Note: When any ambiguity of interpretation is found in this provisional translation, the Japanese text shall prevail.

5. Court precedents relating to Other Requirements for Patentability (Article 29bis, Article 39, Article 32 of the Patent Act)

Classification	Content	No.	Date of Decision (Case No.)	Relevant Portion of Examination Guidelines
71	Concerning substantial identity by prior art effect (Article 29bis)	1	Intellectual Property High Court Decision, November 11, 2009 (2008 (Gyo KE) No. 10483)	Part III, Chapter 3, 3.2
		2	Intellectual Property High Court Decision, December 17, 2012 (2012 (Gyo KE) No. 10085)	
		3	Intellectual Property High Court Decision, August 9, 2013 (2013 (Gyo KE) No. 10022)	
		4	Intellectual Property High Court Decision, September 19, 2013 (2012 (Gyo KE) No. 10433)	
72	Concerning substantial identity with prior application (Article 39)	1	Tokyo High Court, November 14, 2002 (1999 (Gyo KE) No. 376)	Part III, Chapter 4, 3.2
		2	Appeal Decision dated January 27, 2012 (Muko 2009-800075)	
73	Concerning applicability of unpatentability (Article 32)	1	Tokyo High Court, December 25, 1986 (1984 (Gyo KE) No. 251)	Part III, Chapter 5, 2
		2	Decision dated March 26, 2004 (Igi No.2002-71216)	
		3	Intellectual Property High Court Decision, November 30, 2016 (2016 (Gyo KE) No. 10117)	

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Relevant portion of Examination Guidelines	Part III, Chapter 3, 3.2
Classification of the Case	71: Concerning substantial identity by prior art effect (Article 29bis)
Keyword	

1. Bibliographic Items

Case	"Hexamine compound" (Appeals against an Examiner's Decision) Intellectual Property High Court Decision, November 11, 2009 (2008 (Gyo KE) No. 10483)
Source	Website of Intellectual Property High Court
Application No.	Japanese Patent Application No. H6-155470 (JP H8-3122A)
Classification	C07C 211/54
Conclusion	Acceptance
Related Provision	Article 29bis
Judges	IP High Court First Division, Presiding judge: Tomokazu TSUKAHARA, Judge: Tamotsu SHOJI, Judge: Toshiya YAGUCHI

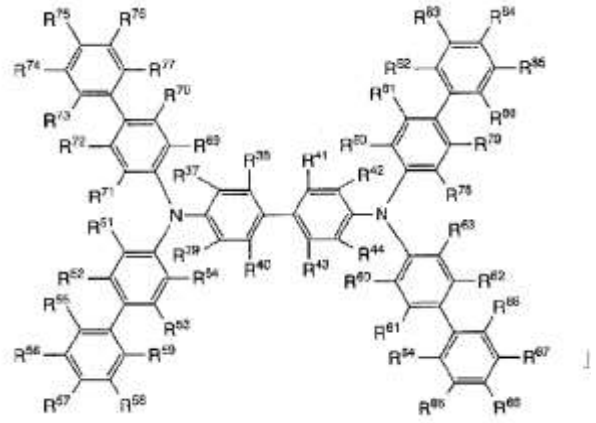
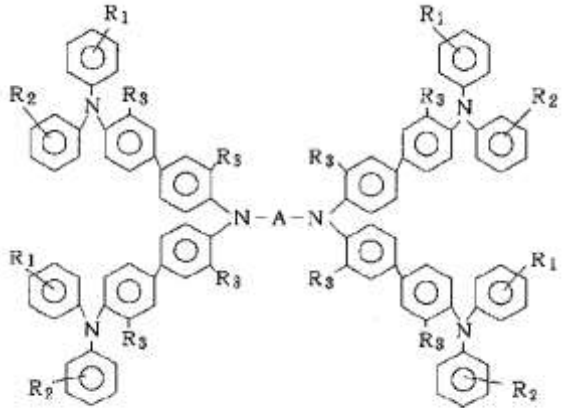
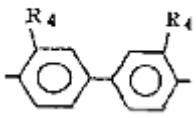
2. Overview of the Case

(1) Summary of Claimed Invention

The claimed invention is to provide a new hexamine compound useful as charge transport materials for organic light emitting elements, electrophotographic photoreceptors, and relates to a hexamine compound represented by a specific general formula.

(2) Comparison of invention stated in the Description, etc. fof the prior application with the Present Invention

Invention stated in the specification and the like of the prior application (identified in the Appeal Decision) Japanese Patent Application No. H7-43564 (JP H8-48656A)	Present Invention (amended) (Claimed Invention 1)
"B "[Chemical formula 37]	[Claim 1] A hexamine compound represented by the following general formula (1)

	
([0104])" (cited from the Court decision) "The specification and the like of the prior application describes ...compounds for an organic EL element, ...in addition, describes the compound (...compound No. II-10) in which R^{57}, R^{66}, R^{75} and R^{84} are $N(Ph)_2$ and R^{37} to R^{44}, R^{51} to R^{56}, R^{58} to R^{65}, R^{67} to R^{74}, R^{76} to R^{83}, and R^{85} to R^{86} are H in the compound represented by [Chemical formula 37]" (cited from the Court Decision)	General formula (1) [wherein, R_1 and R_2 indicates ... an unsubstituted aryl group, R_3 indicates a hydrogen atom ..., and A indicates a bivalent group represented by the following formula. Provided that a case in which R_1, R_2 and R_3 are simultaneously a hydrogen atom and A is an unsubstituted biphenylene group (R_4 indicates a hydrogen atom) is excluded] ... [Chemical formula 4]  (wherein R_4 indicates a hydrogen atom, a methyl group, a methoxy group or a chlorine atom) ...

(3) Procedural History

June 15, 1994	:	Present Patent Application
February 8, 1995	:	Patent Application of Prior Application (Japanese Patent Application No. H7-43564) (Priority date: June 3, 1994)
February 20, 1996	:	Publication of Prior Application (JP H8-48656A)
January 6, 2005	:	Amendment (See the above "Present Invention")
February 21, 2007	:	Decision of refusal
April 19, 2007	:	Request for Appeals against an Examiner's Decision of Refusal (Fufuku No. 2007-11283)
May 17, 2007	:	Amendment (Present Amendment)
October 15, 2008	:	Dismissal of the Present Amendment, and Appeal Decision that "The present request

of Appeal is dismissed."

3. Portions of Appeal/Trial Decisions relevant to the Holding

<table>
<tr><td colspan="2">Appeal Decision (cited from the Court Decision)</td></tr>
<tr><td colspan="2">*Portions in italic is to add for understanding the citation of the Court Decision.
...in order to determine that an invention relating to a compound is "invention stated in ...the specification originally attached on the request" prescribed in Article 29bis of the Patent Law, it is not proper to be construed in a limited way that only the compound exemplified in the specification and the like of the prior application is the "invention stated in ...the specification originally attached to the request", it is reasonable to recognize that at least a compound in which a portion of a substituted group of the compound exemplified in the specification and the like of the prior application is slightly modified for reducing the effect on the function of the target invention is the "invention stated in ...the specification originally attached to the request" prescribed in Article 29bis of the Patent Law, since it is essentially stated in the specification and the like.
...it is reasonable to recognize that a portion of the substituted group of the compound in which R^{57}, R^{66}, R^{75} and R^{84} are $N(Ph)_2$, and R^{37} to R^{44}, R^{51} to R^{56}, R^{58} to R^{65}, R^{67} to R^{74}, R^{76} to R^{83}, and R^{85} to R^{86} are H in the compound represented by [Chemical formula 37] is a compound which is recognized to be a compound in which a portion thereof is slightly modified for reducing the effect on the function, for example, the compound in which R^{57}, R^{66}, R^{75} and R^{84} are ...N(Ph)(Ph-CH_3) (the "Prior Invention" compound in the following Court Decision) in the compound represented by [Chemical formula 37].
(3) Comparison and determination
...the Claimed Invention 1 is identical to the Prior Invention.</td></tr>
<tr><td colspan="2">Decision</td></tr>
<tr><td>Allegations by Plaintiff
Even though several court decisions are reviewed, it has been necessary to state an invention in a prior application, upon confirming that the prior invention can be manufactured and the invention has usefulness, in order to exclude the later application from the prior application. Confirmation of the producibility and usefulness is not enough of an abstract statement, but it is necessary for Examples to be present and/or for a person skilled in the art to be able to recognize them based on the Examples. In other words, in order to be an invention of a chemical substance as being accomplished, it is necessary to be determined as a basis that the substance has sufficient similarity in structure to that in the Example and the</td><td>Allegations by Defendant
It is not proper to construe in a limited way for an invention relating to a compound that only a compound exemplified in the specification and the like of a prior application is the "invention stated in the specification and the drawing originally attached to the request" prescribed in Article 29bis of the Patent Law. At least, it is reasonable to recognize that the compound in which a portion of substituted groups of the compound exemplified in the specification and the like of the prior application is slightly modified to have less effect on the function of the invention is the "invention stated in the specification and the like originally attached to the request" prescribed in Article 29bis of the Patent Law since it is equivalently</td></tr>
</table>

similar result can be obtained. E The compound of the "prior invention" is encompassed in the formula of chemical formula 5 cited in the Appeal Decision or chemical formula 16 cited by the Defendant with unlimited formula, and such a simple encompassed relationship does not mean a disclosure of the compound only thereby. It is not possible in principle to recognize that a compound whose chemical structure is not even disclosed in the specification and the like of the prior application is an invention disclosed as being accomplished. ...the relationship of homologous series asserted by the Defendant is merely a general theory of chemical properties, properties of electron distribution, energy level and the like as properties of the charge transport material are greatly affected by the presence of methyl group (see Exhibit A15). In any case, there is no homologous relationship between the compound of the Example and the compound No. II-10 or the compound of "Prior Invention".	described therein. This is because it is improper to construe in a limited way that only the compound exemplified in the specification and the like of the prior application, especially only the compound stated in the Example is the "invention stated in the specification and the like originally attached to the request", since such a way is an extremely example-centered concept. In addition, even in compounds except those stated in the Example, in case of the compound structurally similar to the compound stated in the Example, there are several cases that such a compound can be easily manufactured and its usefulness can be presumed by a person skilled in the art. ...unless the Plaintiff clearly explains a special inhibitory basis for the applicability of the provision of Article 29bis of the Patent Law (a specific fact clarifying that "it cannot be said from the description of the specification and the like of the prior application that the compound No. II-10 and the compound of the "Prior Invention" are described therein"), it should be naturally said that the producibility and usefulness of the compound No. II-10 and the compound of the "Prior Invention" can be presumed. In addition, since it cannot be said that the Plaintiff clearly explains that the special inhibitory basis is present for applicability of the provision of the Article, the Claimed Invention could not be granted a patent under the provision of Article 29bis of the Patent Law.
Judgement by the Court (2) Since an invention of a so-called chemical substance has an essential to provide a chemical substance to be novel, and useful, that is, be industrially applicable, it is necessary to disclose its usefulness in the specification, while it is not enough only to confirm the chemical substance itself and be able to manufacture the chemical substance, in order to affirm its establishment. ...especially when inventive step of Article 29(2) of the Patent Law is determined, when the identity to the prior invention under the provision of Article 29bis(1) of the Law is determined, it is not reasonable to interpret	

the other compound is "as good as described" only by the description of the one compound, since both compounds have a relationship of homologous series (as mentioned above, this is because it is widely recognized by a person skilled in the art that it is generally difficult to predict the usefulness of the invention of chemical substance only based on its chemical structure, and the usefulness can be verified by experiment).

...since the determination of the identity to the prior invention under the provision of Article 29bis(1) of the Patent Law is different from the determination of inventive step under the provision of Article 29(2) of the Patent Law, ...it is not reasonable to supplement the description of the specification and the like of the prior application in consideration of the "publicly-known technique" easily, and it is not reasonable to determine that the compound of the "prior invention" is substantially stated in the specification and the like of the prior application, when the compound No. II-10 and the compound of the "prior invention" are regarded to be the same upon eliminating the presence or absence of a methyl group.

(5) Therefore, the compound of the "prior invention" argued by the Defendant is not stated in the specification and the like of the prior application and also it cannot be said that it is as good as described therein. Accordingly, the Appeal Decision applying the provision of Article 29bis of the Patent Law is erroneous, based on the reason that the compound of the "prior invention" is as good as stated in the specification and the like of the prior application.

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Relevant portion of Examination Guidelines	Part III, Chapter 3, 3.2
Classification of the Case	71: Concerning substantial identity by prior art effect (Article 29bis)
Keyword	Providing a new effect

1. Bibliographic Items

Case	"Washing machine that improves washing effect" (Appeals against an Examiner's Decision) Intellectual Property High Court Decision, December 17, 2012 (2012 (Gyo KE) No.10085)
Source	Website of Intellectual Property High Court
Application No.	Japanese Patent Application No. 2007-327916 (JP 2008-212635A)
Classification	D06F 39/12
Conclusion	Dismissal
Related Provision	Article 29bis
Judges	IP High Court Second Division, Presiding Judge: Syuhei SHIOTSUKI, Judge: Tomoko MANABE, Judge: Minoru TANABE

2. Overview of the Case

(1) Summary of Claimed Invention

The claimed invention is intended to provide a washing machine that can prevent its laundry from deformation caused by dehydration holes, and that can improve its washing effect by increasing the friction between the inside of a washing tub and laundry during its washing process, and that can reduce the amount of water for washing, and comprises a rotating washing tub, that has numerous concavities caved from an inner surface to outside in a shape of polygonal pyramid and numerous dehydration holes formed in each of the concavities.

