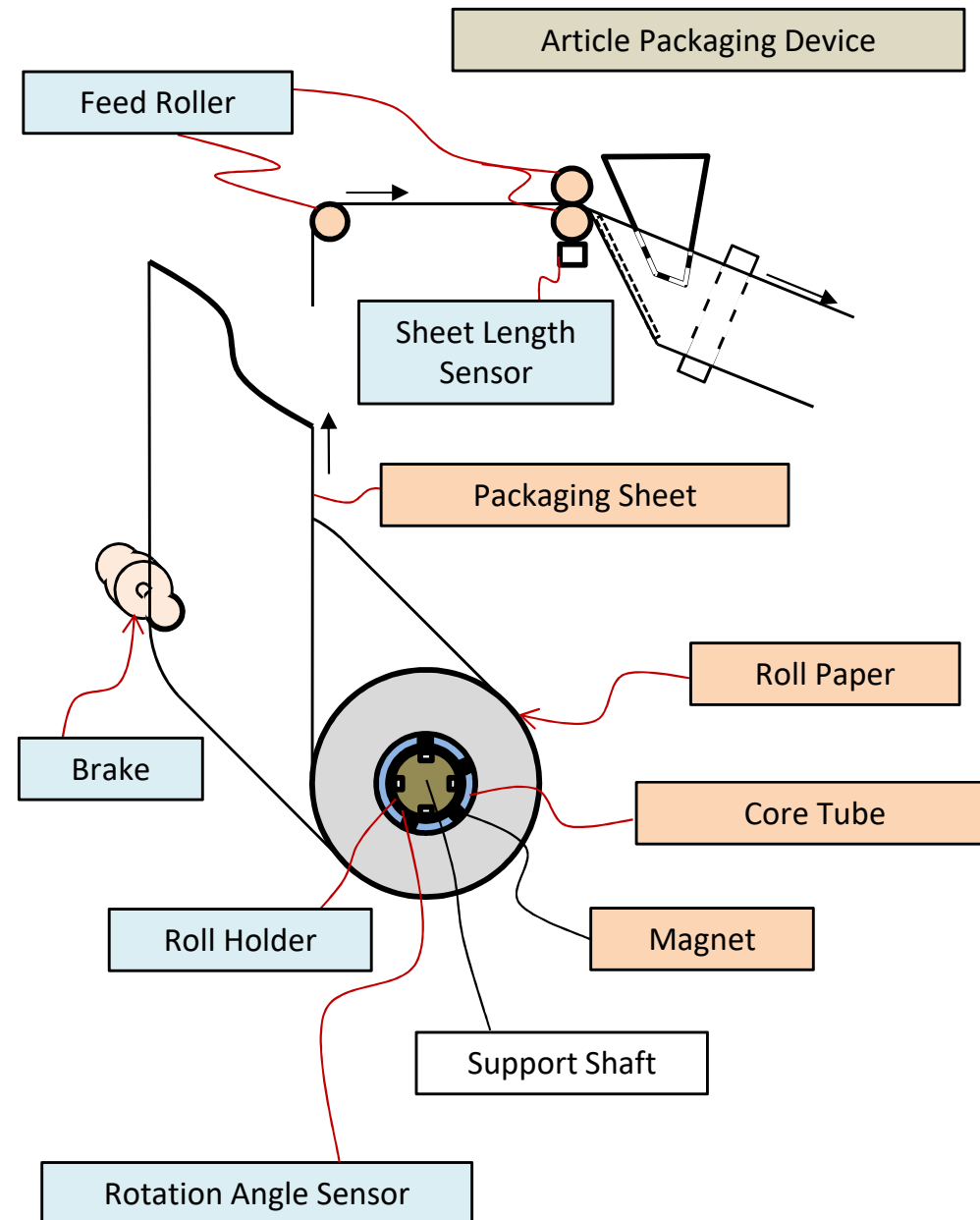
- **Direct detection of rotation angle of the roll paper**

- In order to accurately detect the rotation angle of the roll paper, **the rotation angle of the roll paper itself is directly detected.**



