Trial decision

Invalidation No. 2011-800136

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The decision on the case of the patent invalidation trial between the above parties on Japanese Patent No. 3229297, entitled "MOVABLE BODY OPERATION TENDENCY ANALYSIS METHOD, OPERATION CONTROL SYSTEM, COMPONENT OF SAME, AND RECORDING MEDIUM," dated February 27, 2012 came with a court decision of revocation of the trial decision (2012 (Gyo-Ke) 10129, rendition of decision on October 17, 2012) at the Intellectual Property High Court, the case was proceeded further, and another trial decision was handed down as follows:

Conclusion

In a Request for Correction dated April 15, 2013, correction of claim 9 in

Correction 1, Correction 3 (correction of claim 15), and Correction 5 are approved. Meanwhile, corrections of claims 10 and 11 in Correction 1, correction of claim 11, Correction 2 (correction of claim 11), Correction 4, and Correction 6 are not approved.

The patent regarding the inventions of claims 9 and 15 in Japanese Patent No. 3229297 is invalid.

The costs in connection with the trial shall be borne by the demandee.

Reason

No. 1 History of the procedures

The history of the procedures of Japanese Patent No. 3229297 of the case is as follows:

Patent application filed on October 12, 1999

Registration of Establishment of the Patent Right on September 7, 2001 (20 claims)

Opposition to the patent filed on May 20, 2002 (Oppsition No. 2002-71235)

Request for Correction filed on October 25, 2002 (corrections of claims 1 to 16, and cancellation of claims 17 to 20)

Decision on Opposition issued on January 21, 2003 (correction approved, and patent of claims 1 to 16 maintained)

Trial for Invalidation of the case demanded on August 4, 2011 (Invalidation No. 2011-800136)

Request for Correction filed on September 16, 2011

First Trial Decision (Correction approved. Not invalidated.) issued on February 27, 2012

Action for Suit against Trial Decision (2012 (Gyo-Ke) 10129) filed on April 5, 2012

Judgement rendered on October 17, 2012 (judgement to overturn the trial decision of February 27, 2012)

Petition for Acceptance of Final Appeal (2012 (Gyo-No) 10059) made on October 31, 2012

Dismissal of petition without prejudice on March 12, 2013

Request for Correction alleged on March 15, 2013

Request for Correction filed on April 15, 2013

Written Refutation filed on June 18, 2013

Decision to approve or disapprove amendment issued on July 8, 2013

(Correction allowed)
Written Reply filed on July 24, 2013
Notice of Reasons for Rejecting a Request for Correction issued on August 8, 2013
Written Opinion filed on September 9, 2013

No. 2 Outline of Allegations made by Demandant and Demandee

1. Demandant's allegation

The demandant's allegation is set forth below.

The inventions of claims 9 and 15 of the patent could be easily made by a person skilled in the art according to Evidences A No. 1 to A No. 3 and well-known art. Thus, demandee should not be granted a patent for these inventions in accordance with the provisions of Article 29(2) of the Patent Act, and therefore these patents should be invalidated under provisions of Article 123(1)(ii) of the Patent Act.

<Means of proof>

Evidence A No. 1:	Microfilm of Japanese Utility Model Application No. H03-026831 (Japanese Unexamined Utility Model Application Publication No. H04-123472)
Evidence A No. 2:	Japanese Unexamined Patent Application Publication No. H06-223249
Evidence A No. 3:	Japanese Unexamined Patent Application Publication No. S62-144295
Evidence A No. 4:	Japanese Unexamined Patent Application Publication No. H10-024784
Evidence A No. 5:	Japanese Unexamined Patent Application Publication No. H10-177663
Evidence A No. 6-1:	Japanese Unexamined Patent Application Publication No. H05-150314
Evidence A No. 6-2:	Japanese Unexamined Patent Application Publication No. H05-258144
Evidence A No. 6-3:	Japanese Unexamined Patent Application Publication No. H06-004733
Evidence A No. 6-4:	Japanese Unexamined Patent Application Publication No. H06-300773
Evidence A No. 6-5:	Japanese Unexamined Patent Application Publication No.

H10-063905

Evidence A No. 7: Japanese Unexamined Patent Application Publication No. H09-147159

Evidence A No. 8: Tokyo District Court Decision on November 30, 2011 (2010 (Wa) 40331)

2. Demandee's Allegation

None of the inventions of claims 9 and 15 of the patent could be easily made by a person skilled in the art according to Evidences A No. 1 to A No. 3 and well-known art. Thus, the patent of the case does not fall under Article 123(1)(ii) of the Patent Act and should not be invalidated.

The demandee has also submitted: printed-out copy of Google Search Result display screen (e.g., search result relating to wordings such as "behavior of a vehicle") as Evidences B No. 1-1 to B No. 1-3; copy of a court decision of suit against the trial decision 2011 (Gyo-Ke) 10265 dated April 9, 2012 as Evidence B No. 2; and a copy of pages in "Kojien" (Iwanami Shoten, Publishers.) showing definitions of the wordings "control" and "level" as Evidence B No. 3.

No. 3 Correction

1. Aim of Request for Correction and Matters of Corrections

In the correction requested by the demandee in the Written Correction Request filed on April 15, 2013, the specification of the patent maintained by the Decision on Opposition dated January 21, 2003 (corrected specification dated October 25, 2002; hereinafter referred to as the "Base Specification") is requested to be corrected to the descriptions as given in the corrected specification attached to the Written Correction Request dated April 15, 2013 (hereinafter referred to as the "Corrected Specification"). The requested corrections are set forth below.

(1) Correction 1

Correction 1 is directed to correct the recitation of claim 9 in the scope of claims for patent in the Base Specification, which includes the following corrections.

A. Correction 1-1

The recitation "determining said behavior as the specific behavior" is corrected to "determining said behavior as a specific behavior of which characteristics being determined individually for each operator to analyze operation tendency of the mobile

object."

B. Correction 1-2

The recitation "determining the presence or absence of occurrence of a specific behavior in the behavior of the mobile object detected by said sensor section in accordance with a behavioral condition for determining" is corrected to "determining the presence or absence of occurrence of a specific behavior in the behavior of the mobile object detected by said sensor section in accordance with a collecting condition for collecting information relating to behavior before and after occurrence of the specific behavior for a predetermined period of time by determining."

C. Correction 1-3

The recitation "comprising ... recording means for ... recording, on a predetermined recording medium, information relating to the specific behavior of the corresponding mobile object in accordance with occurrence of said specific behavior, thereby enabling analysis of an operation tendency of said mobile object " is corrected to "comprising ... recording means for ... recording, on a recording medium for an operator of the mobile object, information relating to the behavior compatible with the collecting condition in accordance with occurrence of said specific behavior, thereby enabling analysis of an operation tendency of said mobile object."

D. Correction 1-4

The recitation "the recording medium is a card-like recording medium that is classified in accordance with at least one of identification information of the mobile object, identification information of an operator that operates the mobile object, and behavioral environment of the mobile object, and that is generated on a classification-by-classification basis " is corrected to " the recording medium is a card-like recording medium that is classified in accordance with identification information of said operator or behavioral environment of said mobile object, and that is generated on a classification-by-classification basis."

E. Correction 1-5

The recitation "the card-like recording medium having at least said behavioral condition recorded thereon" is corrected to "the card-like recording medium having at least said collecting condition set thereon."

(2) Correction 2

Correction 2 is directed to correct the recitation "as distinguished from information relating to said specific behavior" of claim 11 in the scope of claims for patent in the Base Specification to "as distinguished from information relating to behavior before and after occurrence of said specific behavior."

(3) Correction 3

Correction 3 is directed to correct the recitation of claim 15 in the scope of claims for patent in the Base Specification, which includes the following corrections.

A. Correction 3-1

The recitation "a collecting condition for collecting information relating to a specific behavior of a mobile object" is corrected to "a collecting condition for collecting information relating to behavior before and after occurrence of the specific behavior by determining behavior of the mobile object as a specific behavior of which characteristics being determined individually for each operator to analyze operation tendency of the mobile object."

B. Correction 3-2

The recitation "a predetermined recording medium" is corrected to "a recording medium for an operator of the mobile object."

(4) Correction 4

Paragraph [0016] of the Base Specification describes:

"A data recorder of the present invention comprises: a sensor section for detecting behavior of a mobile object; and recording means for determining the presence or absence of occurrence of a specific behavior in the behavior of the mobile object detected by said sensor section in accordance with a behavioral condition for determining said behavior as the specific behavior, and recording, on a predetermined recording medium, information relating to the specific behavior of the corresponding mobile object in accordance with occurrence of said specific behavior, thereby enabling analysis of an operation tendency of said mobile object. If the specific behavior is dangerous behavior, the recording means may determine the presence or absence of occurrence of the dangerous behavior based on compatibility between a condition pattern that fixes the condition of the corresponding dangerous behavior and the behavior pattern detected by the sensor section, and the recording means may

record information of the corresponding behavior when the dangerous behavior occurs.

Preferably, the recording means may intermittently record information relating to the behavior of the corresponding mobile object on the recording medium as distinguished from information relating to the specific behavior when determined that no specific behavior has occurred.

The recording medium is a card-like recording medium that is classified in accordance with at least one of identification information of the mobile object, identification information of an operator of the mobile object, and behavioral environment of the mobile object, and that is generated on a classification-by-classification basis, and at least the behavioral condition may be recorded on the card-like recording medium."

The above description is corrected in Correction 4 as follows:

"A data recorder of the present invention comprises: a sensor section for detecting behavior of a mobile object; and recording means for determining the presence or absence of occurrence of a specific behavior in the behavior of the mobile object detected by said sensor section in accordance with a collecting condition for collecting information relating to behavior before and after occurrence of the specific behavior for a predetermined period of time by determining said behavior as the specific behavior of which characteristics being determined individually for each operator to analyze operation tendency of the mobile object and recording, on a recording medium for an operator of the mobile object, information relating to the behavior compatible with the collecting condition in accordance with occurrence of said specific behavior, thereby enabling analysis of an operation tendency of said mobile object, wherein the recording medium is a card-like recording medium that is classified in accordance with identification information of said operator or behavioral environment of said mobile object, and that is generated on a classification-by-classification basis, and the card-like recording medium having at least said collecting condition set thereon.