(2) Comparison between the Invention Stated in the Description, etc. of the Prior Application and the Claimed Invention

The invention stated in the description, etc. of the prior application (Exhibit A1) Japanese Patent Application No. 2009-541762 (JP 2010-513070A)	The claimed invention (after amendment)
"A washing machine with a rotating drum 19	[Claim 1] A washing machine provided with a rotating

comprising: drum 19 having numerous three-dimensional facet structure caved from an inner surface of drum 19 to outside and arranging a multiple of hole 3 at tip 4 of polygonal pyramid; numerous three-dimensional facet structure being formed adjacently each other and having a fold 9 and 10 formed inside drum 19 in a hexagonal shape, a fold 17 and 18 extended to a hole 3 from each corner of a fold 9 and 10, and a flat facet 15 and 16 extended to a hole 3 from a fold 9 and 10 formed by three faces." (Cited from finding and judgment of trial decision) "[0007] A defect based on a high pressure and acceleration force causes the problem that, especially in the drum of washing machine, laundry is pressed into the hole of a peripheral wall of a drum at dewatering. Accordingly, an inconvenient damage like a dent is formed in dried laundry, ...Therefore, in order not to load laundry strongly, the liquid coming from washed laundry is intended not to be removed at dewatering as long as technically possible. [0016] Furthermore, a problem to be solved by the invention is,...for example, to provide structured walls in order to protect laundry. [0066] According to Fig. 2, the neutral point made to be generated by gathered three support elements 14 forms tip 4 of polygonal pyramid of three-dimensional facet structure. This neutral point is arranged in the center of hexagon structure. However, it is possible that the neutral point is placed at the center or the outside of structure of triangle, quadrangle, rectangle, square, rhombus, parallelogram, pentagon, hexagon, octagon, or	washing tub comprising: the washing tub having numerous concavities caved in a polygonal pyramid shape from an inner surface to outside and numerous dehydration holes formed in each of the concavities; the numerous concavities being formed adjacently each other and having a polygonal part protruding against an inner surface of the washing tab, a valley part extended to the dehydration hole from a corner of the polygonal part, and an inclined plane extended to the dehydration hole from a side portion of the polygonal part.

emblem type, and support element 14 is suitably arranged in the structure." (Cited from National Publication of International Patent Application No. 2010-513070)	

(3) Procedural History

December 19, 2007	:	The patent application (priority date: February 28, 2007)
December 21, 2007	:	Prior patent application (Japanese Patent Application No. 2009-541762) (priority date: December 22, 2006)
July 3, 2008	:	International publication of the prior application (International Publication No. WO2008/77394)
April 2, 2010	:	Examiner's decision of refusal
July 22, 2010	:	Request for Appeals against an Examiner's Decision of Refusal (Fufuku No. 2010-16498)
September 2, 2010	:	Written Amendment
October 24, 2011	:	Trial decision of "dismiss the request for trial."

3. Portions of Appeal/Trial Decisions relevant to the Holding

Appeal Decision (cited from the Court Decision)
[Differences between the Claimed Invention and the Invention of the Prior Application] The difference exists in the following point. Concerning concavity, that of the claimed invention is caved "in a shape of polygonal pyramid", while that of the claimed invention of the prior application has flat facets 15 and 16 formed by three faces in a hexagonal fold 9 and 10. Therefore, since the number of side portion of polygonal part does not match that of the inclined plane, it cannot be said that the concavity of the invention of the prior application is caved "in a shape of polygonal pyramid." [Determination on Substantial Identity between the Claimed Invention and the Invention of the Prior Application] ...Paragraph [0066] in Exhibit A1 states that concerning the three-dimensional facet structure, structures other than that of Fig. 2 can be selected, and also states the three-dimensional facet structure of which the neutral point is arranged in the center of quadrangle structure. Since this three-dimensional facet structure requires flat facet formed by four faces, it is caved in a quadrangular pyramid shape, that is, ... in a polygonal pyramid shape. It makes only a fine difference to replace concavities in a polygonal pyramid shape with concavities composed of flat facet 15 and 16 formed by three faces in a square-shaped fold 9 and 10, concerning measures to embody the three-dimensional facet structure. In addition, it does not generate new effects to form concavities in a polygonal pyramid shape. Thus, the claimed invention is substantially identical to the invention of the prior application.

Decision	
Allegations by Plaintiff (2) Since concavity is formed in a polygonal pyramid shape, and polygonal parts forming the perimeter of the bottom of polygon lie on the same plane and configure inner peripheral envelope surface of the washing tab, and elements forming concavities are successive in a ridged or tapered shape, then, laundry is supported by the successive parts in a ridged or tapered shape, and there is a distance between dehydration holes (drain holes) formed in concavity and laundry. Therefore, laundry which falls into dehydration holes certainly decreases, and also the successive parts in a ridged or tapered shape generate working effect of giving moderate friction to laundry. In addition, since concavity of the washing tab in the claimed invention is formed by press working, polygonal parts in concavity are rounded. Thus, in the claimed invention, the working effect of preventing laundry from deformation and damages is generated by curved polygonal parts in contact with laundry (See paragraph [0045]). Otherwise, in the perimeter of the bottom of three-dimensional facet structure, a washing tab in the invention of the prior application has at least one corner which is more protruding against the inside of washing tab than other corners, and protruding part is threaten to damage laundry. Furthermore, the invention of the prior application states only the problem relating to damages of laundry caused by dehydration holes at dewatering (See paragraph [0007] of Exhibit A1). As mentioned above, since the claimed invention has working effect which is not in the invention of the prior application, the difference between the claimed invention and the invention of the prior application is not fine, concerning	Allegations by Defendant (2) The invention of the prior application, as well as the claimed invention takes working effect of preventing laundry from damages, and it is clear that polygonal parts formed by combining each of the bottom of concavities give moderate friction to laundry, and improve washing effect. However, it is not necessary to consider the working effect of the dependent claim in determining on the substantial identity to the claimed invention. In view of working effect, there is also no difference between the invention of the prior application and the claimed invention. Therefore, The JPO decision correctly determined on the substantial identity concerning working effect.

embodiment measures to solve problems. Additionally, the dependent claimed invention of Claim 1 (the claimed invention) can certainly prevent laundry from deformation caused by dehydration holes, and also can more certainly reduce the amount of washing water, because there is appropriate amount of washing water in the washing tab. Especially, when forming dehydration holes by press working, said invention can prevent laundry from damages caused by generation of burrs. Therefore, the JPO decision on the substantial identity between the claimed invention and the invention of the prior application is erroneous, because it overlooked working effect of said dependent claimed invention.	

Judgement by the Court

2 Concerning Grounds 2 for Cancellation of Trial Decision (Errors in Judgment of Substantial Identity)

There is no error in the JPO decision that affirms the substantial identity between the invention stated in the description of the prior application and the claimed invention

In addition, the description of the prior application also mentions particularly about the working effect of preventing laundry from damaging at dewatering (Exhibit A1, paragraphs [0007] and [0016]). The working effect relating to the plaintiff's allegation is obviously obtained when adopting the structure of concavity of a quadrangular pyramid shape (three-dimensional facet structure) and also when forming the wall surface of washing tab by press working (it is supposed to form the wall surface of washing tab by press working, in the description of the prior application), thus it cannot be said that the working effect has been newly obtained by the claimed invention. Therefore, even when considering the working effect, there is no reason for Grounds 2 for cancellation of appeal decision alleged by the plaintiff.

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Relevant portion of Examination Guidelines	Part III, Chapter 3, 3.2
Classification of the Case	71: Concerning substantial identity by prior art effect (Article 29bis)
Keyword	

1. Bibliographic Items

Case	"Information provision system" (Appeals against Examiner's Decision) Intellectual Property High Court Decision, August 9, 2013 (2013 (Gyo KE) No. 10022)
Source	Website of Intellectual Property High Court
Application No.	Japanese Patent Application No. 2001-184444 (JP2003-006308A)
Classification	G06F 17/60
Conclusion	Dismissal
Related Provision	Article 29bis
Judges	IP High Court Third Division, Presiding Judge: Ryuichi SHITARA, Judge: Rika NISHI, Judge: Atsushi KAMIYA

2. Overview of the Case

(1) Summary of Claimed Invention

The system includes the job offer information storage means 12, the communication means 7 with external devices, and the information processing means 14 configured to control each of these means, and the job offer information storage means 12 stores, by a job offerer, job offer information on a job offer for a specific period of time and at a specific place. Then, the processing means 14 receives job seeking information on job seeking for the specific period of time and at the specific place from a terminal on the side of a job seeker by way of the communication means 7, compares this job seeking information with the job offer information stored in the job offer information storage means 12, and not only reads out job offer information that matches the job seeking information from the job offer information storage means 12 but also transmits the read job offer information by a job offerer to a terminal on the side of a job seeker.

(2) Comparison between the Invention Stated in the Description, etc. of the Prior Application and the Claimed Invention

The invention stated in the description, etc. of the prior application (Exhibit A1)	The claimed invention

Japanese Patent Application No. 2000-187776 (JP2002-007616A)	
A credit assessment information gathering and browsing system, having a server connected with a job seeker client's communication terminal (his/her own personal computer) and a job offerer client's communication terminal (personal computer of the client) through a computer network, wherein the server comprises a control unit, a job offer client information storage unit, a job seeking client information storage unit, a job offer condition information storage unit, a job seeking condition information storage unit, a job seeking client credit assessment information storage unit, a main program storage unit, or the like, the job offer client information storage unit and the job offer condition information storage unit are each configured to store job offer client information and job offer condition information transmitted from the communication terminal of the job offer client by way of the computer network, the job seeking client information storage unit and the job seeking condition information storage unit are each configured to store job seeking client information and job seeking condition information transmitted from the communication terminal of the job seeking client by way of the computer network, when the job offer client selects a process to browse job seeking information from the communication terminal by way of the computer network, based on job seeking conditions (at least of a job type, a work location, working hours, holidays, a period of time, qualifications, and compensation package) that a job offerer client wishes and that is transmitted from the communication terminal through the computer network, the server performs appropriate processing by searching applicable job	[Claim 2] In an information provision system, comprising a plurality of job offerer-side terminals configured to transmit job offer information including job offer conditions by way of communication means, a plurality of job seeker-side terminals configured to transmit job seeking information including job seeking conditions by way of communication means, and a server device configured to receive the job offer information and the job seeking information by way of the communication means, accumulate the job offer information and the job seeking information in storage means, select from the storage means job seeking information in which the job offer condition and the job seeking condition match, and transmit the job seeking information to the job offerer-side terminal by way of the communication means, the information provision system, wherein the job offerer-side terminal accepts input of message information indicating an impression of a job seeker that was reached out in the past from a job offerer through input means and transmit the message information to the server device by way of the communication means, the server device associates with the job seeker the message information indicating the impression of the job seeker that is received from the job offerer-side terminal by way of the communication means, accumulates the message information in the storage means, reads the message information indicating the impression of the job seeker from the storage means depending on a request received from the job offerer-side terminal by way of the communication means, and transmits the message information to the job offerer-side terminal by way of the communication

seeking condition information from the job seeking condition information storage unit, and displays the job seeking condition information, as the job seeking information screen, on a display unit of the communication terminal of the job offer client by way of the computer network, the job seeking client credit assessment information storage unit is configured to store credit assessment information including a description of an impression of the job offer client on the job seeking client or a reason of assessment or the like in a period of time before or after employment of the job seeking client, when the job offer client selects a process to register the credit assessment information of the job seeking client from the communication terminal by way of the computer network, the server causes the credit assessment information, which is entered by means of a keyboard or a mouse of the communication terminal and transmitted through the computer network, to be stored in the job seeking client credit assessment information storage unit, when the job offer client browses the job seeking information screen, finds job seeking information that the job offer client wishes, and then informs the server from the communication terminal by way of the computer network that the job offer client wishes to request credit assessment information of the job seeking client, the server reads the credit assessment information of the job seeking client from the job seeking client credit assessment information storage unit and performs a predetermined process, and then causes the credit assessment information to be displayed, as a credit assessment information screen, on the display unit of the communication terminal of the job offer client by way of the computer network. (Recognition of Appeal Decision)	means, and when transmitting the message information, the server device does not transmit message information for which a preset accumulation period of time has elapsed of message information accumulated in the storage means, reads from the storage means only message information for which the accumulation period of time has not elapsed and transmits the message information to the job offerer-side terminal by way of the communication means, the accumulation period of time being a period of time that the job seeker sets in advance to clear the past.

(3) Procedural History

June 19, 2001	:	Patent application
June 3, 2011	:	Examiner's decision of refusal
September 7, 2011	:	Request for Appeals against an Examiner's Decision of Refusal (Fufuku No. 2011-19387)
October 9, 2012	:	Amendment (See "The Claims" described above.)
December 10, 2012	:	Appeal decision that "The request for appeals and trials of this case is not valid."