Claim of the Patent

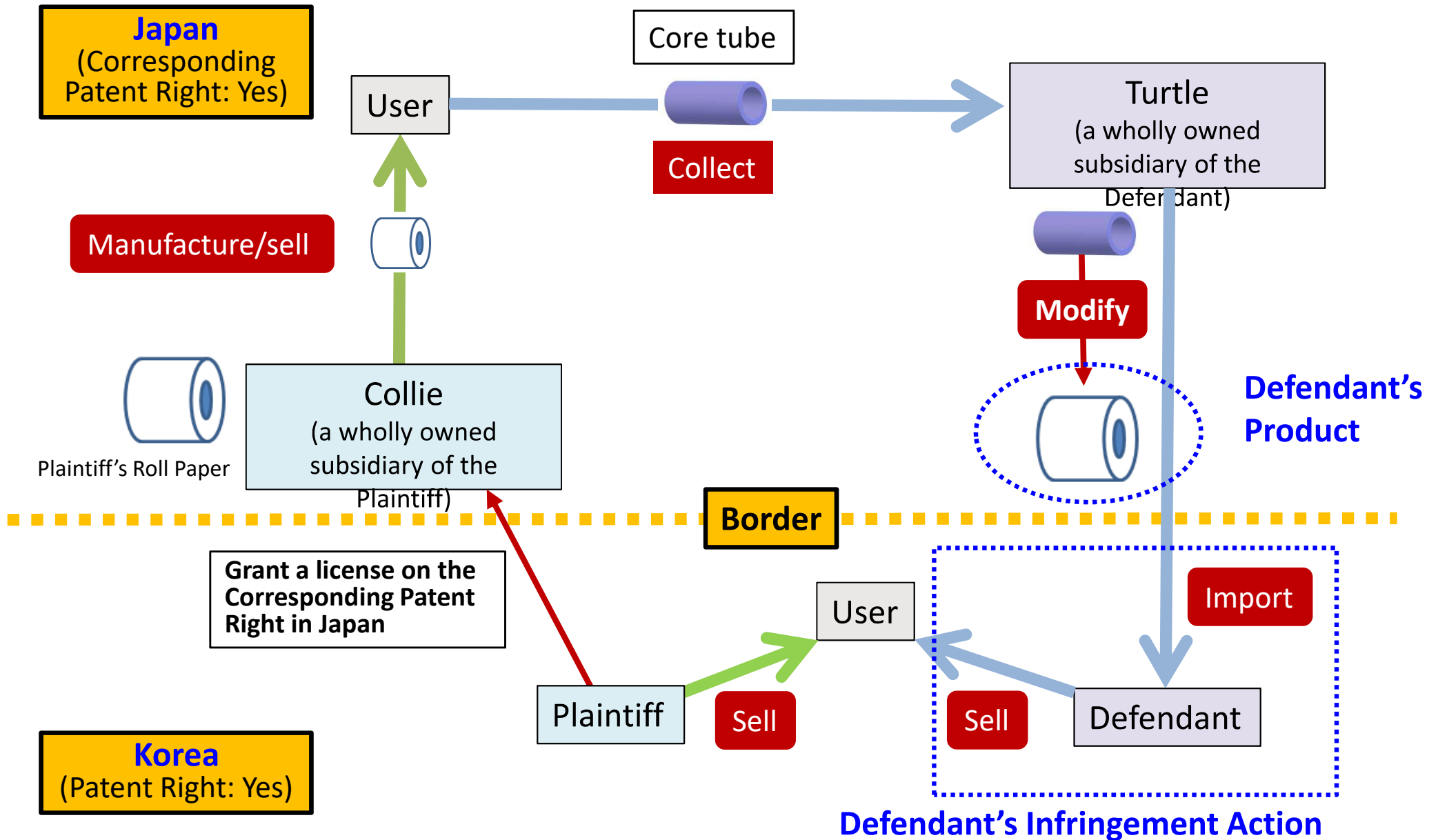
	Claim of the Patent
A	A roll paper used for an article packaging device,
B	wherein the article packaging device , comprising:
B1	a rotatable roll holder to which the roll paper is detachably attached;
B2	a feed roller drawing out a heat-sealable packaging sheet from the roll paper;
B3	a rotation angle sensor detecting a rotation angle of the roll paper;
B4	a sheet length measuring sensor measuring sheet feed length drawn out from the roll paper; and
B5	a brake applying a variable braking force to the roll holder,
B6	is configured to adjust the braking force applying to the roll holder based on the outer diameter of the roll paper calculated from the detected signals of the rotation angle sensor and the sheet length sensor, and
C	wherein the roll paper , comprising:
C1	a core tube , having magnets, attachable to the roll holder;
C2	a packaging sheet wound around the core tube; and
C3	the magnets are disposed at respective positions detectable by the rotation angle sensor when the core tube is attached to the roll holder.



II. The Defendant's Product and Infringement Action

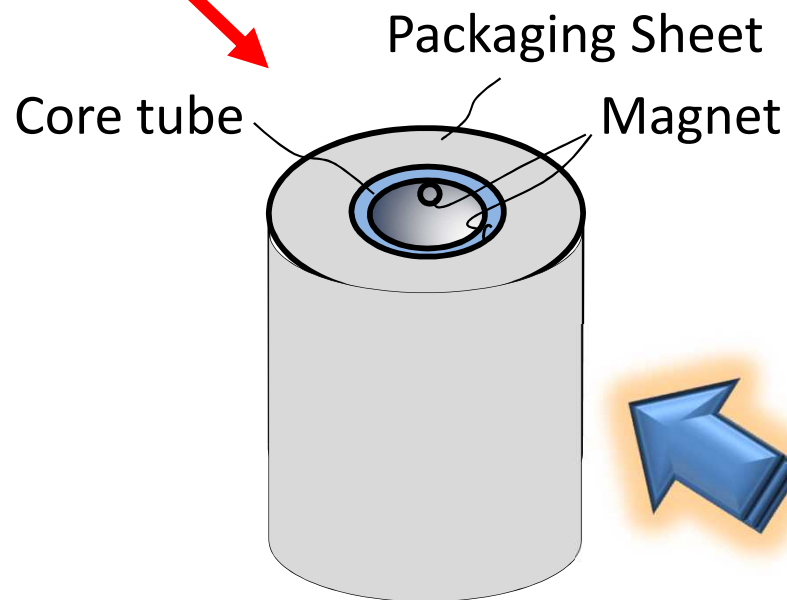


Defendant's Infringement Action

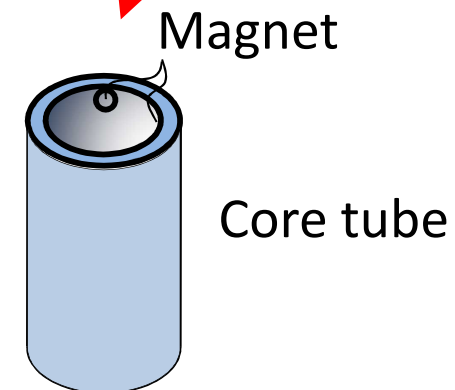


Defendant's Product – Roll Paper

Turtle (a wholly owned subsidiary of the Defendant) winds a packaging sheet on the used core tube.



A used core tube of the Roll Paper manufactured and sold by Collie (a wholly owned subsidiary of the Plaintiff)