If the specific behavior is dangerous behavior, the recording means may determine the presence or absence of occurrence of the dangerous behavior based on compatibility between a condition pattern that fixes the condition of the corresponding dangerous behavior and the behavior pattern detected by the sensor section, and the recording means may record information of the corresponding dangerous behavior when the dangerous behavior occurs.

The recording means may intermittently record information relating to the

behavior of the corresponding mobile object on the recording medium as distinguished from information relating to the behavior for a predetermined period of time before and after occurrence of the specific behavior when determined that no specific behavior has occurred."

(5) Correction 5

Paragraph [0020] of the Base Specification describes:

"The recording medium of the present invention is a computer-readable recording medium having digital information recorded thereon, the digital information is causing a computer to execute procedures for: setting a collecting condition for collecting information relating to a specific behavior of a mobile object on a predetermined recording medium; reading recorded information from the recording medium on which information relating to behavior compatible with the set collecting condition is recorded; and analyzing an operation tendency of the corresponding mobile object from the read information."

The above description is corrected in Correction 5 as follows:

"The recording medium of the present invention is a computer-readable recording medium having digital information recorded thereon, the digital information is causing a computer to execute procedures for: setting, on a recording medium for an operator of a mobile object, a collecting condition for collecting information relating to behavior before and after occurrence of a specific behavior for a predetermined period of time by determining behavior of the mobile object as the specific behavior of which characteristics being determined individually for each operator to analyze operation tendency of the mobile object; reading recorded information from the recording medium on which information relating to behavior compatible with the set collecting condition is recorded; and analyzing an operation tendency of the corresponding mobile object from the read information."

(6) Correction 6

In Correction 6, the description of "The second embodiment set forth below" in paragraph [0051] of the Base Specification is corrected to "The embodiment set forth below."

2. Judgment on Purpose of Correction and New Matters

(1) Discussion on Correction 1

Correction 1 is directed to: limit the matters specifying the invention of claim 9

in the scope of claims in the Base Specification; and clarify corrections corresponding to the limitation and unclear recitations. Thus, Correction 1 is directed to: "restriction of claims" prescribed under Article 134-2(1), proviso (i) of the Patent Act; and "clarification of an ambiguous description" prescribed under Article 134-2(1), proviso (iii) of the Patent Act.

Further, Correction 1 is supported by the descriptions of paragraphs in the specification attached to the application, e.g., paragraphs [0006], [0007], [0030], [0038], [0039], [0041], [0043] to [0046], [0048] to [0050], [0066], [0068], [0070], and [0085]. This shows that Correction 1 is made within the scope of the specification or the drawings attached to the application and is not directed to change any of the category, subject, and object of the invention. For this reason, Correction 1 does not practically expand or change the scope of claims.

(2) Discussion on Correction 2

Correction 2 is directed to correct the recitation "as distinguished from information relating to said specific behavior" in the previously presented claim 11 to "as distinguished from information relating to behavior before and after occurrence of said specific behavior" in accordance with Correction 1-2. Thus, the correction is made in accordance with the correction of the quoted claim 9 and is directed to "clarification of an ambiguous description" prescribed under Article 134-2(1), proviso (iii) of the Patent Act.

Further, Correction 2 is supported by the descriptions of paragraphs such as paragraph [0049] in the specification attached to the application. Thus, the correction is made within the scope of the specification or the drawings attached to the application, and is not directed to change any of the category, subject, and object of the invention. For this reason, Correction 2 does not practically expand or change the scope of claims.

(3) Discussion on Correction 3

Correction 3 is directed to limit the matters specifying the invention of claim 15 in the scope of claims in the Base Specification. Thus, Correction 3 is directed to "restriction of claims" prescribed under Article 134-2(1), proviso (i) of the Patent Act.

Further, Correction 3 is supported by the descriptions of paragraphs in the specification attached to the application, e.g., paragraphs [0030], [0039], [0041], [0043] to [0046], [0048] to [0050], [0068], [0070], and [0085]. This shows that Correction 3 is made within the scope of the specification or drawings attached to the

application and is not directed to change any of the category, subject, and object of the invention. For this reason, Correction 3 does not practically expand or change the scope of claims.

(4) Discussion on Correction 4

Correction 4 is directed to correct Detailed Explanation of the Invention in the specification in accordance with the corrections of claims 9, 10, and 11 made in Correction 1. Thus, Correction 4 is directed to "clarification of an ambiguous description" prescribed under Article 134-2(1), proviso (iii) of the Patent Act.

(5) Discussion on Correction 5

Correction 5 is directed to correct Detailed Explanation of the Invention in the specification in accordance with the correction of claim 15 made in Correction 3. Thus, Correction 5 is directed to "clarification of an ambiguous description" prescribed under Article 134-2(1), proviso (iii) of the Patent Act.

(6) Discussion on Correction 6

Correction 6 is directed to correct an apparent typographical error of "Second Embodiment" under "(Third Embodiment)" in paragraph [0051] of the Base Specification to "Embodiment." Thus, Correction 6 is directed to "correction of errors and mistranslation" prescribed under Article 134-2(1), proviso (ii) of the Patent Act.

3. Judgment on Propriety of Correction

Propriety of the corrections of the claims should be judged individually on a claim-by-claim basis if correction is made to restrict the claims for which a trial for invalidation is made. Corrections of other claims and corrections of the specification or the drawings are judged integrally for their propriety. Meanwhile, if corrections of the specification or the drawings clearly relate to certain claims that are demanded for a trial for invalidation and judged individually for the propriety of the corrections, they will be judged integrally with the judgement on propriety of those claims.

(1) Discussion on propriety of Corrections 1 and 2

As set forth above, Correction 1 is directed to restrict the scope of claim 9. Correction 1 is directed to correct only claim 9. However, claims 10 and 11 are the

dependent claims of claim 9 and thus, Correction 1 is also directed to correct claims 10 and 11 in the same manner as claim 9. Further, Correction 1 is directed to restrict the scope of claims and is made within the scope of the matters in the specification or the drawings attached to the application. Thus, Correction 1 does not practically expand or change the scope of claims.

Correction 2 is directed to correct claim 11. This correction is made to clarify ambiguous descriptions and is made within the scope of the matters in the specification or the drawings attached to the application. Thus, Correction 2 does not practically expand or change the scope of claims.

As can be seen from the above, the correction of claim 9 in Correction 1 is legitimate.

Meanwhile, claims 10 and 11 depend from claim 9 restricted by Correction 1 and thus, these claims are also restricted. Since claims 10 and 11 are not demanded a trial for invalidation, the inventions of the corrected claims 10 and 11 should be independently patentable at the time of filing of the patent application so that the correction of claims 10 and 11 (hereinafter referred to as "Corrected Invention 3" and "Corrected Invention 4") are recognized as a legitimate correction (comply with the provisions of Article 126(5) of the Patent Act which is applied mutatis mutandis pursuant to the provisions of Article 134-2(5) of the Patent Act). This can be determined after reviewing the reasons for invalidation of corrected claim 9 asserted by the demandant.

(2) Discussion on propriety of Correction 3

As set forth above, Correction 3 is directed to restrict the scope of claim 15, and claim 15 is corrected within the scope of the matters in the specification or the drawings attached to the application. Thus, Correction 3 is not directed to practically expand or change the scope of the claim.

For this reason, Correction 3 is legitimate.

(3) Discussion on propriety of Corrections 4 to 6

Corrections 4 to 6 are directed to correct Detailed Explanation of the Invention in the specification. Meanwhile, Correction 5 is directed to correct the specification or the drawings clearly related to claim 15 that is demanded a trial for invalidation. Thus, the propriety of Correction 5 is judged integrally with Correction 3. As set forth above, Correction 5 is directed to "clarification of an ambiguous description" prescribed under Article 134-2(1), proviso (iii) of the Patent Act. In addition,

Correction 3 directed to correct claim 15 is legitimate and thus, Correction 5 is also legitimate.

Meanwhile, Corrections 4 and 6 cannot be recognized as corrections of the specification or the drawings clearly related to claims 9 and 15 that are demanded a trial for invalidation. Thus, the propriety of Corrections 4 and 6 are judged integrally with the above corrections of claims 10 and 11.

4. Summary

As can be seen from the above, at least correction of claim 9 in Correction 1, Correction 3, and Correction 5 are directed to the matters prescribed under Article 134-2(1), proviso (i)(iii) of the Patent Act and comply with the provisions of Article 126(3)(4) of the Act which is applied mutatis mutandis in the provisions of Article 134-2(5) of the Act. Thus, these Corrections shall be approved.

The determination of whether the corrections of claims 10 and 11 in Correction 1, Correction 2, Correction 4, and Correction 6 are legitimate or not is made in the statement in "No. 5" set forth below.

No. 4 Judgment on Reasons for Invalidation

Reasons for Invalidation asserted by the demandant have been amended as set forth in the above "No. 2"(1) in the Written Refutation dated June 18, 2013. Thus, the amended Reason for Invalidation will now be studied as follows.

1. Recognition of Corrected Inventions

Claims 9 and 15 are corrected in the Correction. Thus, the inventions of claims 9 and 15 (hereinafter referred to as "Corrected Invention 1" and "Corrected Invention 2") are specified by the corrected claims 9 and 15 as set forth below.