3. Portions of Appeal/Trial Decisions relevant to the Holding

<table>
<tr><td colspan="2">Appeal Decision</td></tr>
<tr><td colspan="2">[Prima facie difference]
The difference is as follows: When message information is transmitted, while in the claimed invention, "the server device does not transmit message information for which a preset accumulation period of time elapses, of message information accumulated in the storage means, and reads from the storage means and transmits to the job seeker-side terminal by way of communication means only message information for which the accumulation period of time does not elapse, the accumulation period of time being a period of time set by the job seeker in advance in order to clear the past", in the earlier filed invention, no such accumulation period of time is not specified.
5. Determination
The prima facie difference described above shall be reviewed.
...
Naturally, the storage unit configured to store predetermined information has a limited storage capacity. Thus, deleting older information for which a predetermined period of time or longer elapses is a well-known art (for example, ...) that can even be stated as common general technical knowledge. Since the job seeking client credit assessment information storage unit in the earlier filed invention also has a limited storage capacity, keeping only relatively recent credit assessment information by deleting older credit assessment information for which a preset accumulation period of time elapses and providing the information to the job offerer side, more specifically, reading from the storage unit and transmitting only the credit assessment information before the accumulation period of time elapses without transmitting the credit assessment information for which the preset accumulation period of time elapses is merely addition of the well-known art, and does not exhibit exceptionally more operation and effect than that possessed by the well-known art.</td></tr>
<tr><td colspan="2">Decision</td></tr>
<tr><td>Allegations by Plaintiff
a ...Even though the technology that the appeal decision considers the well-known art, the contents is "Deleting older information for which a predetermined period of time or longer elapses</td><td>Allegations by Defendant
Given that in the claimed invention, it is possible "not to provide the job offerer-side terminal with message information for which a preset period of time elapses", therefore, for a job seeker to clear the past,</td></tr>
</table>

because the storage capacity is limited". Even this is added to the earlier-filed invention, it is not what "is configured to read from the storage unit and transmit only credit assessment information for which the accumulation period of time has not elapse "without transmitting credit assessment information for which a preset accumulation period of time elapses". ... c The technical idea of a period of time for deleting older information depending on limitation of storage capacity differs from that of a "preset period of time that the job seeker sets in advance in order to clear the past". In the art that the appeal decision considers the well-known art, a system may be different from the objective of "the job seeker clearing the past "and may be such that a job seeker cannot clear the past. In contrast, in the claimed invention, it is possible to implement a system with high reliability that the operation and effect of "the job seeker clearing the past" are achieved. d The earlier filed invention has no problem that "with the objective of the job seeker clearing the past". Thus, naturally, it does not need any embodying means to solve the problem. Hence, the earlier filed invention and the claimed invention are clearly not identical. Nevertheless, the appeal decision attempts to derive consequences that the earlier filed invention is identical to the claimed invention, by adding to the earlier filed invention matters that are neither described nor suggested in the earlier filed invention. Such an approach is similar to examinations of so-called inventive step (Patent Act, Article 29(2)). However, identity must not be derived through combination of a plurality of publicly-known facts in determining the identity in the Patent Act, Article 29bis. e Even given the content of the well-known art	also by deleting message information for which an accumulation period of time set in advance elapses, the "predetermined period of time" in the earlier filed invention to which the well-known art of "deleting older information for which the predetermined period of time or longer elapses" is added, has the technical significance as a "parameter to determine whether or not to transmit information corresponding to credit assessment information" alleged by Plaintiff, similar to the "accumulation period of time" in the claimed invention.

stated in the appeal decision, the storage capacity of the storage unit and accumulation pace of information should be considered when setting a "predetermined period of time" stated in the well-known art since the well-known art is to settle the problem that the storage capacity of the storage unit is limited. Thus, above-mentioned period of time relies on the storage capacity of the storages unit and the information accumulation pace to the storage unit. Then, the operation ad effect achieved through combination of the earlier filed invention and the well-known art is simply coexistence of the operation and effect of "being able to objectively assess credit of a job seeking client A" achieved by the means of solving the problem of the earlier filed invention and the operation and effect of being able to "solve the problem that the storage capacity of the storage unit is limited" achieved by the well-known art achieved. On the other hand, while the "accumulation period of time" in the claimed invention is a "period of time that the job seeker sets in advance to clear the past", setting of this period of time relies on neither the storage capacity of the storage unit nor the information accumulation pace to the storage unit. Consequently, the operation and effect are different. Therefore, the "predetermined period of time" in the well-known art and the "accumulation period of time" in the claimed invention have completely different attributes, and the difference is not a minor difference in design.	
Judgment by the Court (3) Regarding the well-known art a JP 2000-305980A ... b JP H11-195039A ... c In light of what is identified in a and b above, <u>in a system configured to search information stored in a</u>	

storage unit and provide a result of the search, it is found that deleting older data for which a predetermined period of time or longer elapses is the well-known art in this technical field before this application is filed, since the storage unit has a limited storage capacity or older information needs to be always refreshed as it loses reality and is of no value (hereinafter referred to as the "well-known art of this case").

(4) Determination on prima facie difference

a In light of the content of the earlier filed invention and the content of job seeking client credit assessment information in the earlier filed invention which are recognized in (2) above, also in the earlier filed invention, it is found that data needs to be always refreshed since the job seeking client credit assessment information storage unit has a limited storage capacity and older job seeking client credit assessment information loses the reality and is of no value. Then, it can be stated that in the earlier filed invention, although addressing these is to be done even if it is not clearly indicated in the specification of the earlier filed invention, and thus it is a matter equal to what is described in the earlier filed invention that a configuration making data always fresh by deleting older job seeking client credit assessment information for which a preset accumulation period of time elapses is made by adding the well-known art of this case to the earlier filed invention.

b When a comparison is made between the claimed invention and the configuration in which the well-known art is added to the earlier filed invention recognized in item a above, also in the configuration in which the well-known art is added to the earlier filed invention, by deleting older job seeking client credit assessment information for which a preset accumulation period of time has elapses, the "server" in the earlier filed invention can read only job seeking client credit assessment information before the accumulation period of time elapses and transmit it to the "communication terminal of the job offer client" by way of the communication means, rather than transmitting job seeking client credit assessment information for which the preset accumulation period of time elapses. Therefore, it is found that the configuration in which the well-known art is added to the earlier filed invention is that including the configuration of the claimed invention "the server device does not transmit message information for which a preset accumulation period of time has elapsed, of message information accumulated in the storage means, reads from the storage means only message information for which the accumulation period of time has not elapsed and transmits the message information to the job offerer-side terminal by way of the communication means".

In addition, also in the configuration in which the well-known art is added to the earlier filed invention, by deleting older job seeking client credit assessment information for which the preset accumulation period of time has elapsed, the older job seeking client credit assessment information that has lost the reality and become of no value is deleted and data can be always made fresh. Thus, it is found that this allows a job seeker to clear the past. Therefore, the accumulation period of time in the configuration in which the well-known art is added to the earlier filed invention also corresponds to the "period of time that the job seeker sets in advance to clear the past" in the claimed invention.

It is further found that since job seeking client credit assessment information no longer is provided to the communication terminal of the job offer client due to addition of the well-known art to the earlier filed invention, as a result, similar to the claimed invention, the operation and effect can be such achieved that a job

offerer can select a job seeker viewing credit assessment information that indicates an impression of the job seeker, and a job seeker who lost confidence can clear the past and restart. Therefore, the operation and effect of the claimed invention is merely a sum of the operation and effect exhibited by the earlier filed invention and the operation and effect achieved by the well-known art of this case.

c With the above, the configuration according to the prima facie difference between the claimed invention and the earlier filed invention is such a level that the above-mentioned well-known art is merely added to the earlier filed invention, and no new operation and effect is achieved. Therefore, it cannot be stated that the conclusion of determination of the appeal decision that the claimed invention and the earlier filed invention are substantially identical is wrong.

(For reference)

See also Tokyo High Court, February 19, 2004 (2001 (Gyo KE) No. 533).

(71)-4

Relevant portion of Examination Guidelines	Part III, Chapter 3, 3.2
Classification of the Case	71: Concerning substantial identity by prior art effect (Article 29bis)
Keyword	

1. Bibliographic Items

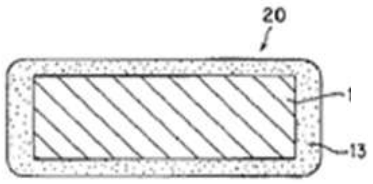
Case	"Rectangular conductor for a solar battery, method for fabricating same and lead wire for a solar battery" (Appeal against an Examiner's Decision) Intellectual Property High Court Decision, September 19, 2013 (2012 (Gyo KE) No. 10433)
Source	Website of Intellectual Property High Court
Application No.	Japanese Patent Application No. 2004-235823 (JP 2006-054355A)
Classification	H01L 31/04
Conclusion	Acceptance
Related Provision	Article 29bis
Judges	IP High Court Fourth Division, Presiding Judge: Yoshinori TOMITA, Judge: Yoshiki TANAKA, Judge: Akimitsu ARAI

2. Overview of the Case

(1) Summary of Claimed Invention

The claimed invention relates to a rectangular conductor for a solar battery in which, even when the thickness of a silicon crystal wafer is reduced, warping or damage is unlikely to occur upon bonding with a lead wire for connection. A conductor 1 having a volume resistivity equal to or less than 50μΩ.mm and a 0.2% yield strength value equal to or less than 90MPa in a tensile test is formed into a rectangular shape to create a rectangular conductor for a solar battery 10, with the surface being coated with a tin lead plating film 13, to create a lead wire for a solar battery 20.

[FIG. 2]



1 Conductor
13 Tin lead plating film
20 Lead wire for a solar battery

(2) Comparison between the Invention Stated in the Description, etc. of the Prior Application and the Claimed Invention

The invention stated in the description, etc. of the	The claimed invention

prior application (Exhibit A1) Japanese Patent Application No. 2000-187776 (JP 2002-007616A)	
A core material for a solar battery having a volume resistivity equal to or less than 2.3μΩ.cm and a yield strength value of 19.6 to 49MPa in a tensile test (finding of the Appeal Decision).	[Claim 1] A rectangular conductor for a solar battery comprising a volume resistivity equal to or less than 50μΩ.mm and a 0.2% yield strength value equal to or less than 90MPa in a tensile test (but not equal to or less than 49MPa).

(3) Procedural History

August 13, 2004	:	Patent Application
September 30, 2011	:	Decision of Refusal
December 28, 2011	:	Request for Appeals against an Examiner's Decision of Refusal (Fufuku No. 2011-28155)
November 5, 2012	:	Appeal Decision of "The request of the present appeal is dismissed"

3. Portions of Appeal/Trial Decisions relevant to the Holding

Appeal Decision
(Summary of the determination of the Appeal Decision as shown in the Holding) The prior underlying invention uses a core material as a low yield material in order to reduce or resolve the thermal stress which occurs at the time of solder bonding to a semiconductor substrate, making it unlikely for cracks to appear on the semiconductor substrate, and specifies a yield strength of the core material of equal to or less than 49MPa as the range for not causing cracks to appear on a semiconductor substrate. However, it is obvious to a person skilled in the art that formation of cracks is not affected by the yield strength of a core material alone. Furthermore, since it can be acknowledged that formation of cracks depends also on the thickness of a semiconductor substrate, the above range of yield strength should be considered as a matter of design which is specified as is appropriate in accordance with the structure of the middle layer or the thickness of the semiconductor substrate, etc. The structure in which the yield strength of a core material is equal to or less than 49MPa is specified by such matter of design. In view of the above, the point which is considered as a configuration of the claimed invention pertaining to the above difference of "(excluding the numerical range of yield strength of 49MPa or less)" is merely a difference of a matter of design which is specified as is appropriate in a prior underlying invention, and shall not be acknowledged as causing a special difference as a technical idea, or in other words, an invention. Accordingly, the claimed invention and the prior underlying invention shall be considered as having substantial identity.
Decision

Allegations by Plaintiff	Allegations by Defendant
While the prior underlying invention specifies a numerical range of specific yield strength for preventing formation of cracks, the claimed invention uses the numerical range, which is actively excluded by the prior underlying invention, as a matter specifying the invention for preventing formation of warping. The "yield strength value of 19.6 to 49MPa" is an essential part of the prior underlying invention and is not a matter of design which is specified as is appropriate. The description of the prior underlying invention does not disclose an invention for preventing formation of cracks by using a yield strength which is outside this numerical range, and it is impossible to understand the numerical range of the prior underlying invention as being merely a matter of design which is specified as is appropriate. ...	Whether or not cracks will be formed is not affected by the yield strength of a core material alone. It also depends on the thickness of a semiconductor substrate, and it can be said that the yield strength of the prior underlying invention is determined appropriately in terms of design according to the structure of a middle layer or the thickness of a semiconductor substrate, etc. The claimed invention and the prior underlying invention are both based on the common technical idea of lowering the thermal stress upon solder bonding through a plastic deformation of a rectangular conductor (core material) so as to solve the problem which occurs when the thickness of a silicon crystal wafer is reduced. The description of the claimed invention does not contain any statement about the technical significance of excluding the 0.2% yield strength of 49MPa or less, and since one cannot find any particular technical significance as to excluding the numerical range of 49MPa or less from the range of 90MPa or less, it cannot be said that the matter is more than a mere specification of a matter of design.