III. The Subject Patent to the Defendant's Product Has Not Been Exhausted

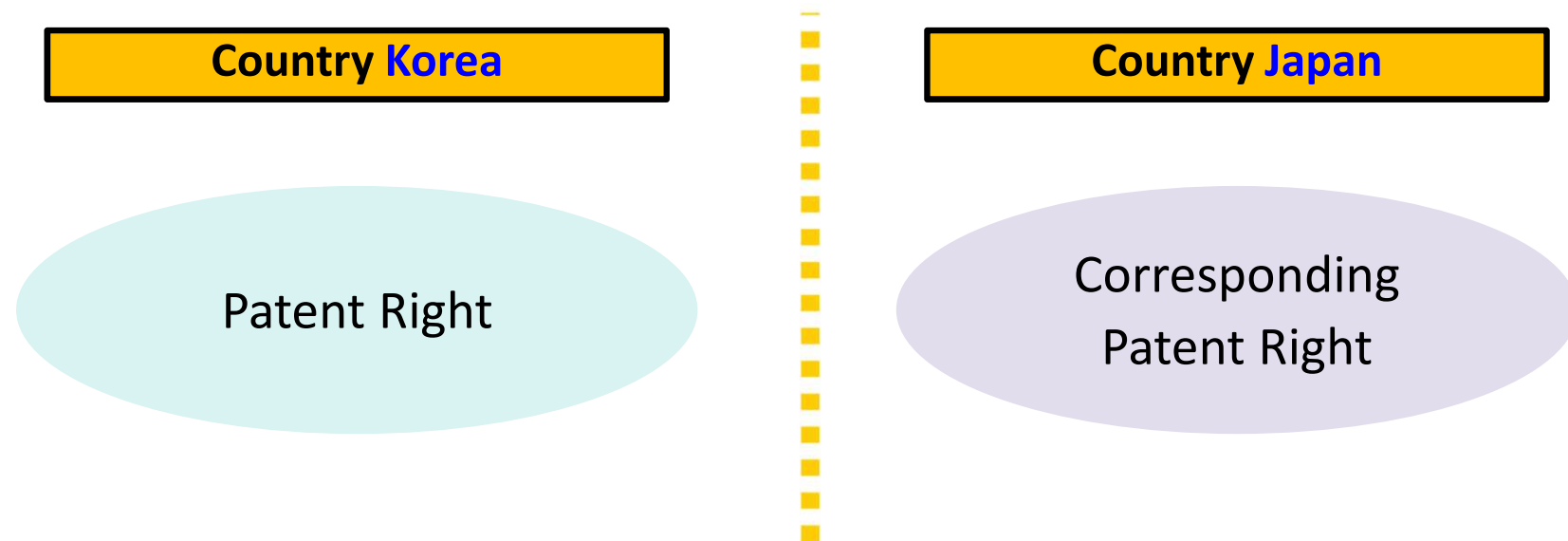


International Exhaustion Cannot Be Recognized in Any Respect. (1/2)

- **The Supreme Court has not yet expressed its view on whether patent can be internationally exhausted or not.**
- **Paris Convention for the Protection of Industrial Property (as amended on September 28, 1979) Article 4bis (1)**
 - “Patents applied for in the various countries of the Union by nationals of countries of the Union shall be **independent** of patents obtained for the same invention in other countries, whether members of the Union or not.”
 - For patents granted in different countries, the patent laws of each country independently apply to establishment, validity, or transfer of each patent, even when they all concern the same invention in substance.
 - Even if the patented product was exported to Country B, the product is subject to the patent laws of Country A from the moment it is imported back into Country A.

International Exhaustion Cannot Be Recognized in Any Respect. (2/2)

- **The Plaintiff owns respective patent rights in both countries**
 - Since the Patent Right that the Plaintiff owns in Korea and the Corresponding Patent Right that the Plaintiff owns in Japan are different, it cannot be regarded as profiting twice from the same patent even if the Plaintiff exercises the Patent Right in Korea against the Defendant's Product.



No international exhaustion by exercising two different patent rights.

The Defendant's Product Lost the Identity with the Original Product by Winding the Packaging Sheet around the Used Core Tube. (1/3)

- **Standard for determining whether the repair or replacement of a consumable or part constitutes patent infringement**
 - *“If a person who lawfully acquired a product by working a process invention repairs the product or replaces a consumable or part therein **to a degree that damages the identicalness with the original product**, such act amounts to production and thus constitutes patent infringement”*

(See Supreme Court Decision 2002Do3445 rendered on April 11, 2003 and Intellectual Property High Court Decision 2017Na1001 rendered on November 10, 2017)
- **Factors to consider whether the repaired or replaced product is identical to the original product**
 - ① **The objective nature of the product**
 - ② **The manner the product is used**
 - ③ **Legislative purpose of the Patent Act**
 - ④ **Functions of the product**

The Defendant's Product Lost the Identity with the Original Product by Winding the Packaging Sheet around the Used Core Tube. (2/3)

① Winding of a packaging sheet constitutes replacement of an important and essential element.

- The Plaintiff's Roll Paper is exclusively used for packaging article, the part of packaging sheet is a major part of the Plaintiff's Roll Paper, economic value of the Plaintiff's Roll Paper is concentrated on the part of packaging sheet.
- It cannot be assumed that users wind again a packaging sheet onto the used core tube by themselves.
- Utility as product of the Plaintiff's Roll Paper is completely lost after using up the packaging sheet.

The act of winding the packaging sheet on the used core tube of the Plaintiff's Roll Paper is not simple replacement.

The Defendant's Product Lost the Identity with the Original Product by Winding the Packaging Sheet around the Used Core Tube. (3/3)

② The Plaintiff's Roll Paper has lost its utility as product when the packaging sheet is used up.

- The part of the core tube of the Plaintiff's Roll Paper does not have the structure and strength suitable for removal.
- It is difficult to secure a quality of the part of the core tube of the Plaintiff's Roll Paper when it is used after recycling.
- It is principally assumed that the packaging sheet should be used up after it is attached to the Plaintiff's Device.

The act to wind again the packaging sheet on the used core tube of the Plaintiff's Roll Paper removes the identity with the original product.

Comparison of the Quality of the Defendant's Product and the Plaintiff's Roll Paper – Test Results [Exhibit 1] (1/2)

■ Defendant's products are expected to:

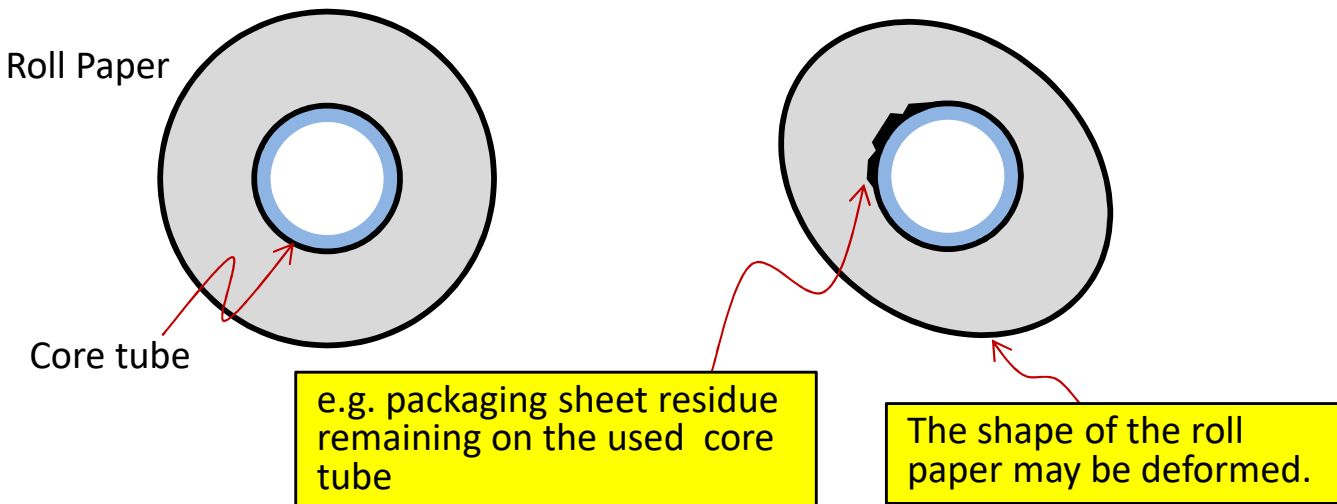
- ① Since the Defendant's product uses the used core tube, the surface of the core tube may not be completely smooth or the shape of the core tube may have been deformed. (e.g. the ruggedness caused by packaging sheet residue remaining on the core tube)
- ② If the packaging sheet is wound on the non-smooth or deformed core tube, the shape of the roll paper may also be deformed.
- ③ Errors occur in the diameter of the roll paper (2R) calculated by the formula of $R = S / \theta$
→ loss of essential feature of the invention