• Corrected Invention 1

"A data recorder comprising:

a sensor section for detecting behavior of a mobile object; and

recording means for determining the presence or absence of occurrence of a specific behavior in the behavior of the mobile object detected by said sensor section in accordance with a collecting condition for collecting information relating to behavior before and after occurrence of the specific behavior for a predetermined period of time by determining said behavior as the specific behavior of which characteristics being determined individually for each operator to analyze operation

tendency of the mobile object and recording, on a recording medium for the operator of the mobile object, information relating to the behavior compatible with the collecting condition in accordance with occurrence of said specific behavior, thereby enabling analysis of an operation tendency of said mobile object,

wherein the recording medium is a card-like recording medium that is classified in accordance with identification information of said operator or behavioral environment of said mobile object, and that is generated on a classification-by-classification basis, and the card-like recording medium having at least said collecting condition set thereon."

• Corrected Invention 2

"A computer-readable recording medium having digital information recorded thereon, the digital information is causing a computer to execute procedures for:

setting, on a recording medium for an operator of a mobile object, a collecting condition for collecting information relating to behavior before and after occurrence of a specific behavior for a predetermined period of time by determining behavior of the mobile object as the specific behavior of which characteristics being determined individually for each operator to analyze operation tendency of the mobile object;

reading recorded information from the recording medium on which information relating to behavior compatible with the set collecting condition is recorded; and

analyzing an operation tendency of the corresponding mobile object from the read information."

2. Described matters in Cited Documents

(1) Japanese Unexamined Patent Application Publication No. S62-144295 (Evidence A No. 3)

Japanese Unexamined Patent Application Publication No. S62-144295 is a publication distributed before filing of the patent (before the priority date) submitted by the demandant as Evidence A No. 3. This relates to a drive control system of a vehicle and discloses the following features together with the drawings.

A. "[Industrial Fields of Application]

The present invention relates to a system for controlling driving status of a driver using a vehicle, and more particularly to a drive control system of a vehicle capable of determining safe speed/reckless driving and grasping a travel distance by classifying into usage of the vehicle (time of travelling).

[Related Art]

Conventionally, Presence or absence of excessive speed and sudden acceleration/deceleration, the number of times of these events, or control of travel distance in accordance with the usage of the vehicle (e.g., for private use, public use, or commuting) have been controlled by a driver driving an automobile or other vehicles. Thus, it has been difficult to evaluate these in an objective way.

If the vehicle is a company-owned car or a car for company use, a need to clarify a control classification or responsibilities is particularly increased, and a reliable drive control system is desired.

[Problem to be solved by the Invention]

The present invention is made in view of the above. A first object of the invention is to provide a system configured to: automatically determine presence or absence of excessive speed and sudden acceleration/deceleration, and the number of times of these events based on a predetermined reference value; and obtain the driver's drive control data by grasping a travel distance by classifying into the usage of the vehicle (e.g., for private use, public use, or commuting).

Besides the above, a second object of the invention is to provide a system configured to obtain data input from other data processing devices integrally together with the driver's drive control data" (page 2, lower left column, line 9 to lower right column, line 17).

B. "Transmission of data from a drive data recording device 2 to the control data processing device 3 can be carried out by, for example, storing the data in an external storage body 1 via a writing unit 10A (reading the data at the control data processing device 3) or transferring the data via a data communication unit 10B" (page 3, lower right column, line 16 to page 4, upper left column, line 1).

C. "[Examples]

A preferred example which applies the drive control system of a vehicle of the present invention to a company-owned car and uses an IC card as an external storage body will now be described by referring to Figs. 3 and 4.

Fig. 3 is a schematic view showing a hardware configuration of the drive control system of a vehicle, comprising: a drive data recording device 2 mounted on a vehicle V; an IC card 1 to which drive data is written by the drive data recording device 2; a magnetic-tape-readout data processing device 4 provided at a business facility or a sales place for reading identification data from an identification data storage unit 1b

of a magnetic stripe of the IC card 1; and a control data processing device 3 provided at facilities such as a control office.

The IC card 1 is provided with a CPU and an IC memory, and comprises a drive data storing unit 1a configured to write drive data thereto, and the identification data storing unit 1b configured to store identification data with the magnetic stripe attached to the outer surface of the card.

In the present example, the identification data storing unit 1b has an operator's identification code (ID code) appropriately pre-written thereto with writing means.

The drive data recording device 2 has a microcomputer configuration including a data reading/writing unit 2a, and has an I/O port, a CPU, and an operation unit 20.

The drive data recording device 2 is connected to a detecting unit 5 via an interface, and the detecting unit 5 being provided at a drive wheel system or a speed indicator of the vehicle V to detect a vehicle speed at predetermined sampling intervals inputs detection signals to the drive data recording device 2.

Those drive data not detected by the detecting unit 5 is configured to be input from a manual input switch 2b (which includes, in the present example, a rotary switch for determining a type of input data and a digital switch for setting a value of the determined type of the input data) at any time.

The drive data recording device 2 is also provided with a clock function 6 including a battery backed-up clock generator which allows clock signals such as date and time to the operation unit 20.

The acquired drive data is then written to the drive data storing unit 1a of the IC card 1 with data input from the manual input switch 2b via a data reading/writing unit 10A of the drive data recording device 2.

When a driver in working is, for example, refueling at a gas station, the identification code stored in the identification data storing unit 1b composed of a magnetic stripe of the IC card 1 is allowed to be read by a magnetic-tape-readout data processing device 41 at the gas station. The read identification code is then integrated with processing data such as fuel amount and charge to be recorded" (page 4, upper left column, line 7 to lower left column, line 19).

D. "As such, the data in association with the driving processed in the magnetic-tape-readout data processing device 4 by the driver using the IC card 1 as a magnetic card is then integrally data-processed or recorded at a control data processing device 3 in accordance with the driver's identification code" (page 4, lower right column, lines 9 to 13).

E. "In the above system, the driver's data can be controlled by the configuration as shown in Fig. 4.

In short, the vehicle speed data input from the detecting unit 5 is input into the operation unit 20 of the recording device 2.

In the operation unit 20, the vehicle speed data is input into a safe speed determination means 13.

The safe speed determination means 13 has a reference speed preset thereto for enforcement of safe driving and is configured to determine whether the input vehicle speed exceeds the reference speed.

The safe speed reference value determined by the safe speed determination means 13 is, for example, divided into two stages of a first reference of over 80 km/h and less than 110 km/h and a second reference of over 110 km/h for determination.

The vehicle speed data is input into speed change rate calculation means 11 such that a speed change rate for a certain period of time can be calculated. A sudden acceleration and deceleration are then determined depending on whether the calculated speed change rate is determined by reckless driving determining means 12 to be the one exceeding a reference change rate preset as a sudden acceleration or the one below a reference change rate set as a sudden deceleration (page 5, upper left column, line 13 to upper right column, line 13).

F. "The driving evaluation means 31 is directed to evaluate driving based on each of the above data. In one example, a safe speed driving evaluation means 33 counts the number of times the speed has exceeded the reference speed determined by the safe speed determination means 13, and calculates a product of the counted number of times and a predetermined coefficient as a point.

Here, the safe speed reference value is set to over 80 km/h and less than 110 km/h for the first reference, and over 110 km/h for the second reference. Thus, the number of times the speed has exceeded each of these references are counted by the safe speed driving evaluation means 31 and a product of each of the counted number of times and a corresponding coefficient is calculated.

Reckless driving evaluation means 32 then counts the number of times of sudden acceleration and deceleration determined by the reckless driving determining means 12, and a product with the corresponding predetermined coefficient is calculated as a point" (page 5, lower right column, lines 1 to 15).

G. "The above configuration is performed in the operation unit 20 of the drive data recording device 2 and an operation unit 30 of the control data processing device 3. The present invention is not intended to limit to one of the above operation units but, in the present example, the driving evaluation means 31 and the subsequent means are processed in the operation unit 30 of the control data processing device 3 (page 6, upper left column, line 15 to upper right column, line 1).

With reference to the above A to G and the drawings, Evidence A No. 3 discloses the following invention (hereinafter referred to as "Invention A-3"):

"A drive control system of a vehicle for controlling driving status of a driver using a vehicle by determining excessive speed and sudden acceleration/deceleration, the system comprising: a drive data recording device 2 mounted on the vehicle; an IC card 1 having a drive data storing unit 1a and an identification data storing unit 1b to which an identification code of the driver is written, wherein the IC card has drive data written thereto by the drive data recording device 2; a magnetic-tape-readout data processing device 4 provided at facilities such as a gas station; and a control data processing device 3 provided at a control office, wherein the drive data recording device 2 has a detecting unit 5 for detecting a vehicle speed connected thereto, an operation unit 20 of the drive data recording device 2 comprises safe speed determining means 13, speed change rate calculation means 11, reckless driving determining means 12, etc, the operation unit 20 is configured to determine whether a vehicle speed data exceeds a reference speed and to determine sudden acceleration/deceleration by comparing a speed change rate obtained from vehicle speed data with a preset reference change rate, these drive data are thus written to the IC card 1 and can be read at a control data processing device 3, an operation unit 30 of the control data processing device 3 comprises a safe speed driving evaluation means 33, a reckless driving evaluation means 32, etc., wherein the number of times the speed has exceeded the reference speed determined by the safe speed determining means 13 is counted to calculate a point and the number of times of sudden acceleration and deceleration determined by the reckless driving determining means 12 is counted to calculate a point, when the driver refuels the vehicle at a gas station, an identification code is allowed to be read from the IC card 1 by a magnetic-tape-readout data processing device 4 at the gas station, and the read identification code is then integrated with data such as fuel amount to be recorded, the data processed in the magnetic-tape-readout data processing device 4 is then integrally data-processed by the control data processing device 3 in accordance with

the driver's identification code."

3. Inventive Step of Corrected Invention 1

(1) Corresponding and Different Features between Corrected Invention 1 and Invention A-3

Corrected Invention 1 will now be compared with Invention A-3.