Judgment by the Court

A ... The claimed invention and the prior underlying invention only coincide in that both are a rectangular conductor for a solar battery with a volume resistivity equal to or less than 23μΩ.mm (in this respect, it is unreasonable that the JPO determined that both inventions coincide in that they have a volume resistivity equal to or less than 50μΩ.mm and a 0.2% yield strength value equal to or less than 90MPa in a tensile test). Regarding a 0.2% yield strength value in a tensile test, the numerical range of the claimed invention is equal to or less than 90MPa and does not include the range equal to or less than 49MPa, which means that the numerical range of the yield strength value of the prior underlying invention (19.6 to 49MPa) is excluded.

Therefore, the claimed invention and the prior underlying invention do not even have overlapping parts with respect to the numerical range of the yield strength, and both inventions are completely different.

B The prior underlying invention has a numerical range of the yield strength value of 19.6 to 49MPa. The description of the prior underlying invention (Exhibit A10) contains no statement which implies that a 0.2% yield strength value of the rectangular conductor for a solar battery is to be set at equal to or less than 90MPa (but not equal to or less than 49MPa), as in the case of the claimed invention. Even if the formation of cracks

on a semiconductor substrate also depends on the thickness of the semiconductor substrate, there is no sufficient evidence to prove that the art of setting the numerical range of the yield strength at the same level which is described in the claimed invention was well known or commonly used when the patent application was filed. Accordingly, it cannot be said that the adoption of the same 0.2% yield strength value, as in the case of the claimed invention, in the prior underlying invention was merely application of a well-known art or commonly used art and was merely a matter of design variation to be specified in accordance with the structure of a middle layer or the thickness of a semiconductor substrate.

Therefore, the structure pertaining to the difference between the claimed invention and the prior underlying invention (the difference in the numerical range of the yield strength) cannot be deemed to be a minor difference in embodying a means for solving problems.

...

The Defendant argues that the claimed invention and the prior underlying invention are based on the common technical idea of lowering the thermal stress upon solder bonding through a plastic deformation of the rectangular conductor (core material) so as to solve the problem which occurs when the thickness of a silicon crystal wafer is reduced, but since there is no particular technical significance in excluding the range equal to or less than 49MPa from the numerical range of the yield strength of the claimed invention, it cannot be said that the matter is more than a mere specification of a matter of design variation, and as for the numerical range of the yield strength of the prior underlying invention, it was only specified as is appropriate in terms of design and is not limited to the numerical range, the difference concerning the specification of the numerical range of the yield strength for the claimed invention and the prior underlying invention is limited to the difference of a matter of design variation as is specified appropriately upon working the invention, and does not cause any particular difference as an invention.

However, ... While the claimed invention focuses on reducing the warping of a cell and the prior underlying invention focuses on preventing formation of cracks on a semiconductor substrate, respectively, the problems to be solved by both inventions are different, and it cannot be said that the two inventions are based on a common technical idea. As such, the Defendant's argument does not even have the basis.

(72)-1

Relevant portion of Examination Guidelines	Part III, Chapter 4, 3.2
Classification of the Case	72: Concerning substantial identity with prior application (Article 39)
Keyword	Simply a difference in category expressions

1. Bibliographic Items

Case	"Method of constructing framework of building" (Trial for Invalidation) Tokyo High Court, November 14, 2002 (1999 (Gyo KE) No. 376)
Source	Website of Intellectual Property High Court, HANREI JIHO No. 1811, Page 120, HANREI TIMES No. 1109, Page 86
Application No.	Japanese Patent Application No. S62-064392 (JP S63-233137A)
Classification	E04B 1/26
Conclusion	Dismissal
Related Provision	Article 39(2)
Judges	Tokyo High Court, No. 18 Civil Affairs Section, Presiding Judge: Noriaki NAGAI, Judge: Hidehira SHIOTSUKI, Judge: Masatoshi TANAKA

2. Overview of the Case

(1) Summary of Claimed Invention

A mixed construction method of the conventional construction method and the two-by-four method, which is a construction method of a building, wherein to standardize assembly by simplifying joint parts through minimal cross sections and types using precut members, precut members are used and combined by a standardized coupling member to form a framework of a building, the construction method of a building, forming a floor by driving structural plywood or a face bar having performance equivalent to or higher than it to a floor framework assembled of beam members, erecting a pillar material on the floor, constructing the floor framework assembled of the beam members on the pillar material, fitting a wall into a wall framework that is assembled by a frame material into a frame unit that is formed of the pillar material and the beam member, and driving to the frame part structural plywood or others similar thereto, when forming of each floor of a building of a plurality of floors to be constructed.

(2) Comparison of the invention applied on the same day and the invention of this case

Invention applied on the same day (Patient No.	Invention of this case (patent invention of this case)

1928996)	
[Claim 1] A coupling device for building components being used with fastening means listed in A below, and including at least one combination of a basic coupling member listed in B with at least one of first and second application coupling members listed in C and D. A fastening means consisting of a bolt and a nut to be threadedly fitted into the bolt; B a basic coupling member, including: a pair of first and second side plate parts arranged in parallel with predetermined space in a vertical direction to face each other; an intermediate plate part arranged in the vertical direction, both ends of which are fixed to a central part of opposed inner sides of these side plate parts to interconnect the both side plate parts, and on which an insertion hole through which a bolt of a first fastening means is inserted is opened; and an end plate part one end of peripheral ends of which is fixed to the side plate part and the intermediate plate part, and which is arranged in a horizontal direction, and forming a H-shaped horizontal cross section constituting space into which at least one end of a first vertical building component, whose material axis extends in the vertical direction, is fitted; C a first application coupling member including a first connecting plate part on which an insertion hole is opened through which a bolt of the second fastening means for connecting a first horizontal building component in which a plate surface extends in a same plane as the intermediate plate part of the basic coupling member, one side end is a fixed part to an outer surface central part of the one side plate part of the basic coupling member, and the material axis extends to the horizontal direction; and	[Claim 1] A framework construction method of constructing framework of a building by using fastening means listed in B below and a coupling device for building components which is configured depending on a location in a building and which is listed in C below and connecting and configuring a building component listed in A. A a component member including (a1) and (a2) listed below: (a1) at least one vertical building component whose material axis extends to a vertical direction, and which has a groove part on an end surface or which is formed of precut wood material of two parallel members; and (a2) at last one horizontal building component whose material axis extends in the horizontal direction, and which has a groove part on an end surface or which is formed of precut wood material of two parallel members; B fastening means consisting of a bolt and a nut threadedly fitted to the bolt; C a coupling device for building components configured by selecting, as appropriate, number of coupling members to be used and a location of use thereof and combining a coupling member in (c1) below with at least one coupling member in (c2) and (c3): (c1) a basic coupling member, comprising: a pair of first and second side plate parts arranged in parallel with predetermined space in a vertical direction to face each other; an intermediate plate part whose both side ends are fixed to the central part of the opposing inner surface of these side plate parts to interconnect the both side plate parts, and on which an insertion hole is opened through which is inserted a bolt of the first

D a second application coupling member including a third side plate part on which an insertion hole is opened through which is inserted a bolt of the third fastening means for being fixed and attached to at least one side surface parallel to the intermediate plate part of ends of the first vertical building component to be fitted into the basic coupling member; and a second connecting plate part on which an insertion hole is opened through which is inserted a bolt of the fourth fastening means for connecting the second horizontal building component one side end of which is fixed to the central part of the third side plate part, which extends parallel to the first and second side plate parts and extends in a direction orthogonal to the first horizontal building component, and whose material axis extends to the horizontal direction.	fastening means for fixing the vertical building component, being arranged in the vertical direction, being fitted into a groove part of the vertical building component or sandwiched between two parallel members of the vertical building component; and an end plate part one end of whose peripheral end is fixed to the side plate part and the intermediate plate part, and which is arranged in the horizontal direction, and receives an end surface of the vertical building component, and forming an H-shaped horizontal direction cross section that constitutes space into which an end of at least one first vertical building component is fitted; (c2) a first application coupling member, comprising a first connecting plate part, whose plate surface extends in a same plane of the intermediate plate part of the basic coupling member, one side end of which is a fixed part to the outer surface central part of the one side plate part of the basic coupling member, on which an insertion hole is opened through which is inserted a bolt of the second fastening means for connecting the first horizontal building component by receiving an end surface thereof on the outer surface of the side plate unit, being fitted into a groove part of the first horizontal building component or being sandwiched between two parallel members of the first horizontal building component; and (c3) a second connecting plate part, comprising: a third side plate part on which an insertion hole is opened through which is inserted a bolt of the third fastening means for being fixed and attached to at least one side surface parallel to the intermediate plate part of ends of the first vertical building component fitted into the basic coupling member; and a second connecting plate part one end of which is fixed to the central part of the third side plate part,

	which extends parallel to the first and second side plate parts and extends in a direction orthogonal to the first horizontal building component, and on which an insertion hole is opened through which is inserted a bolt of the fourth fastening means for connecting the second horizontal building component whose material axis extends in the horizontal direction, being fitted into the groove part of the second horizontal building component or sandwiched between two parallel members of the second horizontal building component.

(3) Procedural History

May 12, 1995	:	Setting and registration of the patent right
October 20, 1998	:	Demand for trial for invalidation of the patent (Muko No. 10-35498)
February 1, 1999	:	Demand for correction by Defendant (Patentee)
September 10, 1999	:	Trial decision that does not allow the correction and that the request for appeals and trials of this case is not valid.
May 25, 2000	:	Demand for trial for correction (Teisei No. 2000-39038: See "Invention of this case" above) by the Defendant (patentee). The same correction trial decision became final and conclusive.

3. Portions of Appeal/Trial Decisions relevant to the Holding

Appeal Decision
For the "framework of a building" in the invention of this case, the item "Framework" on page 1431 of "Unabridged Construction Dictionary", the first edition, the eighth issue published in 1984 by Shokokusha Co., Ltd. has the definition "A structural element made by a combination of wire rods. Mainly used to support structural dynamics load and resist external force." In addition, the item "framework structure" on the same page of the same dictionary has the definition "A structure configured to mainly support load by a combination of a pillar or beam or wire rods such as a truss or the like so as to be able to resist external force". On the one hand, it is obvious that the "building component" in the "coupling device for building components" in the invention applied on the same date is a generic name of a wide range of members including a building component for constructing the "framework of a building". The building construction method that applies the "coupling device for building components" to a wide range of building components differs from the invention of this case which is the "framework construction method of a building" that selects, as a building component, the "vertical building component" and "horizontal building component" configured to support load

<table>
<tr><td colspan="2">and uses the coupling device for building components". Accordingly, the invention of this case and the invention applied on the same date not only simply differ in a category only, but also substantially differ in their configurations.</td></tr>
<tr><td colspan="2">Decision</td></tr>
<tr><td>Allegations by Plaintiff
2 Grounds for reversal/cancellation 2 (Mistake in determination on identity with the invention applied on the same date)
...
[1] Difference of category
While the invention of this case is an invention related to a "framework construction method", the invention applied on the same date is an invention related to a "coupling device for building components".
However, the invention of this case simply describes in terms of a method an invention of a product of the "coupling device for building components of the invention applied on the same date, and it cannot be stated that there is a substantial difference.
...</td><td>Allegations by Defendant
2 Regarding the grounds for reversal/cancellation 2
The invention of this case (that after being corrected. The "invention of this case" mentioned in the Section of Allegations by Defendant refers to that after being corrected) and the invention applied on the same date have the following differences and do not remain as inventions of different categories.
...
[2] Difference in a building component, a coupling member, and a connection method
...
(c) A vertical building component combined when the invention applied on the same date is used may be a building component for framework or for any other thing such as a steel frame. The method of the invention of this case is effective when precut wood material is used as a building component. Thus, this precut wood material is selected and made constituent features. Therefore, it cannot be stated that the invention of this case has no substantial technical difference from the invention applied on the same date that has no such specification.
Here, a use example of an "steel frame and others" includes an example of connection by fitting a steel frame whose cross section is U-shaped or square-shaped in both sides of an intermediate plate part, and inserting a bolt through an insertion hole formed on the intermediate plate part and the third side plate part.
...</td></tr>
</table>

Judgment by the Court

2 Regarding grounds for reversal/cancellation 2

(1) When looking at a relation of the invention of this case (that after being corrected. The "invention of this case" mentioned in the Section of Allegations by Defendant refers to that after being corrected) and the invention applied on the same date, both parties considers it understandable condition that the invention of this case is an invention of a method which uses the "coupling device for building components" of the invention applied on the same date. In this manner, the invention of this case is a method invention using the invention applied on the same day that is an invention of a product, and thus upon the practice of the invention of this case, this automatically results in the practice of the invention applied on the same date. In such a case, if the method of using the device of the invention applied on the same date is limited to the method of the invention of this case, it should be stated that both inventions are a same invention, in spite of a category difference. However, if the method of using the device of the invention applied on the same date is not limited to the method of the invention of this case, it cannot be stated that both inventions are identical.

(2) Then, reviewing them, ...the invention applied on the same date is an invention related to the "coupling device for building components" and it is obvious that for a "building component", which is an application of this coupling device, no special provision is provided excluding that the end of the first vertical building component whose material axis extends to the vertical direction is fitted into the space of the "basic coupling member", that the first horizontal building component whose material axis extends to the horizontal direction is connected to the "first application coupling member", and that the second horizontal building component whose material extends to the horizontal direction is connected to the "second application coupling member". Then, when using the invention applied on the same date, it is found that use of any building component is allowed as far as the requirements that these first vertical building component, and the first and second horizontal building components are respectively fitted into the space of the basic coupling member and connected to the first and second application coupling member are met.