S: sheet feed length detected by the sensor

θ : rotation angle of the roll paper detected by the sensor

<Plaintiff's roll paper shape>

<Defendant's Product shape>



Purpose of the test:

We confirmed the error between the calculated outer diameter of the roll paper and the actual diameter of the roll paper (when the Defendant's product is applied to the Plaintiff's article packaging device).

Comparison of the Quality of the Defendant's Product and the Plaintiff's Roll Paper – Test Results [Exhibit 1] (2/2)

■ Test Conditions

- Tests were performed by the KOREA INSTITUTE OF MACHINERY & MATERIALS.
- Both the Plaintiff's roll paper and the Defendant's product were attached to the Plaintiff's article packaging device and tested.
- The Plaintiff's roll paper and the Defendant's product were tested the same number of times (500 times) under the same conditions.

■ Test Results

-	Defendant's Product	Plaintiff's Roll Paper
Errors between calculated outer diameter of the roll paper (d_c) and actual outer diameter of the roll paper (d_a) (%)	4.1%	2.4%

* calculated outer diameter of the roll paper (d_c)

= $2 \times$ sheet feed length measured by the sheet length sensor (S) / rotation angle of the roll paper measured by the rotation angle sensor (θ)

* actual outer diameter of the roll paper (d_a)

= average outer diameter of the roll paper during the time of measurement measured by a separate sensor

It is confirmed that the outer diameter of the roll paper was not accurately calculated when the Defendant's product was used in the Plaintiff's article packaging device.

User Survey on the Plaintiff's Roll Paper and the Defendant's Roll Paper [Exhibit 2] (1/2)

■ Survey Conditions

Method	Online survey
Subject	User of the Plaintiff's article packaging device
Area	Seoul, Daejeon, Daegu, Busan, Gwangju

■ Survey Results

Q1. How do you dispose of the core tube after using roll paper?

- A. Throw it away (96.9%)
- B. Reuse it as roll paper (0.8%)
- C. Other (2.3%; sell 1.2%)

Typically, roll papers are used only once, and general users do not reuse the core tube.

Q2. Which company's roll paper do you use?

- A. Plaintiff (21.1%)
- B. Defendant (16.2%)
- C. Both (48.5%)

User Survey on the Plaintiff's Roll Paper and the Defendant's Roll Paper [Exhibit 2] (2/2)

Q3. If you have used both companies' roll paper products in Q2, which company's quality do you feel is better?

- A. Plaintiff (52.3%)
- B. Defendant (11.1%)
- C. I'm not sure (36.6%)

Among users who used both companies' products, many evaluated the quality of the plaintiff's roll paper higher.

Q4. In Q3, if the quality of the Plaintiff company's product felt better, what did you like about the Plaintiff's roll paper?

- A. The packaging results are excellent. (34.2%)
- B. The packaging sheet does not tear easily. (18.7%)
- C. The tension of the packaging sheet is maintained well when used in the device. (15.2%)
- D. The quality of the packaging sheet itself is excellent. (3.7%)
- E. Other (18.2%)

Users highly evaluated that when the roll paper was attached to the article packaging device, the packaging sheet was drawn out with an appropriate tension, and that the packaging was well done.

It is confirmed that the act of winding again the packaging sheet on the used core tube of the Plaintiff's Roll Paper has removed the identity with the original product.

Rebuttal against Defendant's Argument (1/2)

1 2

The Defendant argues that the identity of the product is maintained even after winding the packaging sheet on a used core tube.

It claims that the quality of the core tube is unaffected because winding the packing sheet does not cause any damage to the magnets included in the core tube.

► **Erroneous as in utter disregard with the problem the patented invention solves.**

- The patented invention enables accurate detection of the outer diameter of the roll paper to properly adjust the braking force. Among others, **distortion of the outer shape of the roll paper** is a common reason that hinders accurate measurement (paragraph [0004]).
- Winding a packaging sheet onto a used core tube is likely to cause **distortion of the outer shape of the roll paper** for the following reasons:
 - ① **Uneven** surface of the used core tube (remaining packaging sheet residue, adhesives, etc.)
 - ② **Damage to the core tube** caused in the process of attaching the new packaging sheet
 - ③ **Winding of a packaging sheet to a complete cylinder shape requires precision.** In the absence of such precision, the outer diameters will be uneven.

Rebuttal against Defendant's Argument (2/2)

1 2

The Defendant argues that the act of winding a packaging sheet is a mere replacement of consumables.

It claims that re-winding a packaging sheet onto the used core tube is no more than a replacement of consumables and consumers are more concerned about the variety of the packaging sheets.

► The argument fails to consider how consumers use the roll papers in the market.

- The Plaintiff is the patentee of the article packaging device and the roll paper. It manufactures and sells roll papers, not packaging sheet, as consumables.
- After the packaging sheet is used up, consumers do not purchase a new packaging sheet product and wind it onto the core tube. Mostly, they purchase a new roll paper, either from the Plaintiff or the Defendant.
- As such, the Defendant also manufactures and sells roll papers, i.e. the patented product, not the packaging sheet.

