#### Appeal decision

Appeal No. 2013-4177

USA Appellant	MARS, INCORPORATED
Kanagawa, Japan Patent Attorney	YANAGIDA, Masashi
Kanagawa, Japan Patent Attorney	SAKUMA, Takeshi

The decision on the case of appeal against the examiner's decision of refusal of Japanese Patent Application No. 2008-506508, entitled "Compositions comprising probiotic and sweetener components" (International Publication No. WO 2006/110406 on October 19, 2006, National Publication of International Patent Application No. 2008-535520 on September 4, 2008) came with a court decision of revocation of the appeal decision (2004 (Gyo-Ke) 10270, rendition of decision on July 30, 2015) at the Intellectual Property High Court, the case was proceeded further, and another appeal decision was handed down as follows:

Conclusion

The appeal of the case was groundless.

Reasons

No. 1 History of the procedures

The present application was filed on April 4, 2006 as an international filing date (the claim of priority under the Paris Convention was received by the foreign receiving office on April 11, 2005 in the US), and the examiner's decision of refusal was issued on October 29, 2012. The demand for appeal of the case against the examiner's decision was filed on March 4, 2013 and at the same time a written amendment was submitted. Against this, the appeal decision was given on July 25, 2014, but revoked by the Intellectual Property High Court (2014 (Gyo-Ke) 10270, rendition of decision on July 30, 2015). Then, the case was proceeded further, and a notice of reasons for refusal was issued by the body on October 22, 2015, and an opportunity for stating the opinion within a reasonable period was given. However, no reply was submitted by the demandant.

# No. 2 The Invention

For the present application, the appeal decision "The appeal of the case was groundless." on July 25, 2014, by which the amendment on March 4, 2013 was dismissed, was revoked by the Intellectual Property High Court. Thus, the inventions according to Claims 1 to 16 of the present application are those specified by matters

stated in Claims 1 to 16 of the scope of the claims, which have been amended by the written amendment on March 4, 2013, and the invention according to Claim 1 (hereinafter referred to as "the Invention") is as follows:

"[Claim 1]

A composition characterized by comprising:

(a) a probiotic component comprising strains isolated from resected and washed canine or feline gastrointestinal tract, and bacteria of a genus selected from the group consisting of Bifidobacterium, Lactobacillus, and combinations thereof; and

(b) a sweetener component comprising monosaccharides selected from a group consisting of sorbitol, mannitol, glucose, mannose, fructose, and mixtures thereof, wherein

the sweetener component and the probiotic component are mixed with each other, and

the composition is substantially free of a chewing gum base."

No. 3 Summary of the notice for reasons for refusal on October 22, 2015

The outline of the notice of reasons for refusal by the body on October 22, 2015 is as follows:

[Reason 1] (Violation of requirements for clarity)

The statement in the scope of claims of the present application does not meet the requirements under Article 36(6)(ii) of the Patent Act.

[Reason 2] (Violation of requirements for support)

The statement in the scope of claims of the present application does not meet the requirements under Article 36(6)(i) of the Patent Act.

[Reason 3] (Lack of inventive step)]

The inventions according to Claims 1 to 16 of the present application should not be granted a patent under the provision of Article 29(2) of the Patent Act, since these inventions could have easily been made by a person having ordinary skill in the art to which the inventions pertain (a person skilled in the art), on the basis of the inventions stated in the publications (Cited Documents 1 to 4) listed below which were distributed in Japan or foreign countries prior to the filing of the present application.

Cited Document 1: National Publication of International Patent Application No. 2005-508647

Cited Document 2: International Publication No. WO 2004/028460 (translated into Japanese as the national publication thereof, National Publication of International Patent Application No. 2006-501281)

Cited Document 3: National Publication of International Patent Application No. 2003-534003

Cited Document 4: National Publication of International Patent Application No. 2002-534113

No. 4 Judgment by the body

1 Reason 1 (Violation of requirements for clarity)

The statement "a probiotic component comprising strains isolated from resected and washed canine or feline gastrointestinal tract, and bacteria of a genus selected from the group consisting of Bifidobacterium, Lactobacillus, and combinations thereof" in Claim 1 is difficult to understand as a Japanese sentence. Also, the statement includes in parallel expressions with different classification classes and concepts (strain and genus). Furthermore, it is unknown what the expression "comprising strains" is related to. Thus, the "probiotic component" cannot be specified. The statement is therefore unclear.