When reviewing the first vertical building component, although based on the properties that the material axis extends to the vertical direction or that the end is fitted into the space of the basic coupling member, it can be stated that this member is a so-called wire rod, the material is not limited. Then, obviously, it is a well-known fact that a wire rod to be used in construction includes wood material and steel material (steel frame). Furthermore, it is also the recognized fact that there exists the method of using of fitting two steel frames of the same shape as each space part of basic coupling member partitioned by the intermediate plate part into each space part of basic coupling member, and connecting them with a bolt through insertion holes formed on the third side plate part of the second application coupling member and on the intermediate plate part of the basic coupling member.

In the Japanese Examined Patent Publication (Exhibit A4), although there is a description that the first vertical building component is a wood material such as "a precut wood material is used for a building component to be joined by the coupling device" (Column 11, 46 to 47 lines), there is neither a description that the steel frame material is included nor the description that the steel frame is eliminated. Then, according to

the description in the claims of the invention applied on the same date, the invention applied on the same date has only constituent requirements for the first vertical building component that "the material axis extends to the vertical direction" and that the end is fitted into the space of the basic coupling member, and does not provide any other stipulation at all. Therefore, it is obvious that as the method of using the device of the invention applied on the same date, the method of using the first vertical building component which is the steel frame material is included.

(3) In contrast to this, according to the requirements of the invention of this case that "at least one vertical building component whose material axis extends to the vertical direction, and which has the groove part on the end surface or consists of precut wood material of two parallel members" (constituent requirement (a1)) and "the basic coupling member forming an H-shaped horizontal direction cross section that constitutes space into which an end of the first vertical building component is fitted" (constituent requirement (C1)), the vertical building component also has the requirement that it has the groove part on the end surface or is a wood of two parallel members, in addition to that the material axis extends to the vertical direction and the end is fitted into the space of the basic coupling member, and it is obvious that it eliminates the steel frame material. ...

(4) As described above, since the method of using the first vertical building component, the steel frame material, which is one method of using the invention applied on the same date is not included in the invention of this case, it is obvious that the method of using the invention applied on the same date is not limited to the invention of this case. Therefore, in this respect, it cannot be stated that the invention of this case and the invention applied on the same date are identical inventions, and thus the grounds for reversal/cancellation 2 has no reason.

(72)-2

Relevant portion of Examination Guidelines	Part III, Chapter 4, 3.2
Classification of the Case	72: Concerning substantial identity with prior application (Article 39)
Keyword	

1. Bibliographic Items

Case	"Slot machine" (Trial for Invalidation) Appeal decision dated January 27, 2012 (Muko No. 2009-800075)
Source	Published Appeal and Trial Decisions
Application No.	Japanese Patent Application No. 2005-109071 (JP 2005-211685A)
Classification	A63F 5/04
Conclusion	Dismissal
Related Provision	Article 39(2)
Judges	Chief Administrative Judge: Hiroo OBARA, Administrative Judge: Shinji SAWADA, Administrative Judge: Nao YOSHIMURA

2. Overview of the Case

(1) Summary of Claimed Invention

This is an invention for preventing the processes for control, as implemented on a game machine having a card reader function, from getting complicated. The game machine comprises a lending instruction part for instructing the lending of a prescribed amount of game value in exchange for marketable value owned by a player, as specified by the information recorded on a card, as well as a lending part (S41E, S41F) for lending a prescribed amount of game value in response to the operation of a lending instruction part. Once the lending of a prescribed amount of game value is started (YES at S41A), subsequent processes (S41 and thereafter) are prohibited until the lending is ended (number of lending at S41G=0).

(2) Comparison between the invention filed on the same date and the claimed invention

The invention filed on the same date (Invention of Exhibit A11; Patent No. 4058089)	The claimed invention (the claimed patented invention)
[Claim 1] a. A slot machine, capable of being played by using marketable value owned by a player as a number of bets, comprising a variable display	[Claim 1] a. A slot machine, capable of being played by using marketable value owned by a player as a number of bets, comprising a variable display

device equipped with multiple of variable display parts indicating variably multiple types of identification information including that of a big bonus, wherein one game ends at the time of stop of such multiple of variable display parts after its start of variation, c. the multiple of variable display parts being composed of left, middle and right variable display parts where effective hit lines are set by inputting the number of bets, and comprising: d-1. a game control means, for making transition to a big bonus, when stop results on the effective hit lines of the multiple of variable display parts at the end of regular game are in a display mode of a role of a big bonus by the identification information of a big bonus, d-2. for generating a winning of a small role not making transition to the big bonus, when stop results on the effective hit lines of the multiple of variable display parts at the end of regular game are in a display mode of a small role by identification information of a small role among the multiple of identification information, and d-3. for generating a re-game allowing play of a game without using the marketable value owned by the player as the number of bets, when stop results on the effective hit lines of the multiple of variable display parts at the end of regular game are in a display mode of a role of a re-game by identification information of a re-game among the multiple types of identification information, l'. judgement means for determining whether a winning is arising on each of multiple types of roles including the role of a big bonus, a small bonus and a re-game, based on possibilities of a winning beforehand set on each of the multiple types of roles,	device equipped with multiple of variable display parts indicating variably multiple types of identification information including that of a big bonus, wherein one game ends at the time of stop of such multiple of variable display parts after its start of variation, b. the variable display device comprising multiple of variable display members depicting multiple types of identification information, and the variation of the multiple of variable display parts are started by starting the rotation of the multiple of variable display members and causing the multiple types of identification information to shift toward the multiple of variable display parts, and the multiple of variable display parts are stopped by stopping the rotation of the multiple of variable display members, c. the multiple of variable display parts being composed of left, middle and right variable display parts where effective hit lines are set by inputting the number of bets, and comprising: d-1. a game control means, for making transition to a big bonus, when stop results on the effective hit lines of the multiple of variable display parts at the end of regular game are in a display mode of a role of a big bonus by the identification information of a big bonus, d-2. for generating a winning of a small role not transiting to the big bonus, when stop results on the effective hit lines of the multiple of variable display parts at the end of regular game are in a display mode of a small role by identification information of a small role among the multiple of identification information, and d-3. for generating a re-game allowing a play of game without using the marketable value owned by a player as the number of bets, when stop results on the

m. setting means for setting a winning flag corresponding to a role judged a winning by such judgement means,

g". stop operation means for stopping the variable display parts,

n. variable display control means for stopping at a prescribed position based on a winning flag set by the setting means, any of identification information located within prescribed stoppable range based on identification information displayed at the prescribed position on the effective hit lines in case that such stop operation means is operated,

o. the game control means for deleting a winning flag of a small role, in case that the winning flag of a small role is set by the setting means, and for carrying out to next game without deleting the winning flag of a big bonus, in case that the winning flag of a big bonus is set by the setting means, when stop results on the effective hit lines of the multiple of variable display parts are not in display mode of a role corresponding to a winning flag set by the setting means,

v. the judgement means, not judging whether the role of a big bonus is in a winning in case that the winning flag of a big bonus is already set,

p. arrangement of identification information on the multiple of variable display parts being formed by constitution where the identification information of a re-game inevitably exists within the stoppable range,

q. the variable display control means providing,

q-1. control for stopping at prescribed position, the identification information of a re-game located within the prescribed stoppable range based on identification information displayed at the prescribed position on the effective hit lines of the variable display parts, in case that the stop operation means is operated at the game, when only a winning flag of a re-game is set, effective hit lines of the multiple of variable display parts at the end of regular game are in a display mode of a role of a re-game by identification information of a re-game among the multiple types of identification information,

e. start operation means for starting one game,

f'. reference position detection means for detecting the rotation reference position of a variable display member defined at a prescribed position of each variable display member, is respectively positioned on a rotary shaft more inwardly than the rotation reference position of each variable display member,

g'. stop operation means for stopping the variable display member, being set correspondingly to each variable display member,

h'. stop operation validation means for validating stop operation of the stop operation means, with the precondition that all of the reference position detection means have detected the rotation reference position, after all of the variable display members start rotation and until a prescribed time has passed,

i. validation notification means for informing that such stop operation validation means stop operation was validated,

j. extraction means for extracting numerical information from multiple of numerical information within a prescribed numerical range in case that the start operation means is operated,

k. definition data storage means for storing the definition data which define the corresponding relationship between multiple of numerical information within the prescribed numerical range, and each of multiple types of roles including the role of a big bonus role, a small role, and a re-game role, respectively,

l. judgement means for determining whether a winning is arising on each of the multiple types of

q-2. control for stopping at prescribed position, the identification information of a re-game located within the prescribed stoppable range based on identification information displayed at the prescribed position on the effective hit lines of the variable display parts, in case that the stop operation means is operated, when the winning flag of a re-game as well as the winning flag of a big bonus is set by the winning flag of a re-game set by the setting means at next game having progressed without deletion of the winning flag of a big bonus set by the setting means, q-3'. control for stopping, at prescribed position, the identification information of a big bonus, in case that the identification information of a big bonus exists among identification information located within the prescribed stoppable range based on identification information displayed at the prescribed position on the effective hit lines of the variable display parts, when the winning flag of a small role as well as the winning flag of a big bonus is set by the winning flag of a small role set by the setting means at next game having progressed without deletion of the winning flag of a big bonus, z. a slot machine having above characteristics.	roles, by determining whether the numerical information extracted from the extraction means corresponds to any of the multiple types of roles which are defined by the definition data, m. setting means for setting a winning flag corresponding to a role judged a winning by such judgement means, n. variable display control means for stopping at prescribed position based on a winning flag set by the setting means, any of identification information located within prescribed stoppable range based on identification information displayed at the prescribed position on the effective hit lines in case that the stop operation means is operated, o. the game control means for deleting a winning flag of a small role, in case that the winning flag of a small role is set by the setting means, and for carrying out to next game without deleting the winning flag of a big bonus, in case that the winning flag of a big bonus is set by the setting means, when stop results on the effective hit lines of the multiple of variable display parts are not in display mode of a role corresponding to a winning flag set by the setting means, α. the stop operation validation means, while it validates stop operation of all of the stop operation means at the time of establishment of the precondition after the prescribed time has passed, does not validate stop operation of any of the stop operation means at the time of failure of establishment of the precondition, β. the definition data storage means for storing the definition data at the time of high possibilities of a winning of the small role in order to increase only the winning determination rate for the small role in the regular game when the value awarded to a player by the slot machine is lower than the predetermined

	standard value, and for storing the definition data at a normal time for the small role in order to decrease only the winning determination rate for the small role in the regular game when the value awarded is higher than the standard value, γ. the judgement means, while it determines whether a winning is arising on the small role using the definition data at the time of the high possibilities of a winning in the regular game when the value awarded is lower than the standard value, and determines whether a winning is arising on the small role using the definition data at the normal time in the regular game when the value awarded is higher than the standard value, p. arrangement of identification information on the multiple of variable display parts being formed by constitution where the identification information of a re-game inevitably exists within the stoppable range, q. the variable display control means providing, q-1. control for stopping at prescribed position, the identification information of a re-game located within the prescribed stoppable range based on identification information displayed at the prescribed position on the effective hit lines of the variable display parts, in case that the stop operation means is operated at the game, when only a winning flag of a re-game is set, q-2. control for stopping at prescribed position, the identification information of a re-game located within the prescribed stoppable range based on identification information displayed at the prescribed position on the effective hit lines of the variable display parts, in case that the stop operation means is operated, when the winning flag of a re-game as well as the winning flag of a big bonus is set by the winning flag of a re-game set by the setting means at next game having progressed without deletion of the winning flag of big bonus set by the setting means,

	q-3. control for stopping at prescribed position, identification information of a big bonus, in case that the identification information of a big bonus exists among identification information located within the prescribed stoppable range based on identification information displayed at the prescribed position on the effective hit lines of the variable display parts, when the winning flag of a small role as well as the winning flag of a big bonus is set by the winning flag of a small role set by the setting means, at next game having progressed without deletion of the winning flag of a big bonus set by the setting means, z. a slot machine having above characteristics.

(3) Procedural History

December 21, 2007	:	Registration of establishment of the patent right
March 31, 2009	:	Request for a trial for patent invalidation (Muko No. 2010-880189)
June 30, 2010	:	Decision of "Invalid the patent"
August 6, 2010	:	A suit against trial decision instituted by the demandee (2010 (Gyo KE) No. 10255)
October 8, 2010	:	Request for a trial for correction (Teisei No. 2010-390104)
October 21, 2010	:	Decision of reverse of the trial decision under the provisions of Article 181 (2) of the Patent Act
November 29, 2010	:	Request for correction based on deemed application of the provisions of Article 134ter (5) of the Patent Act (refer to the above "The claimed invention").

3. Portions of Appeal/Trial Decisions relevant to the Holding

Appeal Decision
3. Comparison between the present corrected invention and the invention of Exhibit A11 As such, the following can be said from the comparison between the present corrected invention and the invention of Exhibit A11. ... (2) While the present corrected invention comprises "the variable display device comprising multiple of variable display members depicting multiple types of identification information, and the variation of the multiple of variable display parts are started by starting the rotation of the multiple of variable display members and causing the multiple types of identification information to shift toward the multiple of variable display parts, and the multiple of variable display parts are stopped by stopping the rotation of the multiple of variable display members" (structure b), it is not clear whether the invention of Exhibit A11 comprises the structure b (hereinafter referred to as the "Difference 1").