IV. Conclusion



Conclusion

1 International Exhaustion cannot be recognized in any respect.

2 The Defendant's Product lost the identity with the original product by the Defendant winding the packaging sheet around the used core tube.

»» The Defendant infringed the Plaintiff's patent rights by importing and selling its products.

Thank you

KIM & CHANG

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2023Na1017 Injunction against Patent Infringement

Technical Presentation Material

September 20, 2023

Defendant: Donkey Corp.
Attorney: Si Yul Lee

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 - V. Objective Nature of the Patented Product
 - VI. The Manner that the Patented Product is Used
 - VII. Defendant's Evidence
 - VIII. Conclusion
- 

I. Issues

1 Whether international patent exhaustion is recognized

2 Whether the patent rights remain exhausted upon the act of replacing consumables

II. Korean Precedents on Patent Exhaustion



Korean Precedents on Patent Exhaustion

International Patent Exhaustion

The patent rights were exercised and exhausted when the plaintiff manufactured the patented product and exported it to a foreign country, and thus, the plaintiff cannot exercise its Korean patent rights to the product in Korea.

Seoul District Court (Eastern Branch) Decision, 81GaHap466, rendered on July 30, 1981

Patent Exhaustion regarding Replacement of Consumables

- **If the replaced consumable of the patented product merely concerns a portion of the product, not to affect the identity with the product, the patent rights remain exhausted.**
- A determination is made in consideration of the objective nature of the product and the manner the product is used, legislative purpose of the Patent Act, etc.

Intellectual Property High Court Decision, 2017Na1001, rendered on November 10, 2017 (conclusive)

III. Key Factors as to Whether Patent Rights Are Exhausted in This Case



III. Key Factors as to Whether Patent Rights Are Exhausted in This Case

- **Is the Identity of the Plaintiff's Product Maintained after Replacement of a Packaging Sheet?**

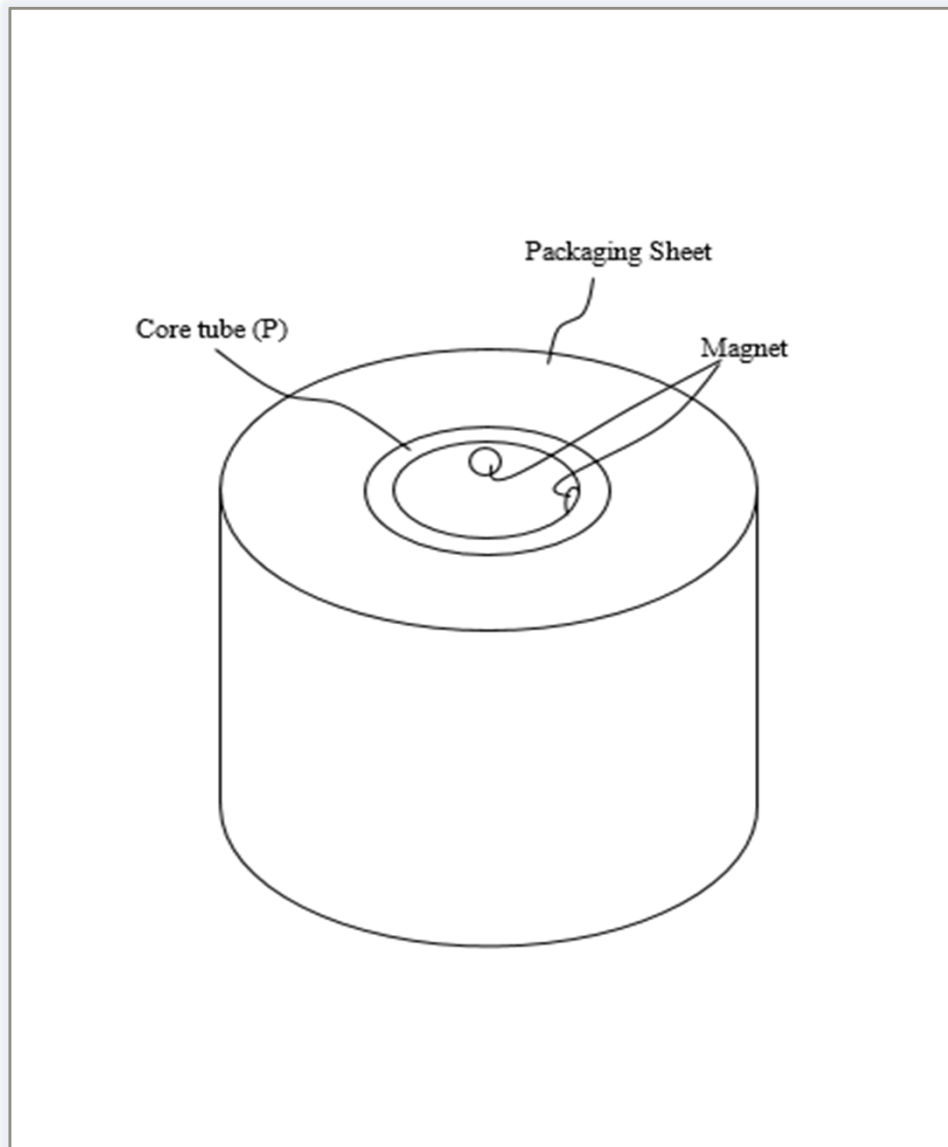
→ Yes, based on:

1. **The objective nature of the patented product**
2. **The manner that the patented product is used** - Replacement of the packaging sheet does not constitute replacement of an essential element of the patented product