Therefore, the Invention is not clear and therefore the statement in the scope of claims of the present application does not meet the requirements under Article 36(6)(ii) of the Patent Act.

#### 2 Reason 2 (Violation of requirements for support)

Since claim 1 states "A composition characterized by comprising: ... a probiotic component ... and ... a sweetener component comprising monosaccharides ... , wherein the sweetener component and the probiotic component are mixed with each other ... ," it can be said that the composition of the Invention comprises "a probiotic component" and "monosaccharides."

In the Detailed Description of the Invention, however, paragraph [0015] states that "As discovered herein, it is found that the sweetener component is useful for managing the stability of the probiotic component." In paragraph [0028], it is also stated that "The compositions herein comprise a sweetener component, which is found useful for probiotic component stability. The sweetener component, as defined herein, is a monosaccharide, disaccharide, or any mixture thereof." From these statements, therefore, the sweetener component was found to be useful for managing the stability of the probiotic component, whereas the effect of including "monosaccharides" rather than "disaccharides" is unknown.

In the first place, the Detailed Explanation of the Invention does not state experimental results or the like by which the usefulness of the sweetener component for managing the stability of the probiotic component can be confirmed. In addition, the working effect of including "monosaccharides" rather than "disaccharides" is unknown.

Thus, the Detailed Description of the Invention does not state the inclusion of "probiotic component" and "monosaccharides" (in combination) to allow recognition of the technical significance thereof.

Since the Invention is not stated in the Detailed Description of the Invention, therefore, the scope of claims of the present application does not meet the requirements under Article 36(6)(i) of the Patent Act.

3 Reason 3 (Lack of inventive step)

(1) Regarding the Cited Documents

A. Regarding Cited Document 1

(A) National Publication of International Patent Application No. 2005-508647, which is a publication cited as Cited Document 1 in the reasons for refusal by the body on October 22, 2015 and distributed before the priority date of the application, states the following matters (underlined in the appeal decision; the same applies hereinafter):

a "[Claim 1]

<u>A foodstuff which comprises colostrum, a probiotic, and a prebiotic</u>." [Claim 2]

A foodstuff, as claimed in claim 1, further comprising sugar.

[Claim 7]

...

A foodstuff, as claimed in any one of claims 1 to 6, wherein the probiotic is one or more of Lactobacillus, Bifidobacterium, Bacteroides, Clostridium, Fusobacterium, Melissococcus, Propionibacterium, Streptococcus, Enterococcus, Eubacterium, Lactococcus, Staphylococcus, Peptostrepococcus, Bacillus, Pediococcus, Micrococcus, Leuconostoc, Weisella, Aerococcus, and Oenococcus. [Claim 8]

A foodstuff, as claimed in claim 7, wherein the probiotic is one or more of <u>Bifidobacterium species</u> and Bacillus subtilis.

[Claim 9]

A foodstuff, as claimed in claim 8, wherein <u>the probiotic is</u> one or more <u>Lactobacillus acidophilus</u>, such as the Lactobacillus deposited as NCIMB 41117.

[Claim 19]

...

<u>A method of maintaining or improving the gastrointestinal health of an animal, the method comprising administering to the animal a foodstuff</u>, as claimed in any one of claims 1 to 17. ... "

b "[0019]

The foodstuff of the present invention may include additional further ingredients. For example, the foodstuff may also comprise sugar. The sugar may be of any type or form, preferably having a fine grade, such as icing sugar. The benefit of a fine grade sugar is threefold. Firstly, it is a suitable carrier for the ingredients. In addition, it provides a suitable and pleasant texture and further, it reduces the water activity in the foodstuff. Reduction of water activity is a benefit in ensuring that the active components of probiotic and colostrum are protected over the shelf life of the product. Accordingly, it is a benefit that the foodstuff of the present invention is formed into a low water activity matrix. The water activity is preferably an aW of 0.6-0. 1, more preferably 0.4-0. 15.