...

(5) While the present corrected invention comprises "start operation means for starting one game" (structure e), it is not clear whether the invention of Exhibit A11 comprises the structure e (hereinafter referred to as the "Difference 2").

(6) While the present corrected invention comprises "reference position detection means for detecting the rotation reference position of a variable display member defined at a prescribed position of each variable display member, is respectively positioned on a rotary shaft more inwardly than the rotation reference position of each variable display member" (structure f'), it is not clear whether the invention of Exhibit A11 comprises the structure f' (hereinafter referred to as the "Difference 3").

(7) While a "stop operation means" (structure g') of the present corrected invention is "set correspondingly to each variable display member in order to carry out stop operation of the variable display member", it is not clear whether the "stop operation means" of the invention of Exhibit A11 (structure g"), which is intended to "carry out stop operation on the variable display part", is set correspondingly to each variable display part (hereinafter referred to as the "Difference 4").

(8) The present corrected invention comprises "stop operation validation means for validating stop operation of the stop operation means, with the precondition that all of the reference position detection means have detected the rotation reference position, after all of the variable display members start rotation and until a prescribed time has passed" (structure h') in addition to having such structure as a "stop operation validation means", "while it validates stop operation of all of the stop operation means at the time of establishment of the precondition after the prescribed time has passed, does not validate stop operation of any of the stop operation means at the time of failure of establishment of the precondition" (structure α), it is not clear whether the invention of Exhibit A11 comprises the structure h' and the structure α (hereinafter referred to as the "Difference 5").

(9) While the present corrected invention comprises "a validation notification means for informing that the stop operation validation means validated stop operation" (structure i), it is not clear whether the invention of Exhibit A11 comprises the structure i (hereinafter referred to as the "Difference 6").

(10) While the present corrected invention comprises "extraction means for extracting numerical information from multiple of numerical information within a prescribed numerical range in case that the start operation means is operated" (structure j), it is not clear whether the invention of Exhibit A 11 comprises the structure j (hereinafter referred to as the "Difference 7").

(11) While the present corrected invention comprises "definition data storage means for storing the definition data which define the corresponding relationship between multiple of numerical information within the prescribed numerical range, and each of multiple types of roles including the role of a big bonus role, a small role, and a re-game role, respectively" (structure k), it is not clear whether the invention of Exhibit A11 comprises the structure k (hereinafter referred to as the "Difference 8").

(12) While a "judgement means" (structure l) of the present corrected invention "determines whether a winning is arising on the multiple types of roles, by determining whether the numerical information extracted from the

extraction means corresponds to any of the multiple types of roles which are defined in the definition data" a "judgement means" of the invention of Exhibit A11 (structure l') "determines whether a winning is arising on multiple types of roles including a big bonus role, a small role, and a re-game role, based on based on possibilities of a winning beforehand set on the multiple types of roles" (hereinafter referred to as the "Difference 9").

...

(16) While a "definition data storage means" of the present corrected invention (structure k) is such that "for storing the definition data at the time of possibilities of a winning of the small role in order to increase only the winning determination rate for the small role in the regular game when the value awarded to a player by the slot machine is lower than the predetermined standard value, and for storing the definition data at a normal time for the small role in order to decrease only the winning determination rate for the small role in the regular game when the value awarded is higher than the standard value" (structure β), it is not clear whether the invention of Exhibit A11 comprises the structure β (hereinafter referred to as the "Difference 10").

(17) While a "judgement means" of the present corrected invention (structure l) "determines whether a winning is arising on the small role using the definition data at the time of the high possibilities of a winning in the regular game when the value awarded is lower than the standard value, and determines whether a winning is arising on the small role using the definition data at the normal time in the regular game when the value awarded is higher than the standard value" (structure γ), it is not clear whether a "judgement means" of the invention of Exhibit A11 (structure l') is as such (hereinafter referred to as the "Difference 11").

(18) While a "judgement means" of the invention of Exhibit A11 (structure l') is such that "not judging whether the role of a big bonus is in a winning in case that the winning flag of a big bonus is already set" (structure v), it is not clear whether a "judgement means" of the present corrected invention (structure l) is as such (hereinafter referred to as the "Difference 12").

...

4. Determination concerning Differences

Each of the above Differences is deliberated as follows.

[Concerning the Differences 1, 3, and 4]

Since the Differences 1, 3, and 4 are very closely related to each other, they shall be deliberated collectively.

In light of the structure a, the present corrected invention and the invention of Exhibit A11 coincide in that "multiple of variable display parts make a stop after its start of variation." As such, the structure b which the present corrected invention comprises adds "multiple of variable display members depicting multiple types of identification information" in order to restrict the multiple of variable display parts, in addition to the fact of "causing the multiple of variable display members to start rotating" and "to stop the rotation of the multiple of variable display parts".

Furthermore, it can be said that the structure f' (reference position detection means) and the structure g' (stop operation means) can be considered as the structures which are added incidentally to the variable display

members having been added.

As such, with respect to the structures b, f', and g' pertaining to the Differences 1, 3, and 4, the relationship between the present corrected invention and the invention of Exhibit A11 is that, with respect to the "multiple of variable display parts," the present corrected invention is an invention of a more specific concept, restricting the "multiple of variable display members" and the structure incidental thereto, and that the invention of Exhibit A11 is an invention of a generic concept having no such restriction.

(1) In view of the above, if the present corrected invention is considered as the prior invention and the invention of Exhibit A11 as the later invention, the two inventions are different only in that the matter specifying the prior invention, which constitutes a more specific concept in the later invention (such as multiple of variable display members) is expressed as a generic concept (multiple of variable display parts), and thus the two inventions have substantial identity concerning the structures of the Differences 1, 3, and 4.

(2) Also, if the present corrected invention is considered as the later invention and the invention of Exhibit A11 as the prior invention, multiple of variable display members as well as a stop operation means set correspondingly to each of the variable display members are, for example as indicated in Exhibit A1 (JP H2-232084A, especially in the section of [Prior Art] in the right column of page 1), is well known in the art in the field of slot machines (hereinafter referred to as "Well-Known Art 1"), and a reference position detection means respectively positioned on a rotary shaft more inwardly than the rotation reference position on each variable display member is, for example as indicated in Exhibit A14 (JP S56-70779A, especially in lines 13-18 in the lower left column of page 3, Fig. 3 and Fig. 8) and Exhibit A21 (JP H2-279183A, especially in lines 4-14 in the lower left column of page 4 and Fig. 1), is well known in the art in the field of slot machines (hereinafter referred to as "Well-Known Art 2"). As such, the matter specifying the later invention (multiple of variable display members) equals to the matter specifying the prior invention (multiple of variable display parts) with Well-Known Arts 1 and 2 added thereto, and furthermore, since the foregoing does not produce any new effect as a result, the two inventions have substantial identity in light of the structures pertaining to the Differences 1, 3, and 4.

[Concerning the Differences 2, 5, and 6]

Since the Differences 2, 5, and 6 are very closely related to each other, they shall be studied collectively.

According to the structures a and g', the invention of Exhibit A11 is also a "slot machine on which one game ends at the time of stop of such multiple of variable display parts after its start of variation," and it is clear that, since it comprises a "stop operation means for causing a variable display part to stop", stop operation is validated under some conditions in addition to the variation of multiple of variable display parts being started under some conditions, or in other words, one game being started.

In view of the above, the present corrected invention and the invention of Exhibit A11 coincide in that one game is started under some conditions and that stop operation is validated under some conditions. As such, the structure e which the present corrected invention comprises restrict some conditions for starting one game to the operation of a "start operation means," and similarly, the structure h' (a stop operation validation means) restricts some conditions (preconditions) for validating stop operation to the "detection of the rotation reference

position by all of the reference position detection means, after all of the variable display members have started rotation and until a prescribed time has passed," and furthermore, the structure α places such restriction that, "if the precondition is established, stop operation of all of the stop operation means is validated after the prescribed time has passed, but that if the precondition is not established, stop operation of none of the stop operation means is validated."

Also, it can be said that the structure i (a validation notification means) is a structure having been added in connection with the validation of stop operation.

Accordingly, with respect to the structures e, h', α, and i pertaining to the Differences 2, 5, and 6, the present corrected invention and the invention of Exhibit A11 have such a relationship that, in connection with starting one game under some conditions and validating stop operation under some conditions, the present corrected invention restricts the conditions of the former to the operation of a start operation means and restricts the conditions of the latter to the detection of the reference position by the reference position detection means after the variable display member has started rotation, whereas the invention of Exhibit A11, which is the invention of a more specific concept with the additional restriction of a validation notification means for informing the validation of stop operation, is an invention with a generic concept with no such restriction.

(1) In light of the above, if the present corrected invention is considered as the prior invention, and if the invention of Exhibit A11 is considered as the later invention, the difference is only in the fact that the matter specifying the prior invention (such as operation of a start operation means), which constitutes a more specific concept in the later invention, is expressed as a generic concept. As such, the two inventions have substantial identity.

(2) In addition, if the present corrected invention is considered as the later invention, and if the invention of Exhibit A11 is considered as the prior invention, starting one game by operating a start operation means is, for example as indicated in Exhibit A1 (JP H2-232084A, especially in the section of [Prior Art] in the right column of page 1), well known in the art in the field of slot machines (hereinafter referred to as "Well-Known Art 3"). Furthermore, the point to the effect that, after all of variable display members have started rotation and until a prescribed time has passed, stop operation of a stop operation means is validated on the condition that all of reference position detection means have detected the reference position, the point to the effect that while stop operation of all of the stop operation means is validated after the prescribed time has passed when the precondition is established, stop operation of none of the stop operation means is validated when the precondition is not established, and the point about informing the validation of stop operation, for example as indicated in Exhibit A20 (JP H3-80038A, especially in lines 25-36, column 6) and Exhibit A21 (JP H2-279183A, especially from line 10, lower right column of page 4 until line 7, upper left column of page 5), is well known in the art in the field of slot machines (hereinafter referred to as "Well-Known Art 4"). As such, the matter specifying the later invention (such as operation of a start operation means) equals to the matter specifying the prior invention with Well-Known Arts 3 and 4 added thereto, and furthermore, since the foregoing does not produce any new effect, both inventions have substantial identity in light of the structures pertaining to the Differences 2, 5, and 6.

[Concerning the Differences 7-9]

Since the Differences 7 through 9 are closely related to one another, they shall be deliberated collectively.

The invention of Exhibit A11 comprises the structure l' (a determination means to determine whether a winning is arising on multiple types of roles based on possibilities of a winning beforehand set on the multiple types of roles).

In light of the above, the present corrected invention and the invention of Exhibit A11 coincide in that both inventions comprise a determination means to determine whether a winning is arising on multiple types of roles, and thus the structure j (an extraction means to extract numerical information), structure k (a definition data storage means), and structure l (determines the applicability of the numerical information which corresponds to any of multiple types of roles), which the present corrected invention comprises, restricts the above determination means as comprising, "when the start operation means is operated, an extraction means to extract numerical information from multiple of numerical information within a prescribed numerical range, and a definition data storage means which stores the definition data defining the corresponding relationship between multiple of numerical information within the prescribed numerical range, and each of multiple types of roles including the big bonus role, the small role, and the re-game role", and restricts the point of "by determining whether the numerical information extracted from the extraction means corresponds to any of the multiple types of roles defined in the definition data, determines whether a winning is arising on the multiple types of roles".

Accordingly, with respect to the structures j, k, and l pertaining to the Differences 7 through 9, it can be said that the relationship between the present corrected invention and the invention of Exhibit A11 is such that, with respect to the above determination means, the present corrected invention is an invention of a more specific concept with the above restrictions added thereto, and the invention of Exhibit A11 is an invention of a generic concept of "determining whether a winning is arising on multiple types of rules based on possibilities of a winning beforehand set on the multiple types of roles."

(1) In view of the above, if the present corrected invention is considered as the prior invention and the invention of Exhibit A11 as the later invention, the two inventions have substantial identity because they are different only in that the matter specifying the prior invention (such as an extraction means for extracting numerical information), which constitutes a more specific concept in the later invention, is expressed as a generic concept.

(2) Also, when the present corrected invention is considered as the later invention and the invention of Exhibit A11 as the prior invention, the fact of comprising, when a start operation means is operated, an extraction means for extracting numerical information out of multiple of numerical information within a prescribed numerical range, and a definition data storage means for storing definition data which define the corresponding relationship between multiple of numerical information within the prescribed numerical range, and each of multiple types of roles including the big bonus role, the small role, and the re-game role, respectively, and the fact of determining whether a winning is arising on multiple types of roles, by determining whether the numerical information extracted from the extraction means corresponds to any of the multiple types of roles defined in the definition data, are well known in the art in the field of slot machines, as for example indicated in Exhibit A2 (JP H4-327877A, especially in paragraphs [0009]-[0011]) and Exhibit A25 (JP H4-307086A,

especially in paragraphs [0008], [0009]) (hereinafter referred to as "Well-Known Art 5"). As such, the matter specifying the later invention (such as an extraction means for extracting numerical information) equals to the matter specifying the prior invention with Well-Known Art 5 added thereto, and since the foregoing does not produce any new effect, the two inventions have substantial identity in light of the structures pertaining to the Differences 7 through 9.