The "vehicle," "vehicle speed," "detecting unit 5," "excessive speed, sudden acceleration/deceleration," "IC card 1," "drive data recording device 2," "driver's identification code" of Invention A-3 correspond respectively to the "mobile object," "behavior of the mobile object," "sensor section," "specific behavior," "card-like recording medium," "recording means," and "identification information of an operator that operates the mobile object" of Corrected Invention 1. The "detecting unit 5," "IC card 1," and "drive data recording device 2" in the drive control system of a vehicle in Invention A-3 correspond to the "data recorder" of Corrected Invention 1.

Invention A-3 is directed to determine excessive speed and sudden acceleration/deceleration. Thus, Invention A-3 conforms to the requirement of "enabling analysis of an operation tendency of said mobile object" in Corrected Invention 1.

The IC card 1 of Invention A-3 has an identification data storage unit 1b to which an identification code of a driver is written. Thus, Invention A-3 conforms to the requirement of Corrected Invention 1, i.e., "the recording medium is ... classified in accordance with identification information of the operator or behavioral environment of the mobile object, and that is generated on a classification-by-classification basis."

In view of the above, Corrected Invention 1 and Invention A-3 correspond with each other in the following feature.

(Corresponding Feature)

"The data recorder comprising: a sensor section for detecting behavior of a mobile object; and recording means for determining the presence or absence of occurrence of a specific behavior in the behavior of the mobile object detected by said sensor section, and recording, on a predetermined recording medium, information relating to the behavior in accordance with occurrence of said specific behavior, thereby enabling analysis of an operation tendency of said mobile object, wherein the recording medium is a card-like recording medium that is classified in accordance

with identification information of the operator or behavioral environment of the mobile object, and that is generated on a classification-by-classification basis."

Meanwhile, Corrected Invention 1 and Invention A-3 are different from one another in the following features.

(Different Feature 1)

Corrected Invention 1 is directed to: record, on a card-like recording medium, information on the behavior compatible with the collecting condition for collecting information relating to behavior before and after occurrence of the specific behavior for a predetermined period of time; and set the collecting condition on the card-like recording medium. Meanwhile, Invention A-3 does not disclose such a feature.

(Different Feature 2)

Corrected Invention 1 is directed to a specific behavior of which characteristics being determined individually for each operator to analyze operation tendency of the mobile object. Meanwhile, Invention A-3 does not specify such a feature.

(Different Feature 3)

Corrected Invention 1 is directed to recording means which records information relating to behavior on a recording medium for an operator of a mobile object. Meanwhile, Invention A-3 does not specify the recording medium as the one specialized for an operator of a mobile object.

(2) Discussion on Different Features

The above different features will now be discussed as follows.

(Discussion on Different Feature 1)

A. The claim recitation "specific behavior" in Corrected Inventions 1 and 2 indicates "a behavior of a vehicle due to a reckless operation which may lead to an accident" such as behavior of a vehicle upon sudden acceleration. In view of paragraphs [0030], [0034], and [0050], and Figs. 2 and 3 of the Corrected Specification, the determination in Corrected Inventions 1 and 2 of whether "a reckless operation which may lead to an accident" has been carried out is made by, for example, determining whether data such as angular velocity obtained from a sensor section exceeds a predetermined threshold. The claim recitation "a collecting condition" in Corrected

Inventions 1 and 2 indicates a condition for collecting information on a mobile object (vehicle) relating to behavior before and after occurrence of the "specific behavior" for a predetermined period of time. In view of paragraphs [0011] to [0021], [0030] to [0035], [0043], and [0048] to [0070], and Figs. 2, 3, and 5 of the Corrected Specification, the "collecting condition" can be specifically defined as a threshold or a combination of thresholds of acceleration, or limitation such as GPS data further added thereto.

The distinguishing technical significance in collecting information relating to behavior before and after occurrence of the "specific behavior" in Corrected Inventions 1 and 2 will now be described. In the description of paragraph [0050] in the Corrected Specification, "(d) when angular velocity, acceleration, and velocity, which are more than a predetermined threshold value are occurred" is named as timing for determining the occurrence of the "specific behavior." Thus, a feature of determining the occurrence of the "specific behavior" upon, for example, excess of one physical amount over a predetermined threshold is not excluded.

B. Microfilm of Japanese Utility Model Application No. H03-026831 (Japanese Unexamined Utility Model Application No. H04-123472) is a publication distributed before filing of the patent (before the priority date) submitted by the demandant as Evidence A No. 1. This is a document which relates to an invention of a vehicle-drive-data collecting device configured to collect data including historical information on acceleration/deceleration of a vehicle. This document includes a description relating to collection of information on behavior of the vehicle before and after occurrence of the "specific behavior" in Corrected Invention 1, i.e., "a behavior of a vehicle due to a reckless operation which may lead to an accident" as set forth below.

• [Claims of Utility Model; Claim 1]

"A vehicle-drive-data collecting device for collecting vehicle drive data including historical information on acceleration/deceleration of a vehicle to record on a recording medium, the device comprising: the recording medium having a plurality of frequency-recording-areas corresponding to predetermined acceleration/deceleration ranks; converting means configured to convert acceleration/deceleration of the vehicle into one piece of the predetermined acceleration/deceleration rank data; stop detection means configured to detect that the vehicle has stopped; sudden deceleration detection means configured to detect sudden deceleration of a maximum rank or near-maximum rank; vehicle speed degradation

detecting means configured to detect that the vehicle speed has continuously reduced by a predetermined value from the start of deceleration; maximum acceleration/deceleration rank detecting means configured to detect a maximum acceleration/deceleration rank from acceleration/deceleration data converted by said converting means during one cycle, said one cycle starting from a travel of a vehicle or an end of the previous cycle up to the detection by said stop detection means, said sudden deceleration detection means, or said vehicle speed degradation detecting means; and writing means configured to increment data in the frequency-recording-areas of said recording medium corresponding to the maximum acceleration/deceleration rank detected by the maximum acceleration/deceleration rank detecting means."

• Paragraph [0005]

"Thus, the collected vehicle drive data is highly dependent on conditions of a road on which the vehicle is travelling. High-ranked acceleration is likely to be achieved by frequent travelling on general roads and low-ranked acceleration is likely to be achieved by frequent travelling on expressways. For this reason, it is not appropriate to determine that a driver of a vehicle who has travelled frequently with high-ranked acceleration has travelled frequently on expressways, and is not an economical or safe driver compared to a driver of a vehicle who has driven frequently with low-ranked acceleration. Thus, use of the data collected by such a device may not be so effective for the above reason."

• Paragraph [0006]

"In view of the above conventional problems, the object of the present invention is to provide a vehicle-drive-data collecting device capable of collecting vehicle drive data including historical information on acceleration/deceleration effective in grasping the driving status of a driver independent of road conditions."

• Paragraph [0010]

"The examples of the present invention will now be described by referring to the drawings. Fig. 2 shows an example of a vehicle-drive-data collecting device of the present invention configured to collect vehicle drive data including momentarily changing vehicle speed data and travel distance in addition to historical information on sudden acceleration and sudden deceleration."

• Paragraph [0011]

"... the vehicle-drive-data collecting device is coupled to a transmission of a vehicle by a coupling means (not shown), and the device comprises: a travelling sensor 1 configured to generate travelling signals of a frequency corresponding to

vehicle speed of a travelling vehicle; a microcomputer (CPU) 2 configured to have travelling signals sampled and input thereto from the travelling sensor 1; a calendar and clock 3 configured to generate time information showing actual time; and a card connector 5 into/from which an IC memory card 4 is inserted/removed as a recording medium."

• Paragraph [0013]

"... the IC memory card 4 comprises: a card ID area 41 configured to have a card ID written thereto for identification of a card; a setup data area 42 configured to store various types of setup data Ds written by a drive data analyzer described hereinafter; a drive data area 43 configured to have collected vehicle speed data and travel distance data written thereto; and an optional data area 44. In the setup data area 42, acceleration rank data (m/sec^2) of ranks 1 to 8 and deceleration rank data (m/sec^2) of ranks 1 to 8 ... are stored."

• Paragraph [0015]

"Meanwhile, the RAM in the CPU 2 includes areas such as a storage area 22a of the setup data Ds. Data of 1 to 8 acceleration ranks and data of 1 to 8 deceleration ranks are read from the IC memory card 4 and stored in the setup data storage area 22a."

• Paragraph [0017]

"Other jobs to be performed by the CPU 2 is to: determine acceleration and deceleration through an operation based on a travel signal for each predetermined period of time; determine, based on the acceleration rank data and the deceleration rank data, the rank of the maximum acceleration/deceleration in one cycle established under a predetermined condition; ...."

• Paragraph [0049]

"As set forth above, the present invention increments a maximum acceleration/deceleration rank of the preceding one cycle every time the vehicle stops, every time sudden deceleration of a maximum rank or a near-maximum rank is detected, and every time continuous reduction in vehicle speed by a predetermined value from the start of deceleration is detected. With the above feature, the present invention is capable of collecting vehicle drive data including acceleration/deceleration historical information which is effective in grasping the driving status of the driver independent of road conditions."

The vehicle-drive-data collecting device of Evidence A No. 1 is thus configured to record, on the IC memory card which is inserted in and connected to the device,

acceleration rank data and deceleration rank data provided as a criterion for classifying (ranking) acceleration and deceleration of a vehicle to grasp the driver's operation (driving) tendency. The acceleration rank data and the deceleration rank data read from the IC memory card are then stored on the RAM of the CPU to be used for the classification.