[0020]

<u>A further ingredient of the foodstuff of the present invention may be sorbitol.</u> <u>The sugar and/or sorbitol content of the foodstuff may be provided in any amount,</u> preferably from 5-50%, more preferably from 35-45% (weight by weight percent on a dry matter basis)."

c "[0029]

In particular, preferred probiotic microorganisms include one or more of Lactobacillus acidophilus, Lactobacillus mucosae, Lactobacillus ruminus, Lactobacillus reuteri, Bifidobacterium species, and Bacillus subtilis. In detail, the probiotic of the present invention may be the Lactobacillus deposited under the Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the purposes of Patent Procedure, accession number NCIMB 41117, on October 10, 2001."

d "[0039]

For example, <u>one form of foodstuff according to the present invention is a highly</u> <u>palatable dairy treat</u>. The product incorporates colostrum, a prebiotic, and a probiotic

in a palatable delivery format. ....<u>the colostrum, prebiotic, and probiotic may be mixed</u> in to any product, infused into the product, or applied to the outside."

# e "[0066]

<u>The viability of the probiotic, in a format of a fat-based dairy matrix (such as described in Example 1) was tested. Products were stored at room temperature (in the range of 19-24°C) and samples were tested for the viability of probiotic over a 10-month period. The viability of the probiotic was excellent, with only 1 log order loss over 10 months.</u> This level of loss is within the errors of each viability measurement. [0067]

The viability of probiotic was also tested when incorporated onto dry pet food kibble. The probiotic was coated onto the kibble in a coating base of vegetable oil and tallow. Products were stored at room temperature (in the range of 19-24°C) and samples were tested for the viability of probiotic over 11 months. Viability of the probiotic was, again, excellent, with no losses over 11 months."

f "[0071] Example 1

Dairy Treat

A highly palatable dairy treat was produced. The recipe is as set out below: [TABLE 1]

Composition	
Ingredient	wt/wt% (dry matter basis)
hydrogenated vegetal	ble fat 30
sucrose	43
colostrum	3
prebiotic	3
probiotic	2
emulsifier and salt	1.6
flavor	0.4
yoghurt powder	5
total 1	00
[0072]	

The probiotic was present at a concentration of approximately 3 x  $10^{10}$  cfu/g. [0073]

The product was obtained by mixing the raw materials. The mixture was then spooned/scraped into molds and placed in a refrigerator to set. The pieces were then demolded.

[0074]

The low water activity matrix was developed using a low heat process to ensure that the active components of colostrum were protected during production and over shelf-life. Viability of this active ingredient on incorporation into the product was confirmed."

(B) In consideration of the above statements listed in the above (A) (particularly, the inventions stated in Claims 1, 2, 7, 8, and 9 of the scope of claims, and the features stated in paragraphs [0019], [0039], and [0073]), Cited Document 1 is recognized to state the following invention (hereinafter, referred to as "Cited Invention"

"A dairy treat product comprising colostrum, a probiotic, a prebiotic, and sugar, wherein the probiotic comprises Bifidobacterium, and Lactobacillusm; and wherein

the product is obtained by mixing raw materials, the mixture is then spooned/scraped into molds and placed in a refrigerator to set, and the resulting pieces are then demolded."

B Regarding Cited Document 2

(A) International Publication No. WO 2004/028460 (translated into Japanese as the national publication thereof, National Publication of International Patent Application No. 2006-501281), which is a publication cited as Cited Document 2 in the reasons for refusal by the body on October 22, 2015 and distributed before the priority date of the application, states the following features:

a "[0030] Presently, probiotic compositions are produced using cultured, concentrated LAB that are dried or lyophilized and then mixed with stabilizing ingredients such proteins and sugars including, but not limited to raffinose, soybean oligosaccharides, fructooligosaccharides, galactooligosaccharides, galactosyl lactose and palatinose, lactulose, lactitol, xylitol, sorbitol, mannitol, trehalose, glucose, sucrose, fructose, maltose, milk, milk powders, whey, whey protein concentrates, casein, casein hydrolysates, lactoferrin, lactoperoxidase, lactoglobulins, glycomacropeptides, lactosaccharides, and lacto-lipids." (paragraph [0023])

b "[0031] The present inventors have surprisingly discovered that certain edible oils not only protect LAB viability better than prior art stabilizing ingredients such proteins and sugars, but actually enhance viability, resulting in a prebiotic effect." (paragraph [0024])