[Concerning the Differences 10 and 11]

The Differences 10 and 11 shall be deliberated collectively since they are closely related to each other.

It can be said that the relationship between the present corrected invention and the invention of Exhibit A11 concerning the Difference 10 is that the present corrected invention is an invention of a more specific concept by being restricted by the structure β, "a definition data storage means which, if the value awarded by the slot machine to a player is lower than the predetermined standard value, stores the definition data at the time of high possibilities of a winning of small role so as to increase only the winning determination rate of the small role in the regular game, and if the value awarded is higher than the predetermined standard value, stores the definition data of a normal time for the small role so as to lower only the winning determination rate of the small role in the regular game" and by the structure γ, "a determination means which, if the value having been awarded is lower than the standard value, determines whether a winning is arising on the small role using the definition data at the time of the high possibilities of a winning in the regular game, whereas if the value having been awarded is higher than the standard value, determines whether a winning is arising on the small role using the definition data at the normal time in the regular game," and that the invention of Exhibit A11 is an invention of a generic concept without such restrictions with respect to a definition data storage means and a determination means.

(1) In view of the above, if the present corrected invention is considered as the prior invention, and the invention of Exhibit A11 as the later invention, the two inventions have substantial identity since the two are different only in that the matter specifying the prior invention (a definition data storage means and a determination means), which constitutes a more specific concept in the later invention, is expressed as a generic concept.

(2) However, if the present corrected invention is considered as the later invention and the invention of Exhibit A11 as the prior invention, the two inventions cannot be considered as having substantial identity because the above structures β and γ pertaining to a definition data storage means and a determination means of the present corrected invention are not well known in the art.

The demandant alleges, on the grounds of

a. The regulations of the time concerning game machines required that a total of the expected value for each role must be over 0.35 medal and below 0.90 medal,

b. Causing variation to the occurrence probability of each role by changing possibilities of a winning is a method which anyone skilled in the art conceives in the design process as is appropriate,

c. The art which is called "centralization of fruits" for maintaining the state of giving awards within a prescribed range by causing variation to possibilities of a winning of the small role (and which greatly enhances

the internal possibilities of a winning of small roles until specific conditions are satisfied) was used in a large number of machines of Machine No. 2 or 3,

d. "New Pulser" (Machine No. 4) which was publicly worked prior to the present patent application is a game machine on which the value-awarding state in a regular game is compared with the standard value, and the result is used to switch between high possibilities of a winning of the small-role state and low possibilities of a winning of the small-role state,

e. The same thing about "New Pulser" can be said of other machines of Machine No. 4, and

f. The fact of comprising an extraction means for extracting numerical information and a definition data storage means, and the fact of determining the winning state of a role by determining whether the numerical information extracted from the extraction means corresponds to any of the roles defined in the definition data are well known in the art,

that the fact of storing the definition data of high possibilities and the definition data of a regular time in a definition data storage means, as well as the fact of determining whether a winning is arising on the small role using these definition data are also well known in the art.

However, it cannot be considered from the above matters of a., b., c., and f., that a game machine for executing or cancelling the "centralization of fruits" by taking into account the value-awarding state was well known in the art.

Also, according to the deliberation of the matters described in the above d., it cannot be considered that the single fact that "New Pulser" was publicly worked prior to the reference date for the application of the present patent (hereinafter referred to as "Reference Date") cannot establish the fact that a game machine which compares the value-awarding state with the standard value in a regular game and, based on the result, switches between high possibilities of a winning of the small role state and low possibilities of a winning of the small role state, was publicly known or publicly worked as of the Reference Date.

The reason for the foregoing is that whether or not the granting of award is compared with the standard value in a regular game and the result is used to switch between high possibilities of a winning of the small role state and low possibilities of a winning of the small role state is not discernable only from playing a game using "New Pulser." Rather, it is discernable only when "New Pulser" is disassembled to analyze a game program or when the development manufacturer makes an announcement of the matter, and furthermore, there is no evidence to suggest that such announcement or analysis took place prior to May 28, 1993, which is the Reference Date, making "New Pulser" publicly known.

Next, Exhibit A34 (column on "Mechanism of Difference Counter") which illustrates "New Pulser" as a game machine which can switch between high possibilities of a winning of the small role state and low possibilities of a winning of the small role state based on the results obtained from comparison of the value-awarding state with the standard value of "New Pulser" in a regular game was published in 1995, and Exhibit A33 (page 114, paragraph 3) was published in 1996, respectively, and although Exhibit A32 (pages 12 and 13) which was published on August 1, 1993 (released on June 22 of the same year) indicates the data of the results of play until the closing time on May 19, there is no mention of possibilities of a winning of the small

role.

Furthermore, based on a deliberation of the matters indicated in above e., Machine No. 4 other than "New Pulser" is, as is also acknowledged by the demandant in lines 1 through 5 of page 25 of the Counter-Statement 2, even the public working of the game machine itself took place on or after the Reference Date, and therefore even if the game machine has similar functions as those of "New Pulser," it cannot affect the substantial identity between the present corrected invention and the invention of Exhibit A11.

[Concerning the Difference 12]

It can be said that the relationship between the present corrected invention and the invention of Exhibit A11 with respect to the Difference 12 is that, in connection with a determination means for determining whether a winning is arising on multiple types of roles, the invention of Exhibit A11 is the invention of a more specific concept by placing the restriction of "when the big bonus winning flag is already set, whether a winning is arising on the big bonus role is not determined" (structure v), and that the present corrected invention is an invention with a generic concept having no such restriction.

(1) In light of the above, if the invention of Exhibit A11 is considered as the prior invention and the present corrected invention as the later invention, the difference is only in the fact that the matter specifying the prior invention, which constitutes a more specific concept in the later invention, is expressed as a generic concept, and therefore the two inventions have substantial identity.

(2) Next, the case in which the invention of Exhibit A11 is considered as the later invention and the present corrected invention is considered as the prior invention is deliberated below.

When determining whether a winning is arising on multiple types of roles, if a bonus flag is already established, the art of not carrying out a drawing for a bonus role is, for example as is shown by the figure about "Flowchart of Determining Big/Centralized/Small Roles" in the upper left corner of page 11 of Exhibit A17 (*Pachisuro Hissho Guide*, published in April 1993), and by the figure about "Mechanism of Role Determination" in the upper left corner of page 10 of Exhibit A18 (*Pachinko Fan*, published in May 1992), and by the description from line 10 of the second row of the same page until line 5 of the third row of the same page to the effect that "once the random calculation is over, it determines whether or not the bonus flag is in an 'ON' state. In other words, in the case of being in the bonus ready-to-win state, there is no need to determine whether or not the bonus will be granted again, so it proceeds directly to the small role determination stage, but if there is no bonus ready-to-win state, or no bonus flag, then it proceeds to the bonus determination", well known in the field of slot machines (hereinafter referred to as "Well-Known Art 6").

As such, the matter specifying the later invention (structure v) equals to the matter specifying the prior invention with Well-Known Art 6 added thereto, and since it does not produce any new effect as a result, the two inventions have substantial identity in connection with the structure pertaining to the Difference 12.

5. Conclusion

As described above, the two inventions have substantial identity pertaining to the structures of the Differences 1 through 9 and the Difference 12, but in connection with the structures pertaining to the Differences 10 and 11, if the present corrected invention is considered as the later invention and the invention

of Exhibit A11 as the prior invention, the above structures β and γ pertaining to a definition data storage means and determination means in the present corrected invention are not well known in the art, and thus the two inventions cannot be considered as identical inventions.

As such, it can be acknowledged that the above structures β and γ produce the effect of "while maintaining the putout rate in a regular game within a prescribed range, controlling the generation of a big bonus and regular bonus based on the timing to extract a random value R and a set value "as indicated in paragraph [0093] of the corrected description, etc.

In conclusion, it cannot be considered that the present corrected invention and the invention of Exhibit A11 are identical, ... and it cannot be said that the present patent is in violation of the provisions of Article 39(2) of the Patent Act.

(73)-1

Relevant portion of Examination Guidelines	Part III, Chapter 5, 2.
Classification of the Case	73: Concerning applicability of unpatentability (Article 32)
Keyword	

1. Bibliographic Items

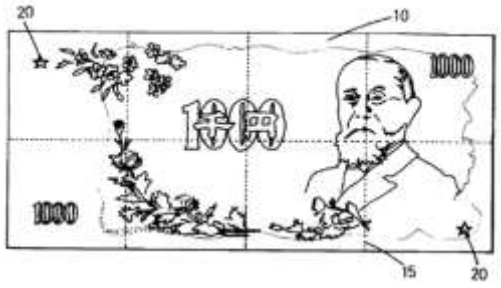
Case	"Paper money" (Appeal against an Examiner's Decision) Tokyo High Court December 25, 1986 (1984 (Gyo KE) No. 251)
Source	Website of Intellectual Property High Court, HANREI JIHO No. 1242, page 110, HANREI TIMES No. 651, page 202
Application No.	Japanese Utility Model Application No. S53-093581 (JP S55-010772U)
Classification	B42D 15/00
Conclusion	Acceptance
Related Provision	Article 32
Judges	Tokyo High Court 18th Civil Division, Presiding Judge: Jiro TAKEI, Judge: Akira TAKAYAMA, Judge: Kishiro KAWASHIMA

2. Overview of the Case

(1) Overview of the present device

A device concerning paper money having the purposes of allowing a blind person to easily and accurately identify paper money, while at the same time making it possible to unify the size and paper quality, etc. of paper money, which differ according to the amount of money, and having the structure in which punch holes of any shape are made thereon while avoiding the crease formed when the paper money is folded in two in the across-the-width direction, or when the paper money is folded in four in a longitudinal direction.

[FIG. 1]



(2) Claim of utility model (present device)

Paper money which is characterized by punch holes of any shape made on the surface while avoiding the crease formed when the paper money is folded in two in the across-the-width direction, or when the paper money is folded in four in a longitudinal direction.

(3) Procedural History

July 7, 1978	:	Patent Application
October 12, 1982	:	Amendment (refer to the above "Claim of utility model")
April 26, 1983	:	Decision of Refusal
May 25, 1983	:	Request for Appeals against an Examiner's Decision of Refusal (Fufuku No. 58-11868)
September 12, 1984	:	Appeal Decision of "The request of the present appeal is dismissed"

3. Portions of Appeal/Trial Decisions relevant to the Holding

<table>
<tr><td colspan="2">Appeal Decision (cited from the Court Decision)</td></tr>
<tr><td colspan="2">...The requester (Plaintiff) alleges, by referring to the effect which is brought about by the present device, that the decision to the effect that this device disturbs public order is wrong, and states that since Article 4 of the Utility Model Act provides for the possible risk concerning the case in which a device for the originally intended purpose disturbs public order, the provision does not include cases such as the case in which public order is disturbed as a result of illicit use of the device for a purpose not originally intended. It should be noted that, as already mentioned in the deliberation of Reason for Refusal 1, paper money and other forms of currency provide the basis of today's social life and economic activities, and once the trust in currency is lost, the disorder which will result would be irreparable, eventually placing a nation at risk of losing its existence. This is why a nation takes tough stance against any act which may jeopardize the trust in currency, takes control of its authority to issue currency, and stipulates in the Penal Code the format, etc. of currency, in addition to strictly prohibiting any act of counterfeiting, forgery, and fraudulent use of currency. In light of the foregoing, the present device, which cannot be worked other than to constitute, or at least having the risk of constituting, an act of violation as stipulated in Articles 148 and 149 of the Penal Code, or which may induce a private person to act as such, must be considered as disturbing public order after all. Furthermore, as long as the law prohibits that the paper money targeted by the present device shall not be altered by an ordinary person, it is evident that when one tries to test the effect of the present invention for actual paper money, it would immediately constitute an act of violation.</td></tr>
<tr><td colspan="2">Decision</td></tr>
<tr><td>Allegations by Plaintiff
2 Concerning violation of public order
The present device concerns paper money, and it is naturally reasonable that the person who can issue paper money having the structure pertaining to the present device, or in other words, the person who can work the present device is the nation alone. The Plaintiff filed an application for the present device from the perspective of social welfare in the hope that</td><td>Allegations by Defendant
2 Concerning violation of public order
As described above, it is virtually impossible to work the paper money in a realistic sense for the present device using the art described in the specification and drawings attached to the present application. Accordingly, if the matter is determined based on a common sense, it is evident that a nation cannot possibly adopt such paper money, and naturally</td></tr>
</table>

the nation adopt paper money having the structure as that of the present device, and the present application was not filed with the intention of the Plaintiff or its related person, etc. to make punch holes on the paper money which is currently in circulation. It is evident without referring to the provisions of Paris Convention concerning patentability of an invention (Article 4quarter) that, even if working of a device is restricted by law, it does not deprive patentability of an invention (registrability of a device) (the fact that working of a device is impossible does not constitute violation of public order). The present appeal decision points out the following as some of the reasons for which the present device has a risk of violating public order: 1. It is almost impossible to work the present device without it constituting, or at least having the risk of constituting, an act of violation under the Penal Code; 2. The present device may motivate a private person to take the aforementioned act of violation; and 3. Trying to confirm the effect of the present device with actual paper money immediately constitutes an act of violation. However, since the present device concerns paper money and is not a device for counterfeit paper money, the above reason 1 stating that the present device cannot be worked without constituting an act of violation under the Penal Code is unreasonable, and furthermore with respect to the point that the reason 3 stating that confirmation of the effect may lead to an act of violation, this reason also has no point in light of the fact that as long as the purpose is confirmation of technical matters, it can be done without having to use actual paper money. In addition, as for the reason 2, whether or not the present device has a structure which solicits an act of violation (crime) is completely unrelated to the technical nature of the present device, and	that an ordinary person cannot lawfully work such device for paper money as the currency which provides the basis for the present social life and economic life. Furthermore, if there is any meaning left of the present device in spite of these circumstances, it would be no other than to motivate a person to perform what would constitute an illegal act if actually carried out by an ordinary private person, or in other words, a crime, of making punch holes on paper money, which is genuine money. The act itself of making punch holes on paper money, which is genuine money in the current distribution process, can be easily performed by any person, and the present device would induce such crime. This point is noted by the Plaintiff himself with respect to the present device, and furthermore, the same would be true even if a star shape or polygon shape is selected as the punch hole. As such, there is no mistake with the Appeal Decision to the effect of judgement that the present device, such as described above, has a risk of violating public order as stipulated in Article 4 of the Utility Model Act.