Invention A-1 disclosed in Evidence A No. 1 is identical to Invention A-3 in their technical field, i.e., a device configured to collect and record information relating to behavior of a vehicle in order to grasp and analyze the operation (driving) tendency of the driver. The technical problem to be solved by Invention A-1 is also directed to "provide a vehicle-drive-data collecting device capable of collecting vehicle drive data including acceleration/deceleration historical information effective in grasping the driving status of the driver independent of road conditions" in order to more appropriately grasp the operation (driving) tendency of the driver. Meanwhile, Invention A-3 is directed to "provide a system configured to: automatically determine presence or absence of excessive speed and sudden acceleration/deceleration, and the number of times of these events based on a predetermined reference value; and obtain driver's drive control data by grasping a travel distance by classifying into the usage of the vehicle (e.g., for private use, public use, or commuting) (Page 2). Thus, these Inventions share the common feature of providing means for collecting and recording more useful and effective information in analyzing operation (driving) tendency of the driver. In view of the above, it can be assumed that Invention A-1 could have been applied to Invention of A-3 by a person skilled in the technical field of a device configured to collect and record information relating to behavior of a vehicle in order to grasp and analyze the operation (driving) tendency of the driver.

In addition to the above, Evidence A No. 3 discloses "The present invention relates to a system for controlling driving status of a driver using a vehicle, and more particularly to a drive control system of a vehicle capable of determining safe speed/reckless driving and grasping a travel distance by classifying into usage of the vehicle (time of travelling)" (page 2, lower left column, lines 10 to 14). Such a disclosure corresponds to the problem to be solved by the present invention described in paragraphs [0004] to [0007] in the Corrected Specification, i.e., providing a technique for analyzing a mobile object operation tendency which allows accurate grasp of a vehicle operation tendency at the locations where the incidence of traffic accidents is high, thereby preventing occurrence of accidents. Invention A-3 is identical to Corrected Invention 1 in their technical problem, i.e., effectively collecting and recording information relating to a driver's operation tendency of a

vehicle as means for detecting and preventing reckless driving. Thus, a person skilled in the art could have motivated to apply Invention A-1 to Invention A-3 to arrive at Corrected Invention 1.

C. (A) Evidence A No. 4 (Japanese Unexamined Patent Application Publication No. H10-024784) is a document relating to an invention of a vehicle comprising a device for grasping, with a computer, an abnormal status or near-abnormal status brought about by driving. Claim 4 in this document recites "a vehicle comprising a computer configured: to monitor information relating to a driving status obtained from a sensor provided in an interior; and upon occurrence of an abnormal or near-abnormal status brought about by the driving, to store, in storage means or recording means, information relating to the monitored driving status in a period of time extended before and after the period of time of the occurrence and information on a travel environment." Thus, it is obvious that Evidence A No. 4 discloses a technical matter of a device configured to collect and record information relating to behavior of a vehicle, wherein information relating to behavior of the vehicle for a predetermined period of time before and after occurrence of an abnormal status or a near-abnormal status brought about by the driving is collected and recorded.

Evidence A No. 4 discloses "An object of the present invention is to solve the above problem by providing a vehicle or vehicle chart system wherein a vehicle such as an automobile is enabled to ensure safe drive by allowing a computer to constantly grasp an abnormal or near-abnormal status brought about by driving without depending on a driver's knowledge. Another object of the present invention is to provide a vehicle and vehicle chart system along with a vehicle maintenance method configured to inform a driver or a mechanical engineer of accurate information on abnormality brought about by driving of a vehicle such as an automobile or indication of such abnormality, and to always maintain safe driving by performing maintenance on the vehicle in accordance with an urgency level. Another object of the present invention is to provide a vehicle and vehicle chart system wherein a portable information terminal device is used to allow quick acquisition of maintenance information on a vehicle such as an automobile, thereby facilitating maintenance of the vehicle depending on the level of urgency to ensure safe driving at any time" (paragraph [0004]). Evidence A No. 4 also discloses "In order to achieve the above object, the present invention relates to a vehicle such as an automobile comprising a computer configured: to monitor information relating to a driving status obtained

from a sensor provided in an interior; and to store, in a storage means or recording means, information relating to at least the monitored driving status upon occurrence of an abnormal or near-abnormal status brought about by the driving (e.g., a steering wheel, a brake, an accelerator, and an engine itself). The present invention also relates to a vehicle such as an automobile comprising a computer configured to: monitor information relating to the driving status obtained from the sensor provided in the interior; and to store, in the storage means or recording means, information relating to the at least the monitored driving status and information relating to a travel environment upon occurrence of an abnormal status or near-abnormal status brought about by the driving (e.g., a steering wheel, a brake, an accelerator, and an engine itself). Further, the present invention also relates to a vehicle such as an automobile comprising a computer configured to: monitor information relating to the driving status obtained from the sensor provided in the interior; and upon occurrence of an abnormal or near-abnormal status brought about by the driving, to store, in the storage means or recording means, information relating to the monitored driving status in a period of time extended before and after the period of time of the occurrence of the abnormal or near-abnormal status" (paragraph [0005]). As can be seen from the above, the main object of the computer of Evidence A No. 4 is to detect abnormality of a device of a vehicle.

However, the above disclosure does not exclude the fact that the technical matter of Evidence A No. 4 is directed to collect and record information on behavior of a vehicle before and after a certain incident as a criterion. Such a technical matter can be easily recognized from Evidence A No. 4 as well known art (paragraph [0032] of Evidence A No. 4 discloses analyzing operation of a driver irrespective of the abnormality of the device of the vehicle and displaying warning information; thus, collection of information on operation of the driver is not excluded from the disclosure).

The device of Evidence A No. 4 determines, from information on driving obtained from the sensor provided in the vehicle (i.e., information on a steering wheel, a brake, an accelerator, an engine, etc.), presence/absence of occurrence of an abnormal or near-abnormal status brought about by the driving. Specifically, this can be determined from, for example, a combination of lateral acceleration, direction of a steering wheel, and an amount of accelerating or braking force, in accordance with whether a combination of information unreasonable at the time of regular driving has occurred (paragraphs [0005] and [0015], and Fig. 2).

(B) Evidence A No. 5 (Japanese Unexamined Patent Application Publication No. H10-177663) is a document relating to an invention of a data collecting device configured to: collect drive status data of a vehicle in two different cycles; and record the drive status data with low frequency upon normal driving (at a sampling rate) and with high frequency upon abnormal driving associated with detection of an accident signal. Paragraph [0006] discloses "a data collecting device of the present invention comprises: means configured to output desired drive status data of a mobile object by sampling during a first cycle; buffer memory means configured to temporarily store the drive status data; removable external memory means; and control means configured to cause the external memory means to store data sampled in a second cycle slower than the first cycle among the drive status data sampled by data logging means when an accident signal is not detected, and causing the external memory means to store data stored in the buffer memory means when the accident signal is detected. With such a configuration, the data collecting device of the present invention is capable of recording, on an external memory, drive status data collected during the second cycle in normal practice, and recording drive status data collected during the first cycle faster than the second cycle upon occurrence of an accident." Paragraph [0033] discloses "upon detection of the accident signal in step 101, the process proceeds to step 108. The data recorded in the RAM 7 is then transferred into an auxiliary storage unit 8 and a memory card 3, and data collection is terminated. Sampling can be further continued even after detection of the accident signal, thereby allowing recording of data after the accident." The "drive status data" in Evidence A No. 5 refers to "a data signal indicating an operating condition (e.g., waiting, out-of-service, and chartered conditions of a taxi; and a cargo condition of a track) and a drive condition (e.g., speed, shift stage, brake signal, steering signal, engine speed, acceleration signal, yaw rate, temperature, and in-vehicle weight) of a mobile object" (paragraph [0010]). Thus, Evidence A No. 5 can be recognized as a document which discloses a technical matter of collecting and recording information relating to behavior of a vehicle such as a speed for a predetermined period of time before and after occurrence of a traffic accident (i.e., before and after occurrence of the "accident signal," to be precise).

Paragraph [0022] of Evidence A No. 5 further discloses detection of the "accident signal" which is indicated by an airbag activation signal. Meanwhile, an acceleration signal, engine speed, and a brake signal may also be used as an indication. Thus, Evidence A No. 5 can be recognized as a document which discloses a technical matter of applying a threshold to acceleration, and collecting and recording

information relating to behavior of a vehicle before and after the point which exceeds the threshold.

(C) Evidence A No. 6-1 (Japanese Unexamined Patent Application Publication No. H05-150314) is a document which relates to an invention of an in-vehicle image capturing device having a plurality of acceleration sensors and a capturing device within a vehicle, and configured to capture a crash condition (claims and paragraph [0001]). Paragraph [0014] discloses "Each image capturing device serially captures an object in front and back/right and left directions of a vehicle consistently during a vehicle travel, and the captured information is individually output to a recording device. The recording device endlessly records, on a recording medium, captured information output from the image capturing device. Once a predetermined amount of captured information is recorded, previously recorded captured information is successively deleted while recording newly captured information." Paragraph [0015] discloses "The acceleration sensors constantly detect acceleration in front and back/right and left directions of a vehicle. Excess in detection output of the acceleration sensors over a predetermined level causes control means, which has detected such detection output, to determine that a traffic accident such as vehicle crash or collision has occurred. After elapse of a predetermined period of time from that point, a recording operation of the recording device is stopped." Thus, Evidence A No. 6-1 can be recognized as a document which discloses a technical matter of applying a threshold to detection output of the acceleration sensors, and capturing behavior of the vehicle for a predetermined period of time before and after the point which exceeds the threshold (determined as occurrence of a traffic accident).