IV. Defendant's Product

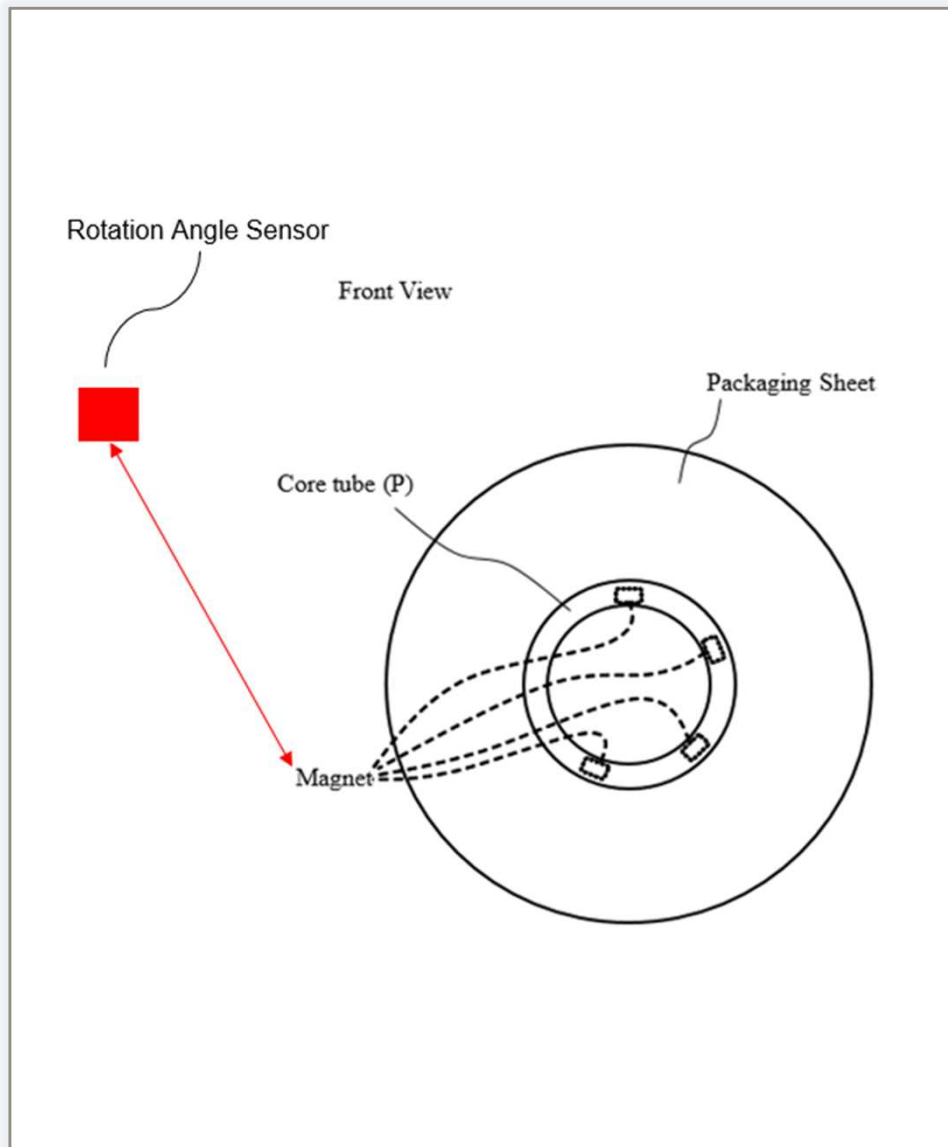


Defendant's Product (1)



- The Defendant's product detects the rotation angle of the roll paper and adjusts the braking force, thereby preventing poor fusing of a packaging sheet while the device is in operation.

Defendant's Product (2)



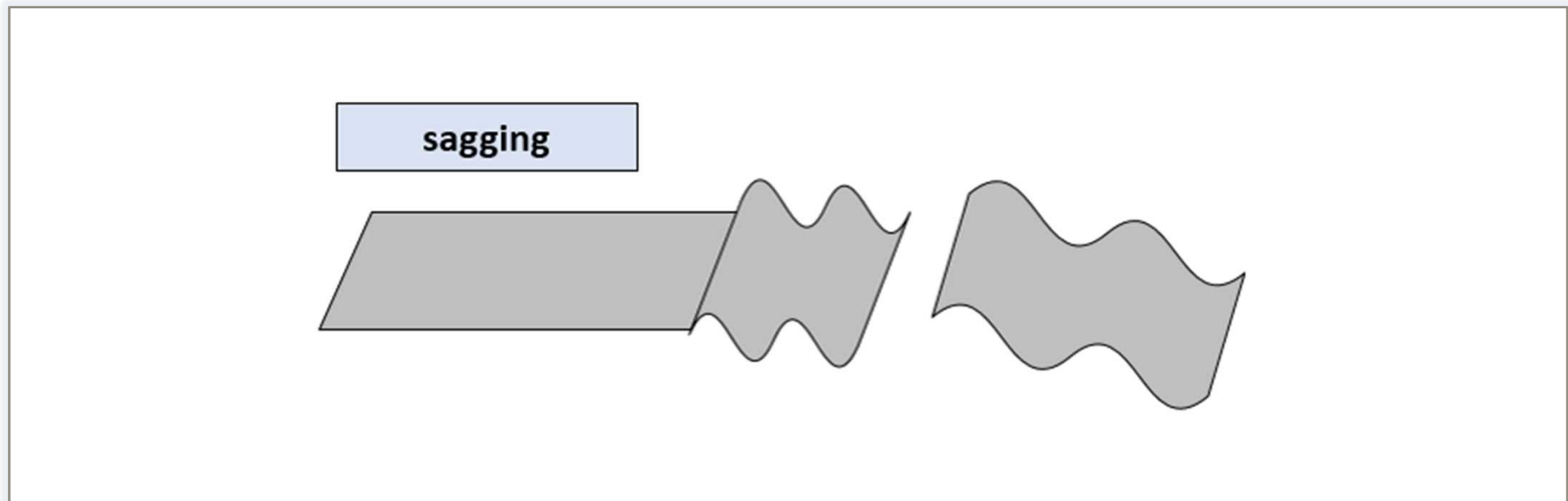
- Winding a packaging sheet by adding an adhesive between the packaging sheet and the core tube **does not affect the magnets in the core tube.**
- The core tube is made of hard plastic and thus is not damaged, having no effect on measurement of the rotation angle of the core tube.
- The rotation angle is measured through the interactions between the magnets in the core tube and the rotation angle sensor of the article packaging device.