furthermore, Article 4 of the Utility Model Act provides for the case in which use of a device for its originally intended purpose has a risk of disturbing public order, and thus it should be interpreted that the provision does not cover cases such as the case in which a device is used illicitly for a purpose other than the originally intended purpose and there being a risk of disturbing public order as a result. Otherwise a device concerning this sort of paper money and other forms of currency as well as the manufacturing equipment for the same would always solicit counterfeiting of currency, and furthermore, a device concerning swords and firearms would solicit and promote an act of violence, and thus unfairly resulting in the case in which the aforementioned provision would be applicable. As such, the above reason 2 is unreasonable as well. The Defendant alleges that since the present device has no technical value and cannot possibly be worked in a realistic sense, it has no purpose but to solicit a criminal act, and for this reason the present device cannot avoid inevitably violating public order. However, the above allegation makes an outrageous leap in terms of logic, is far from being understandable, and is unreasonable.	

Judgment by the Court

2 Concerning violation of public order

...The Defendant alleges that it is virtually impossible to work the paper money in a realistic sense for the present device using the art described in the specification and drawings attached to the present application. Accordingly, if the matter is determined based on a common sense, it is evident that a nation cannot possibly adopt such paper money, and naturally that an ordinary person cannot lawfully work such device for paper money as a currency which provides the basis for the present social life and economic life. Therefore, if there is any meaning left of the present device in spite of these circumstances, it would be no other than to motivate a person to perform what would constitute an illegal act if actually carried out by an ordinary private person, or in other words, a crime, of making punch holes on paper money, which is genuine money. However, the fact that it is virtually impossible to work something and the fact that it violates public order are not directly related, and furthermore, considering that the present device is a device which can be used for industrial purposes as explained in the aforementioned finding, it is difficult to consider that there is no possibility whatsoever in

future for a nation to work the present device, and if a person uses the present device as a clue and comes up with the idea of making holes on paper money which had no holes, such fact is completely a different issue from the issue of whether or not the present device is against public order. As such, the above Defendant's allegations are not worth being adopted.

In view of the above, the present device is not a device which is not industrially applicable, or something which is against public order. Accordingly, the Appeal Decision to the effect of finding that the present device is not industrially applicable or is against public order must be considered as being unlawful by wrongfully applying interpretation of the main paragraph of Article 3(1) of the Utility Model Act and the provisions of Article 4 of the same Act, and the Appeal Decision cannot be exempt from revocation.

(73)-2

Relevant portion of Examination Guidelines	Part III, Chapter 5, 2.
Classification of the Case	73: Concerning applicability of unpatentability (Article 32)
Keyword	Public Health

1. Bibliographic Items

Case	"Methods for determining the Apolipoprotein E4 type isotype" (Opposition to the grant of a patent) Ruled on: March 26, 2004 (H16) (Igi 2002-71216)
Source	Publication of decision to grant a patent
Application No.	Japanese Patent Application No. H6-510050 (National Publication of International Patent Application No. H7-502418)
Classification	C12Q 1/68
Conclusion	The patent to be maintained
Related Provision	Article 32
Judges	Presiding Judge: Naoki KAWANO, Judge: Takeshi UKAI, Judge: Seiko TAMURA

2. Overview of the Case

(1) Summary of Claimed Invention

The method is of diagnosing or predicting Alzheimer's disease. The presence of Apolipoprotein E4 type (ApoE4) isotype or ApoE4 shows that the subject is suffering from Alzheimer's disease or is at a risk of developing Alzheimer's disease.

(2) The Claims (The claimed invention)

[Claim 1] A method for detecting the presence or absence of the APOE4 isotype in a biological sample comprising DNA collected from a subject suffering from late-onset Alzheimer's disease or at a risk of developing late-onset Alzheimer's disease comprising:

determining the presence or absence of DNA encoding the Apolipoprotein E4 type (APOE4) isotype by the amplification of said DNA, or

performing an immunoassay using an antibody selectively binding to the APOE4 isotype, detecting whether or not the gene encoding the APOE4 isotype is homozygous in the APOE sample collected from the subject, or determining the presence or absence of APOE4 isotype in said sample by isoelectric focusing.

[Claim 2] The method according to claim 1, wherein the amplification of the DNA is performed by polymerase

chain reaction.

(3) Procedural History

January 11, 2002 (H14)	:	Registration of Establishment of Patent Right
	:	Opposition to the grant of a patent (Igi No. 2003-70728)
November 26, 2003 (H15)	:	Filing of the Demand for Correction by the patent holder (see the above "The Claims")

3. Portions of Appeal/Trial Decisions relevant to the Holding

Decision
5. Regarding Patent Act Article 32 (1) Overview of the assertion made by the opponent The diagnosis of Alzheimer's disease has to be made by a physician taking in consideration the clinical symptoms, imaging diagnosis, examination of cerebrospinal fluid, and pathological diagnosis. Therefore, it is a general consensus of the medical community that the sole result of detecting the presence of APOE4 is not sufficient enough. The diagnosis of Alzheimer's disease is impossible to be made solely by the detection of APOE4. In this regard, claims 1 and 2 of the present application before correction is considered as misleading information. Therefore, claims 1 and 2 of the present application before correction may endanger the public health which could affect the already established diagnosis of hyperlipidemia. Moreover, blood test is not carried out with prior anticipation, but rather, it detects a specific disease among various unspecific diseases. Then, APOE4 will not be determined for those known to be already suffering from Alzheimer' disease, and thus, in this point also, the invention of the present application before correction may endanger the public health. (2) Determination (I) The opponent asserts that Alzheimer's disease cannot be diagnosed only by the detection of APOE4; however, the invention of the present application provides information as if that is possible. However, even in view of the entirety of the specification of the present application, no description that discloses that Alzheimer's disease could be diagnosed definitely only by the detection result of APOE4 of the method of the invention of the present application, in particular, is found, and thus, the assertion made by the opponent cannot be accepted. On the other hand, refer to the above statement regarding the presence of the APOE4 isotype gene showing the possibility of suffering from late-onset Alzheimer's disease or the degree of the risk of developing late-onset Alzheimer's disease by comprehensively revising the experimental results disclosed in the detailed description of the invention of the present application. Then, the methods disclosed in Invention 1 and 2 of the present application are medically valuable in the

point that they could be utilized as an aid to diagnose late-onset Alzheimer's disease in a patient. Then, even if there is a further need to perform other diagnoses for a definite diagnosis, the method of the invention of the present application *per se* qualifies as a diagnosis of late-onset Alzheimer's disease and does not endanger the public health.

(II) Furthermore, inventions 1 and 2 of the present application restrict their subject for examination for "a biological sample comprising DNA collected from a subject suffering from late-onset Alzheimer's disease or at a risk of developing late-onset Alzheimer's disease", and then, it is obvious that they are exclusively used for the prediction of the possibility of the subject suffering from late-onset Alzheimer's disease or the risk of developing late-onset Alzheimer's disease as mentioned above.

Therefore, the methods of inventions 1 and 2 of the present application have a restriction in that the subject of examination and the purpose of the same are related to late-onset Alzheimer's disease, and they are distinguished from the examination performed for the diagnosis of hyperlipidemia by using the same method.

Accordingly, based on these reasons, the assertion made by the opponent stating that it corresponds to the Patent Act Article 32 is unacceptable.

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Relevant portion of Examination Guidelines	Part III, Chapter 5, 2.
Classification of the Case	73: Concerning applicability of unpatentability (Article 32)
Keyword	

1. Bibliographic Items

Case	"Muscle Training Method" (Trial for Invalidation) Intellectual Property High Court Decision, November 30, 2016 (2016 (Gyo KE) No. 10117)
Source	Website of Intellectual Property High Court
Application No.	Japanese Patent Application No. 1993-313943 (JP 1995-144027 A)
Classification	A63B 21/00
Conclusion	Dismissal
Related Provision	Article 32
Judges	IP High Court Second Division, Presiding judge Takashi SHIMIZU, Judge Takashi NAKAMURA, Judge Reiko MORIOKA

2. Overview of the Case

(1) Summary of Claimed Invention

The claimed invention provides a muscle training method that can individually strengthen muscles by effectively generating fatigue in a desired part of the muscles that is the target of the individual strengthening by virtue of moderate blocking of the flow of blood to the desired part of the target muscles with a tightening tool, and reduce the damages to joints and muscles, and further shorten the training time.

(2) The Claims (after correction) (only claim 1 is shown) (The claimed invention 1)

[Claim 1] A muscle training method comprising encircling a selected part of muscles with a tightening tool imparting a tightening force upon the muscle; reducing the circumference of the tightening tool and imposing a load upon the muscles to generate a fatigue of the muscles and thereby enlarge the muscles, said load imposed upon the muscles to generate the fatigue of the muscles blocking blood flow without stoppage of the blood flow.

(3) Procedural History

December 7, 2011 : Request for a trial for a patent invalidation by the plaintiff (Invalidation No. 2011-800252)

May 7, 2012	:	Request for correction by the defendant (see The Claim in the above)
October 17, 2012	:	Acceptance of the correction, and the decision to the effect that “the trial for a patent invalidation is to be dismissed"
-	:	Filing a suit for cancelling a trial decision by the plaintiff (2012 (Gyo-KE) 10400)
August 28, 2013	:	Dismissal of the suit for cancelling a trial decision by the plaintiff
October 31, 2014	:	Request for a trial for a patent invalidation by the plaintiff (Invalidation No. 2014-800175)
April 20, 2016	:	Decision that “the trial for a patent invalidation is to be dismissed”

3. Portions of Appeal/Trial Decisions relevant to the Holding

<table>
<tr><td colspan="2">Trial Decision</td></tr>
<tr><td colspan="2">There is no reason to say that the invention concerned relates to a muscle training method which is liable to contravene public order morality or public health (public order and morality, etc.) and to bring about a serious danger to a living body in ordinary use in view of the purpose (paragraph [0003]) and implementation status (paragraphs [0002], [0011] ~ [0020]) of the invention concerned.
Even though there is no disclosure of the risk prevention means and security means, it cannot be said that either the invention concerned is contrary to public order and morality, etc. or lack of social validity. The fact that the Defendant establishes a qualification system or makes a contract of license agreement with a business person, etc. does not affect determination whether the invention concerned satisfies the provision under Article 32 of Patent Act.
Therefore, it cannot be said that the invention concerned is an invention which is liable to contravene public order and morality, etc.</td></tr>
<tr><td colspan="2">Decision</td></tr>
<tr><td>Allegations by Plaintiff
The original purpose of implementation of the invention concerned is a muscle training normally including an act of treatment, an act of beauty, etc. Thus, the invention concerned lacks social validity in terms of the industrial applicability of the invention.
The invention concerned inhibits the development of industry and lacks social validity because the patent is granted for physiological phenomena itself.
Therefore, there is an error in determination on the grounds for invalidation 4 in the trial decision.</td><td>Allegations by Defendant
The Plaintiff’s allegation does not have any concreteness, and is not understandable in that the invention concerned lacks social validity. For these reasons, Plaintiff’s allegation is unfounded.
Therefore, there is no error in determination on the grounds for invalidation 4 in the trial decision.</td></tr>
<tr><td colspan="2">Judgment by the Court
<u>The invention concerned does not unambiguously bring about a serious danger to a living body, and when</u></td></tr>
</table>

the invention concerned is also used as a treatment method, etc., the required administrative enforcement laws and regulations should be applied on the case. Because of those matters, it does not mean the invention concerned is not allowed to be patented. When the invention concerned is used for an act such as a treatment act, etc. for which a public license is required, it is obvious that such an act is not allowed to do without the license. Therefore, it cannot be said that grant a patent to the invention concerned itself is contrary to Article 32 of Patent Act due to lack of social validity (Regarding whether the invention concerned is susceptible of industrial applicability, …since it was already examined as a reason for invalidation and judged in the previous case, the eligibility for Article 32 of Patent Act is solely examined in this case.).