(D) Evidence A No. 6-2 (Japanese Unexamined Patent Application Publication No. H05-258144) is a document which discloses an invention relating to a digital drive recorder configured to collect and record vehicle drive information such as speed. Claim 1 of this document discloses "A digital drive recorder comprising: speed raw data writing means configured to write speed raw data, generated by said speed measurement means, into said accident analysis data area for a predetermined period of time before and after the time when impact is applied; impact occurrence time writing means configured to write into said accident analysis data area, the time when impact is applied to a vehicle; and braking time writing means configured to write into said accident analysis data area, the time when a braking operation is performed for a predetermined number of times before and after the time when impact is applied

to the vehicle." Paragraph [0007] of this document discloses "the present invention is directed to provide a digital drive recorder capable of recording correct vehicle travelling status directly before and after occurrence of a traffic accident." Paragraph [0010] of this document further discloses "the recording medium 13 is thus capable of recording not only speed compressed data and speed raw data during a predetermined period of time but also the time when impact is applied to the vehicle and the time of braking operation for a predetermined number of times before and after the time when impact is applied to the vehicle. Such a record is then analyzed to regard the time when impact is applied to the vehicle as an accident occurrence time, thereby allowing acknowledgement of speed before and after the accident occurrence time and status of the braking operation." Thus, Evidence A No. 6-2 can be recognized as a document which discloses a technical matter for regarding the time when impact is applied to the vehicle as an accident occurrence time, and collecting and recording information relating to behavior of a vehicle such as a speed for a predetermined period of time before and after the accident occurrence time.

Paragraph [0012] discloses "An impact signal generated by an impact sensor (not shown) in accordance with impact greater than a predetermined value which may be applied to the vehicle upon an accident is inputted into a CPU 11 via an interface (I/F) 12." Thus, upon application of impact to the vehicle, presence/absence of an event which the CPU has recognized as occurrence of a traffic accident can be determined specifically in accordance with, for example, presence or absence of a signal generated by the impact sensor having a predetermined threshold.

(E) Evidence A No. 6-3 (Japanese Unexamined Patent Application Publication No. H06-004733) is a document which discloses an invention relating to a device for collecting vehicle accident analysis data configured to collect effective data for analyzing a vehicle accident. Following is the descriptions regarding data collection and recording disclosed in this document.

• Claim 1

"A device for collecting vehicle accident analysis data, comprising: inter-vehicle distance detecting means configured to detect distance between an own vehicle and a detected object, and output a distance signal; vehicle speed detecting means configured to detect speed of the own vehicle and output a vehicle speed signal; approach warning determination means configured to output a warning signal by determining, based on the distance signal and the vehicle speed signal from said inter-vehicle distance detecting means and said vehicle speed detecting means,

approach close enough to cause a risk of collision; acceleration detecting means configured to detect acceleration provided for the vehicle and to output an acceleration signal; rewritable storing means; crash detecting means configured to detect a crash based on the acceleration signal generated by said acceleration detecting means and to generate a crash signal; and writing means configured to write, on said storing means, data obtained by incorporating said vehicle speed signal and acceleration signal during a first certain period of time from occurrence of the warning signal output from said approach warning determination means and during a second certain period of time from occurrence of the crash signal generated from said crash detecting means."

- Paragraph [0007]

"The present invention is directed to provide a device for collecting vehicle accident analysis data configured to collect data before and after an accident and facilitate accident analysis."

- Paragraph [0011]

"With the above configuration, the approach warning determination means 13 determines that approach close enough to cause a risk of collision has occurred and outputs a warning signal c based on a distant signal *a* and a vehicle speed signal *b* respectively output from the inter-vehicle distance detecting means 11 configured to detect a distance between the own vehicle and the detected object, and the speed detecting means 12 configured to detect vehicle speed of the own vehicle. The acceleration detecting means 15 provided in the vehicle detects the acceleration and outputs an acceleration signal *d*. The crash detecting means 19 detects crash and generates a crash signal *h* based on the acceleration signal *d* generated by the acceleration detecting means. The writing means 16c writes, on the storing means 16b, data obtained by incorporating the vehicle speed signal *b* and the acceleration signal *d* during a first certain period of time from occurrence of the warning signal *c* output from the approach warning determination means 13 and during a second certain period of time from occurrence of the crash signal *h* generated from the crash detecting means 19."

In view of the above, Evidence A No. 6-3 can be recognized as a document which discloses a technical matter of determining the point of generation of the crash signal *h* as a moment of crash, and collecting and recording information relating to behavior of the vehicle for a predetermined period of time before and after the moment. Evidence A No. 6-3 discloses generating the warning signal *c* by determining risk of collision based on speed and the distance between the own vehicle

and the detected object such as other vehicles. Here, recording of information on behavior of the vehicle is started at the time of generation of the warning signal *c*.

Paragraph [0015] discloses "15 represents acceleration (G) detecting means provided at four points, i.e., front and back/right and left, of the vehicle, which is configured to detect acceleration (G) and output the acceleration signal." Paragraph [0016] discloses "19 represents crash detecting means which may comprise a comparator, to which the acceleration signal *d* generated from the acceleration detecting means 15 is inputted to generate the crash signal *h* in accordance with the acceleration signal *d* of magnitude corresponding to ±0.4G." Thus, upon application of impact to the vehicle, presence/absence of an event which the CPU has recognized as a traffic accident can be determined in accordance with whether the acceleration signal (magnitude of acceleration) generated by the acceleration detecting means provided in the vehicle exceeds a predetermined threshold.

Evidence A No. 6-4 (Japanese Unexamined Patent Application Publication No. H06-300773) is a document which discloses an invention relating to a traffic accident data recording device, and Evidence A No. 6-5 (Japanese Unexamined Patent Application Publication No. H10-063905) is a document which discloses an invention relating to a driving recorder. These documents also disclose technical matters of collecting and recording information relating to behavior of a vehicle for a predetermined period of time before and after occurrence of a traffic accident and occurrence of crash. Further, these documents also adopt a configuration for determining presence or absence of occurrence of the traffic accident in accordance with whether a value detected by the acceleration sensors provided in the vehicle exceeds a predetermined threshold.

(F) Considering all the above statements in (B) to (E), the following features are well known to one skilled in the technical field of a device for collecting and recording information relating to behavior of a vehicle at the priority date of the present case:

collecting and recording information relating to behavior of a vehicle for a predetermined period of time before and after occurrence of a traffic accident; and

determining whether a traffic accident has occurred depending on whether acceleration detected by the acceleration sensors provided in the vehicle exceeds a predetermined threshold, or whether acceleration of the vehicle has exceeded a predetermined threshold instead of depending on presence or absence of an airbag activation signal.

As set forth above, the "specific behavior" in Corrected Inventions 1 and 2 refers

to "a behavior of a vehicle due to a reckless operation which may lead to an accident" and occurrence of a traffic accident is not an underlying premise (i.e., a case without occurrence of a traffic accident may also be included). However, in view of paragraphs [0030], [0034], and [0050], and Figs. 2 and 3 of the Corrected Specification, Corrected Inventions 1 and 2 are directed to determine the presence/absence of the "specific behavior" in accordance with whether data such as angular velocity obtained from a sensor section exceeds a predetermined threshold. Thus, if focused on the performance of the device, the configuration in Corrected Inventions 1 and 2 to collect and record information for a predetermined period of time before and after occurrence of the "specific behavior" is not substantially different from the configuration of the well known art to collect and record information for a predetermined period of time before and after occurrence of the "traffic accident."

In addition, the above well known art and Invention A-3 belong to the same technical field and thus, the former can be applied to the latter without great difficulty. For this reason, a person skilled in the art could have applied the above well know art to Invention A-3 at the time of the priority date of the case to easily arrive at the configuration of collecting and recording information relating to behavior of a vehicle for a predetermined period of time before and after occurrence of the "specific behavior" specified in Corrected Inventions 1 and 2.

Evidence A No. 4 also discloses a technical matter of: determining from information such as lateral acceleration obtained from a sensor in a vehicle, presence/absence of occurrence of an abnormal or near-abnormal status brought about by driving; and collecting and recording information relating to behavior of the vehicle for a predetermined period of time before and after occurrence of such abnormal or near-abnormal status (above (A)). Thus, if focused on the common feature in the performance of the device, one could also have arrived at the above conclusion.

D. In view of the above, a person skilled in the art could have easily arrived at the configuration of Different Feature 1 between Invention A-3 and Corrected Invention 1 (i.e., configuration of recording on/setting to a recording medium, information on the behavior compatible with the collecting condition for collecting information relating to behavior of a vehicle before and after occurrence of the "specific behavior" for a predetermined period of time) at the time of the priority date of the case by applying the following to Invention A-3: Invention A-1 for recording on/setting to a recording

medium, condition for collecting information relating to behavior of a vehicle before and after occurrence of the "specific behavior"; and well known art disclosed in Evidences A No. 4, A No. 5, and A No. 6-1 to A No. 6-5 for collecting information relating to behavior of a vehicle for a predetermined period of time before and after occurrence of a certain incident (e.g., traffic accident) corresponding to the "specific behavior."

(Discussion on Different Feature 2)

A. The configuration of Difference 2 in Corrected Invention 1 includes the limitation "for analyzing operation tendency of the mobile object" to the "specific behavior." Meanwhile, Invention A-3 is also directed to determine excess speed and sudden acceleration/deceleration, and includes requirement "enabling analysis of an operation tendency of the mobile object" of Corrected Invention 1. The "excess speed and sudden acceleration/deceleration" of Invention A-3 corresponds to the "specific behavior" of Corrected Invention 1 and thus, the "specific behavior" of Invention A-3 also comprises the limitation "to analyze operation tendency of the mobile object."

B. Meanwhile, Japanese Unexamined Patent Application Publication No. H06-223249, which is a publication distributed before filing of the patent (before the priority date) submitted by the demandant as Evidence A No. 2, is a document which discloses an invention relating to an automobile radar system configured to record an event of an operation of an automobile. This publication relates to a process for setting condition for collecting information on behavior of a vehicle and includes the following descriptions.

- Paragraph [0008]

"The preferred example of the present invention is particularly used by combining with an automobile radar system, and provides a removable, externally readable, non-volatile solid-state memory event recording apparatus (ERA data storage card) that records selectable information relating to, for example, vehicle performance, operational status, and environment. The ERA (event recording apparatus) particularly records information useful for accident analysis."

- Paragraph [0018]

"Fig. 2 is a detailed block diagram of the ERA system of the example of the invention. A RAM card 20 is connected to a microcontroller 22 via an interface receptacle 21."