V. Objective Nature of the Patented Product



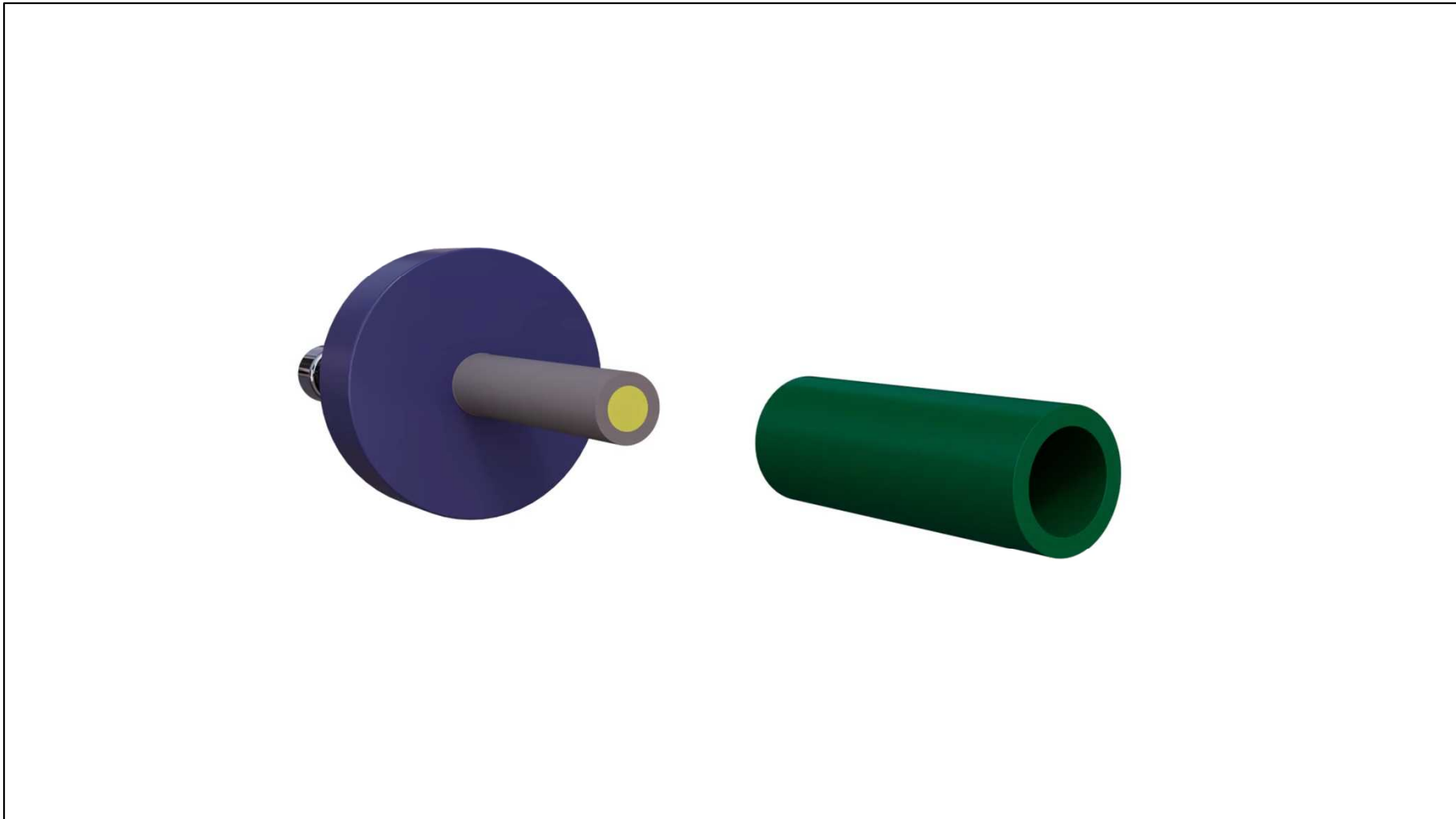
Objective Nature of the Patented Product (1)

- **The patented product interacts with the Plaintiff's article packaging device, and the essential element of the product is the magnet in the core tube.**
 - The invention in question aims to measure the rotation angle of the roll paper and thereby adjust the braking force applied to the roll holder in order to prevent packaging sheet from sagging.



Objective Nature of the Patented Product (2)

- The patented product measures the rotation angle through the magnets in the core tube, which interacts with the roll holder.



VI. The Manner that the Patented Product is Used



The Manner that the Patented Product is Used

- ① Winding a packaging sheet **inflicts no damage on the magnets in the core tube.**
- ② A packaging sheet **is only required to be in a size and specifications that properly fit into the Plaintiff's device.**
- ③ A packaging sheet is **a consumable that requires frequent replacement.**

Replacement of a packaging sheet is not replacement of an essential element of the patented product. Rather, it is merely replacement of a consumable of the patented product.

VIII. Defendant's Evidence



Evidence 1: Affidavit

(Employee A at K Measurement Center)



Evidence 1: Affidavit (Employee A at K Measurement Center)

Excerpt from the affidavit:

- I received the Plaintiff's product and the Defendant's product from the Defendant and conducted tests as follows.
- For “**Error in rotation angle measurement**”, I tested the products by calculating the error between the angle at which each roll paper actually rotated and the angle that was measured.
- For “**Number of rotations before a packaging sheet is cut**”, I tested the products by measuring the number of rotations of each roll paper before a packaging sheet is cut.
- I submitted the test report, which concluded that **the two products were not different in performance.**

Evidence 2: Test Report

(Analysis of the Plaintiff's and Defendant's Products)



Evidence 2: Test Report by K Measurement Center

TEST REPORT

(1) Client	Donkey Corp.
(2) Test Date	September 1, 2023
(3) Test Method	The subject device and compared device were tested with our standard equipment in accordance with the manufacturer's manual
(4) Test Result	See the test result
It is hereby certified that the present report is a test report duly issued by K Measurement Center.	
September 5, 2023 President of K Measurement Center	

TEST RESULT

Device	Error in rotation angle measurement	Number of rotations before a packaging sheet is cut (maximum of 700 rotations)
Defendant's roll paper	3.1%	687 rotations
Plaintiff's roll paper	2.8%	694 rotations

Evidence 3: User Survey

(Considerations in Selecting the Plaintiff's and/or Defendant's Product)



Evidence 3: User Survey

Use ratio by product (%) – Response by only those who have used the Plaintiff’s or Defendant’s product before

- Have used the Plaintiff’s product only – 18.9
- Have used the Defendant’s product only – 15.2
- Have used both products – 65.9



Selection criteria for those who have used both products (%)

1. **Competitive price – 48.5**
2. **Various packaging sheets and better designs – 31.2**
3. Trademark or source of the product – 11.6
4. Others – 8.7

Whether those who have used both products felt any quality difference (%)

- Very much – 5.4
- Yes – 16.2
- No – 46.2
- Not at all – 32.2

VII. Conclusion

- 1** The essential element of the Plaintiff's roll paper is the core tube, as well as the magnets in it.