- Paragraph [0043]

"The RAM card is removable...."

• Paragraph [0047]

"This aspect of the invention can also be used to 'customize' or 'personalize' the operational characteristics of a vehicle to a driver's preferences. For example, each driver of a fleet vehicle or bus can use the RAM card 20 to upload into the vehicle the driver's preferences relating to desired headway distance, warning thresholds, or any other parameter that can be set through a vehicle's electronic control system."

C. In view of the above, Evidence A No. 2 can be recognized as a document which discloses: an invention of an event recording apparatus (ERA) of a vehicle, wherein a computer and a removable RAM card (20) is used to set desired headway distance, warning thresholds, or any other parameter that can be set through a vehicle's electronic control system, i.e., invention for changing the parameter recorded on the RAM card, recording the changed parameter on the RAM card, and applying the changed parameter to the ERA (Invention A-2).

Paragraph [0047] of Evidence A No. 2 discloses that Invention A-2 is capable of uploading into the vehicle, the driver's preferences relating to headway distance, warning thresholds, or any other parameter that can be set through a vehicle's electronic control system, i.e., the parameter is set for each driver or each operator.

Invention A-2 relates to a device for collecting and recording information relating to behavior of a vehicle which is similar to Invention A-3 in their technical field. Further, a person skilled in the art who has viewed Evidences A No, .1 to A No. 3 could have applied Invention A-2 to Invention A-3 to replace the feature of the specific behavior with behavior determined for each operator.

Thus, a person skilled in the art could have easily conceived that the feature of the specific behavior can be replaced with behavior determined for each operator as the feature of Corrected Invention 1 in Different Feature 2 by applying Invention A-2 to Invention A-3.

(Discussion on Different Feature 3)

Paragraph [0043] of Evidence A No. 2 discloses "each driver ... could be given a personalized RAM card 20." Thus, Invention A-2 discloses that the RAM card is a RAM card personalized for each driver. Also, as discussed in the above "(Discussion on Different Feature 2)," one could have induced to apply Invention A-2 to Invention A-3. In view of this, a person skilled in the art could have applied Invention A-2 to Invention A-3 in order to arrive at the configuration of Corrected

Invention 1 in Different Feature 3.

(4) Summary

As set forth above, a person skilled in the art could have easily arrived at Corrected Invention 1 at the time of the priority date of the case by applying the following inventions to Invention A-3: Invention A-1; Invention A-2; and well known art disclosed in Evidences A No. 4, A No. 5, and A No. 6-1 to A No. 6-6 which is directed to collect information relating to behavior of a vehicle for a predetermined period of time before and after occurrence of a certain incident (e.g., traffic accident) corresponding to the "specific behavior." Thus, demandee should not be granted a patent for Corrected Invention 1 under the provisions of Article 29(2) of the Patent Act.

4. Inventive Step of Corrected Invention 2

(1) Corresponding and Different Features between Corrected Invention 2 and Invention A-3

Corrected Invention 2 will now be compared with Invention A-3.

The "vehicle," "excessive speed, sudden acceleration/deceleration," "drive data," "IC card 1," and "control data processing device 3" of Invention A-3 correspond respectively to the "mobile object," "specific behavior," "information relating to the behavior," "recording medium," and "computer" of Corrected Invention 2.

Invention A-3 discloses that: drive data written to an IC card 1 is read at a control data processing device 3; an operation unit 30 of the control data processing device 3 counts the number of times the speed has exceeded a reference speed determined by the safe speed determining means 13 to calculate a point, and counts the number of times of sudden acceleration/deceleration determined by reckless driving determining means 12 to calculate a point. Thus, Invention A-3 conforms to the requirement of "causing a computer to execute procedures for" "reading recorded information from a recording medium on which information relating to the behavior is recorded" and "analyzing an operation tendency of the corresponding mobile object from the read information."

In view of the above, Corrected Invention 2 and Invention A-3 correspond with each other in the following feature.

(Corresponding Feature)

"A computer-readable recording medium having digital information recorded

thereon, the digital information is causing a computer to execute procedures for: determining behavior of a mobile object as a specific behavior and reading recorded information from the recording medium on which information relating to the behavior is recorded; and analyzing an operation tendency of the corresponding mobile object from the read information."

In contrast, Corrected Invention 2 and Invention A-3 are different from each other in the following feature.

(Different Feature 4)

Corrected Invention 2 is directed to: cause a computer to execute procedures for setting, on a recording medium, a collecting condition for collecting information relating to behavior before and after occurrence of a specific behavior for a predetermined time period. Meanwhile, Invention A-3 does not disclose such a feature.

(Different Feature 5)

Corrected Invention 2 is directed to: a specific behavior is a behavior of which characteristics being determined individually for each operator to analyze operation tendency of a mobile object. Meanwhile, Invention A-3 does not specify such a feature.

(Different Feature 6)

Corrected Invention 2 is directed to: a procedure for setting information relating to behavior on a recording medium for an operator of a mobile object. Meanwhile, the recording medium of Invention A-3 is not specified as the one for an operator of the mobile object.

(2) Discussion on Different Features

The above Different Features will now be discussed below.

(Discussion on Different Feature 4)

A. As discussed in "(Discussion on Different Feature 2)" in the above 3, (2), Evidence A No. 2 discloses an invention of an event recording apparatus (ERA) of a vehicle, wherein a computer and a removable RAM card (20) is used to set desired headway distance, warning thresholds, or any other parameter that can be set through a

vehicle's electronic control system, i.e., invention for changing the parameter recorded on the RAM card, recording the changed parameter on the RAM card, and applying the changed parameter to the ERA (Invention A-2).

Invention A-2 relates to a device for collecting and recording information relating to behavior of a vehicle which belongs to the same technical field as Invention A-3. The following feature cannot be distinguished from the technical subject matter of Invention A-2 which is a recording device configured to record information relating to behavior of a vehicle, the device having a blackbox-specific function for recording information useful for analyzing an accident (paragraphs [0001] to [0007] of Evidence A No. 2): (feature of) allowing a computer to execute procedures to change the parameter recorded on a recording medium such as a removable RAM card, record the changed parameter on the RAM card, and apply the changed parameter to the collecting/recording device. Thus, a person skilled in the art who has viewed Evidences A No. 1 to A No 3 could have induced to apply Invention A-3 to Invention A-2, Invention A-3 being directed to a technical subject matter "providing a system configured to: automatically determine presence or absence of excessive speed, sudden acceleration/deceleration, and the number of times of these events based on a predetermined reference value; and obtain driver's drive control data by grasping a travel distance by classifying into usage of the vehicle (e.g., for private use, public use, or commuting)."

B. Thus, a person skilled in the art could have easily arrived at the configuration of Different Feature 4 between Invention A-3 and Corrected Invention 2 at the time of the priority date of the case by applying following inventions to Invention A-3; Invention A-1, Invention A-2, and well known art disclosed in Evidences A No. 4, A No. 5, and A No. 6-1 to A No. 6-5 (the above statements in 3, (1), C., (F)).

(Discussion on Different Feature 5)

In Different Feature 5, Corrected Invention 2 is directed to a specific behavior of which characteristics being determined individually for each operator to analyze operation tendency of the mobile object. Such a feature is not specified in Invention A-3. This is substantially the same as Different Feature 2.

As discussed in "(Discussion on Different Feature 2)" in the above 3, (2), a person skilled in the art could have easily arrived at the configuration of Corrected Invention 2 in Different Feature 5 in which characteristics of the specific behavior is determined individually for each operator by applying Invention A-2 to Invention

A-3.

(Discussion on Different Feature 6)

In Different Feature 6, the "recording medium" of Corrected Invention 2 is specified as "a recording medium for an operator of the mobile object" which is different from Invention A-3. Thus, Different Feature 6 is substantially the same as Different Feature 3.

As discussed in "(Discussion on Different Feature 3)" in the above 3, (2), a person skilled in the art could have easily arrived at the configuration of Corrected Invention 2 in Different Feature 6 by applying Invention A-2 to Invention A-3.

(4) Summary

As set forth above, a person skilled in the art could have arrived at Corrected Invention 2 at the time of the priority date of the case by applying the following inventions to Invention A-3: Invention A-1; Invention A-2; and well known art disclosed in Evidences A No. 4, A No. 5, and A No. 6-1 to A No. 6-6 which is directed to collect information relating to behavior of a vehicle for a predetermined period of time before and after occurrence of a certain incident (e.g., traffic accident) corresponding to the "specific behavior." Thus, demandee should not be granted a patent for Corrected Invention 2 under the provisions of Article 29(2) of the Patent Act.

No. 5 Corrections of claims 10 and 11

As discussed above in "No. 4, 3, Inventive Step of Corrected Invention 1," a person skilled in the art could have easily arrived at the invention of corrected claim 9 based on the inventions disclosed in Evidences A No. 1 to A No. 3 and well known art disclosed in Evidences A No. 4, A No. 5, and A No. 6-1 to A No. 6-6. Thus, independent requirements for patentability of the invention of corrected claim 10 (Corrected Invention 3) and the invention of corrected claim 11 (Corrected Invention 4) will now be discussed below.

1. Independent Requirements for Patentability of Corrected Invention 3

(1) Corrected Invention 3

Corrected Invention 3 is specified by the corrected claim 10 as set forth below.

"The data recorder according to claim 9, wherein said specific behavior is dangerous behavior, and said recording means may determine the presence or absence

of occurrence of said dangerous behavior based on compatibility between a condition pattern that fixes the corresponding dangerous behavior and the behavior pattern detected by said sensor section, and the recording means may record information of the corresponding behavior when the dangerous behavior occurs."

(2) Comparison Regarding Corrected Invention 3

Upon comparison between Corrected Invention 3 and Invention A-3, Corrected Invention 3 cites Corrected Invention 1 and thus, they are different as stated in Differences 1, 2, and 3 in the above "No. 4, 3, (1) Corresponding and Different Features between Corrected Invention 1 and Invention A-3."