- 2** As the product can be re-used with replacement of a packaging sheet, there is no presumption that the product will be used only once.

- 3** Replacement of a packaging sheet merely constitutes replacement of a consumable, not of an essential element of the patented product.

Therefore, the identity with the original product is maintained even after replacing a packaging sheet, and the patent rights remain exhausted.

Thank you

KIM & CHANG

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2023Na1017 Injunction against Patent Infringement

Witness Examination

September 20, 2023

I. The Plaintiff's Direct Examination



The Plaintiff's Direct Examination

1 From September 2017 to March 2020, you worked at the manufacture/technology division of Turtle Corp., the Defendant's Japanese subsidiary. Is this correct?

2 It is difficult to separate only the core tube from the Plaintiff's roll paper that has been used up because the packaging sheet was attached to the core tube using heat. Is this correct?

3 It is difficult to maintain the quality of the final product made by re-winding a packaging sheet if the previous packaging sheet has not been completely removed. Is this correct?

The Plaintiff's Direct Examination

4 Turtle used specially manufactured equipment to re-wind a packaging sheet around the core tube with precision. Is this correct?

5 Is it possible for general users to easily wind a packaging sheet without the help of the above equipment?

6 Imprecise winding would likely lead to a packaging sheet be cut during use. Is this correct?

The Plaintiff's Direct Examination

7 Turtle also went through a series of trial and error in the beginning of manufacturing its re-wound roll papers due to unsecured precision. Is this correct?

II. The Defendant's Cross-Examination



The Defendant's Cross-Examination

1 You were dismissed from Turtle in 2020. Is this correct?

2 You were dismissed for taking bribes from one of the vendors in relation to sample development. Is this correct?

The Defendant's Cross-Examination

3 Turtle's product was first released in September 2022. As you were dismissed in 2020, you never engaged in testing the newly released product. Is this correct?

4 You never engaged in comparing or analyzing the current (2023) Turtle product and the Plaintiff's product. Is this correct?

III. The Court's Witness Examination



The Court's Witness Examination

1 What have you been doing for a living since you left Turtle in 2020?

2 You stated that producing roll papers require specially manufactured equipment. How did you make roll papers when you operated your own business?

2023Na1017 Injunction against Patent Infringement

Closing Statement

Plaintiff's Closing Statement



Plaintiff's Closing Statement

1 Through the test data and survey result submitted by the Plaintiff, the Plaintiff confirmed that the Defendant's roll paper is not of a high quality compared to the Plaintiff's roll paper (e.g., the diameter of the Defendant's roll paper is not precisely measured).

2 Through the witness examination, the Plaintiff confirmed that (1) it is not easy to separate only the core tube from the Plaintiff's roll paper; (2) it is difficult to maintain the quality of the final product if the packaging sheet has not been completely removed; and (3) general users cannot easily wind a packaging sheet around the core tube.

3 Although the Defendant argues that re-winding a packaging sheet around an already used core tube would not affect the identity with the original roll paper product and that such act simply constitutes "replacement", the facts as verified and confirmed above show that the Defendant's such arguments are not reasonable.



- The Defendant's Product **lost the identity with the original product by the defendant winding the packaging sheet around the used core tube.**
- The importation and sale of the defendant's products should be construed as **infringement of the plaintiff's patent right.**

Defendant's Closing Statement



Defendant's Closing Statement

- International patent exhaustion should be recognized to prevent patentees from earning double gains, as supported by court precedents.
- Evidence such as the test report, the affidavit and the user survey shows that the identity with the original patented product is maintained even after replacement of a packaging sheet.
- Plaintiff's witness testimony should be disregarded because of the witness's biased view and the gap in time between his employment at Turtle and the launch of the product.
- Therefore, as the Plaintiff's patent rights are deemed to have been exhausted, the Plaintiff's claims should be dismissed.

Intellectual Property High Court

Rendering of Judgement





Intellectual Property High Court Decision 2023Na1017 rendered on Oct 17, 2023

[Order]

1. The lower court's decision shall be revoked.
2. The Defendant shall not produce, use, transfer, lend, import, or exhibit the Defendant's Product (Model: Turtle1017).
3. The Defendant shall bear the total cost arising from the lawsuit.
4. Paragraph 2 may be enforced provisionally.



[Opinion]

- ❖ Unless there are exceptional circumstances, when a patentee, etc., has transferred a patented product to a third party, the patentee's patent right in the product shall be exhausted as having achieved its purpose.
- ❖ However, if the patented product has been processed or modified to the extent that the identity of the original product is lost, it can be evaluated that the patentee's patent rights shall be considered infringed.
- ❖ Here, whether a patented product has been processed or modified to the extent that the identity of the original product is lost, and therefore, the act of producing has taken place shall be decided based on a comprehensive assessment of the description of the patented invention, the objective nature of the product, and the use form, legislative purpose of the Patent Act, etc.



<1> The description of the patented invention (Roll Paper) is as follows:

The patented roll paper is exclusively used for article packaging devices. It includes magnets on the core tube, and the magnets are arranged to measure locations by the rotation angle sensor in the article packaging device. This enables the rotation angle of the roll paper itself to be precisely measured and the braking force to be properly adjusted according to the external diameter of the roll paper.

<2> The objective nature of Plaintiff's patented product is as follows:

Plaintiff manufactured and sold the Roll Paper on the premise that the core tube of the Roll paper would be used one-time. When the core tube is reused after one-time use of Plaintiff's patented product, it is difficult for ordinary users to remove the core tube. In addition, securing the quality of the core tube of Plaintiff's Roll Paper is difficult. Thus, it is reasonable to conclude that the Plaintiff's patented product has lost its utility after one-time use.



<3> Finally, the use form of the product is as follows:

Plaintiff's patented product is exclusively used in Plaintiff's packaging device, and the packaging sheet part makes up a distinctive portion of the composition of Plaintiff's roll paper. In addition, as examined above, the Plaintiff's patented product loses its utility after it is used up. Therefore, it is reasonable to conclude that replacing the packaging sheet to the plaintiff's core tube cannot be regarded as replacing a consumable component under normal use, but rather as replacing the component that constitutes an essential portion of the invention.

- ❖ Therefore, Defendant's act infringes Plaintiff's patent rights, and Plaintiff's argument is well grounded. For this reason, the lower court's decision rendered shall be revoked.



Thank you