Claim 10 includes limitation "said specific behavior is dangerous behavior, and said recording means may determine the presence or absence of occurrence of said dangerous behavior based on compatibility between a condition pattern that fixes the corresponding dangerous behavior and the behavior pattern detected by said sensor section, and the recording means may record information of the corresponding behavior when the dangerous behavior occurs." In view of this, such a limitation is made only to limit the "specific behavior" to "dangerous behavior."

The above limitation will now be further discussed. In view of the [Problem to be Solved by the Invention], [Embodiments], and [Fig. 7] of the Corrected Specification, it is evident that the "specific behavior" of Corrected Invention 3 includes "sudden acceleration" and "sudden braking." Thus, "sudden acceleration/deceleration" of Invention A-3 corresponds to the "dangerous behavior" of Corrected Invention 3.

Consequently, it can be recognized that Invention A-3 includes the configuration limited in claim 10. Thus, Corrected Invention 3 and Invention A-3 are not substantially different in the limitation of claim 10 but are different only in Different Features 1, 2, and 3.

(3) Discussion on Different Features

Discussions on Different Features 1, 2, and 3 are made in the above "No. 4, 3, (2) Discussion on Different Features."

(4) Summary

Thus, as discussed above in "No. 4, 3, (2) Discussion on Differences," a person skilled in the art could have easily arrived at Corrected Invention 3 from the inventions disclosed in Evidences A No. 1 to A No. 3 and well known art.

Thus, demandee should not be granted a patent independently for Corrected Invention 3 under the provision of Article 29(2) of the Patent Act at the time of filing the application.

2. Independent Patentability Requirement of Corrected Invention 4

(1) Corrected Invention 4

Corrected Invention 4 is specified by the corrected claim 11 as set forth below.

"The data recorder according to claim 9, wherein said recording means intermittently records information relating to the behavior of the corresponding mobile object on said recording medium as distinguished from information relating to behavior before and after occurrence of said specific behavior when determined that no specific behavior has occurred."

(2) Comparison Regarding Corrected Invention 4

Upon comparison between Corrected Invention 4 and Invention A-3, Corrected Invention 4 cites Corrected Invention 1 and thus, they are different as stated in Different Features 1, 2, and 3 in the above "No. 4, 3, (1) Corresponding and Different Features between Corrected Invention 1 and Invention A-3." They are also different from each other in the following feature.

(Different Feature 7)

Corrected Invention 4 comprises the feature "intermittently records information relating to the behavior of the corresponding mobile object on said recording medium as distinguished from information relating to behavior before and after occurrence of said specific behavior when determined that no specific behavior has occurred." Meanwhile, such a feature is not disclosed in Invention A-3.

(3) Discussion on Different Features

A. Discussions on Different Features 1, 2, and 3 are made in the above "No. 4, 3, (2) Discussion on Different Features."

B. Different Feature 7 will now be discussed below.

Japanese Unexamined Patent Application Publication No. H10-177663 (Evidence A No. 5) is a publication distributed before the priority date of the patent submitted by the demandant as Evidence A No. 5. This publication discloses the following:

• [Claim 1]

"A data collecting device for collecting drive status data, the device being mounted on a mobile object, comprising:

means configured to output desired drive status data of the mobile object by sampling in a first cycle;

buffer memory means configured to temporarily store the drive status data;

removable external memory means; and

control means configured to cause the external memory means to store data sampled in a second cycle slower than the first cycle among the drive status data sampled by data logging means when an accident signal is not detected, and causing the external memory means to store data stored in the buffer memory means when the accident signal is detected."

• Paragraph [0034]

"If an accident signal is not detected, the operation ends after collecting data for a predetermined period of time (e.g., a day or a week). The recorded memory card 3 is then removed from the data collecting device 1 by a driver or a controller to be attached to a memory card input/output unit 10 of a fixed station subsystem 2. The data recorded on the memory card 3 is immediately read by the data processing unit 11 and stored in the drive data storing unit 14."

• Paragraph [0035]

"As set forth above, high-speed sampling data and low-speed sampling data are usually stored on a memory card every two seconds (a second cycle). Data such as date and time are stored every one minute (a third cycle). Upon occurrence of an accident, high-speed sampling data in 0.2-second cycle (a first cycle) is stored."

In view of the flowchart of [Fig. 3] and the above statements, Evidence A No. 5 discloses the following invention (hereinafter referred to as "Invention A-5").

(Invention A-5)

"A data collecting device of a vehicle configured to cause the external memory means to store drive status data sampled in a second cycle slower than the first cycle when an accident signal is not detected, and causing the external memory means to store data sampled in the first cycle when the accident signal is detected."

C. Invention A-5 belongs to the same technical field as Invention A-3 in the feature of a device which is configured to collect and record information relating to behavior of

a vehicle (drive status data). Invention A-3 is also directed to a detecting unit configured to detect drive data at predetermined sampling intervals and input signals to a recording device (Evidence A No. 3, page 4, upper right column, lines 14 to 18). A person skilled in the art could have easily arrived at the feature of Corrected Invention 4 in Different Feature 7 by applying Invention A-5 to Invention A-3, thereby allowing a person skilled in the art who has viewed Inventions A-3 and A-5 to effectively utilize the capacity of the storage device and to provide more detailed information on the specific behavior compared to those in a usual status.

(4) Summary

As discussed above in (3) and "No. 4, 3, (2) Discussion on Different Features," Corrected Invention 4 could have easily made by a person skilled in the art based on the inventions disclosed in Evidences A No. 1 to A No. 3 and A No. 5, and well known art.

Thus, demandee should not be granted a patent independently for Corrected Invention 4 under provisions of Article 29(2) of the Patent Act at the time of filing the application.

3. Validity of Corrections

(1) Correction 1

As discussed above in "No. 3, 2(1) and 3(1)," Correction 1 is made under Article 134-2(1), proviso, (i) and (iii) of the Patent Act and complies with Article 126(3) and (4) of the Patent Act which is applied mutatis mutandis pursuant to Article 134-2(5) of the Patent Act.

However, a trial for invalidation is not demanded for claims 10 and 11 corrected in Correction 1, and as discussed in the above "1. and 2.," demandee should not be granted a patent independently for both the corrected inventions of claims 10 and 11 at the time of filing the application. Thus, the corrected inventions of claims 10 and 11 does not conform with the provision of Article 126(5) of the Patent Act which is applied mutatis mutandis pursuant to Article 134-2(5) of the Patent Act, and corrections of claims 10 and 11 in Correction 1 cannot be permitted.

(2) Correction 2

As discussed above in "No. 3, 2(2) and 3(1)," Correction 2 is directed to correct claim 11 under Article 134-2(1), proviso, (iii) of the Patent Act, and complies with Article 126(3) and (4) of the Patent Act which is applied mutatis mutandis pursuant to

Article 134-2(5) of the Patent Act.

However, as discussed in the above "1." and "2.," corrections of claims 10 and 11 in Correction 1 cannot be permitted. The correction of claim 11 in Correction 2 is also not permitted because corrections of claims that are not demanded for a trial for invalidation should be judged integrally for their propriety, and corrections of claims 10 and 11 in Correction 1 cannot be permitted as set forth above.

(4) Correction 4

As discussed above in "No. 3, 2(4)," Correction 4 is directed to correct Detailed Explanation of the Invention in the specification in accordance with Correction 1. Thus, Correction 4 is directed to "clarification of an ambiguous description" prescribed under Article 134-2(1), proviso (iii) of the Patent Act.

However, corrections of claims and corrections of the specification or the drawings that are not demanded for a trial for invalidation should be judged integrally for their propriety, and as set forth above in (1), corrections of claims 10 and 11 in Correction 1 cannot be permitted. Accordingly, Correction 4 directed to correct the specification in accordance with Correction 1 is also not permitted.

(6) Correction 6

As discussed above in "No. 3, 2(6)," Correction 6 is directed to "correction of errors and mistranslation" in the specification prescribed under Article 134-2(1), proviso (ii) of the Patent Act.

However, corrections of the specification or the drawings should be judged integrally with other corrections for their propriety unless the claims that are demanded for a trial for invalidation clearly relate to certain claims that are to be judged individually for their propriety and unless corrections of those claims are to be judged integrally for their propriety. Accordingly, Correction 6 is not recognized as a correction to be judged integrally with the correction of claim 9 or claim 15, and thus Correction 6 cannot be permitted.

4. Conclusion of Discussion on Corrections

As discussed above in "No. 3," and "3. Validity of Corrections" (1) to (6), correction of claim 9 in Correction 1, Correction 3, and Correction 5 are permitted. Meanwhile, corrections of claims 10 and 11 in Correction 1, Correction 2, Correction 4, and Correction 6 are not permitted.

No. 6 Conclusion

As set forth above, correction of claim 9 in Correction 1, Correction 3, and Correction 5 are permitted. Meanwhile, corrections of claims 10 and 11 in Correction 1, Correction 2, Correction 4, and Correction 6 are not permitted.

The inventions of claims 9 and 15 could be easily made by a person skilled in the art based on the inventions disclosed in Evidence A No 3, Evidence A No. 1, and Evidence A No. 2, and well known art. For this reason, demandee should not be granted a patent for these inventions under provisions of Article 29(2) of the Patent Act, and fall under Article 123(1)(ii) of the Patent Act. Thus, it is concluded that the patent for these inventions should be invalidated.

The costs in connection with the trial shall be borne by the demandee under the provisions of Article 61 of the Code of Civil Procedure which is applied mutatis mutandis in the provisions of Article 169(2) of the Patent Act.

Therefore, the appeal/trial decision shall be made as described in the conclusion.

October 28, 2013

Chief administrative judge: YAMAGUCHI, Naoshi
Administrative judge: HARA, Taizo
Administrative judge: HIRATA, Nobukatsu