C Regarding Cited Document 3

(A) National Publication of International Patent Application No. 2003-534003, which is a publication cited as Cited Document 3 in the reasons for refusal by the body on October 22, 2015 and distributed before the priority date of the application, states the following features:

a "[Scope of Claims]

[Claim 1]

Novel isolated strains of lactic acid bacteria having high probiotic activity in pets, selected for their ability to survive and colonize the gastrointestinal tract of pets."

[Claim 9]

Use according to claim 7 or 8, wherein the lactic acid bacteria is selected from the genus Lactobacillus, Bifidobacterium, or Enterococcus.

... [Claim 18]

Pet food composition intended for the health of the gastrointestinal tract of pets containing at least one isolated strain according to any of Claims 1 to 6 and/or a supernatant of its culture and/or a metabolite thereof, associated with an ingestible support or a pharmaceutical matrix."

#### b "[0002]

(Background of the Invention)

The well-being of domestic animals is closely related to their feeding. Correct feeding should result in a fit and healthy pet. In addition to providing nutritional value, food composition influences the intestinal microflora equilibrium and may lead to or prevent gastrointestinal disorders. Therefore, knowledge on the gastro-intestinal tract and digestion processes of healthy animals is integral to the understanding of a practical feeding practice. As meat-eaters, cats and dogs are characterized by a short digestive tract and a rapid flow rate of the bolus of food."

c "[0003]

Among the constituents of the gastrointestinal microflora of cats and dogs Bacteroides sp., Clostridium sp., Enterobacteriaceae, Bifidobacterium sp., Lactobacillus sp., Streptococcus sp., Staphylococcus sp., and yeasts can be recovered."

#### D Regarding Cited Document 4

(A) National Publication of International Patent Application No. 2002-534113), which is a publication cited as Cited Document 4 in the reasons for refusal by the body on October 22, 2015 and distributed before the priority date of the application, states the following features:

# a [Scope of Claims]

#### [Claim 1]

A strain of Bifidobacterium isolated from resected and washed human gastrointestinal tract which is significantly immunomodulatory following oral consumption in humans.

# [Claim 28]

 $\dots$  the Lactobacillus salivarius is isolated from resected and washed human gastrointestinal tract,  $\dots$  ."

b "[0097]

... Lactobacillus salivarius subsp. Salivarius UCC 118 and Bifidobacterium longum infantis UCC 35624 were isolated from the ileal-caecal region of an adult human as described in Example 1. ... "

# (2) Comparison

The Invention is compared with Cited Invention.

A The "probiotic" "comprising Bifidobacterium and Lactobacillus" of Cited Invention corresponds to "a probiotic component comprising bacteria of a genus selected from the group consisting of Bifidobacterium, Lactobacillus, and combinations thereof."

B "Sugar" means "(1) Sweets. Also, sweeteners made from sugar cane, etc. (2) Carbohydrates which exhibit sweetness in water; monosaccharides (fructose/glucose), disaccharides (sucrose/maltose), etc. In general, it often refers to sucrose. (3) Broadly, it is a generic name for glucide; i.e., carbohydrates." (KOJIEN, Sixth Ed., Japanese Dictionary, published by Iwanami Shoten Co., Ltd.). In addition, Cited Document 1 states that "the sugar may be of any type or form" (paragraph [0019]). In consideration of such a definition, the term "sugar" stated in Cited Invention corresponds to both the term "saccharides" (generic name of monosaccharides and

disaccharides) and the term "sweetener component" stated in the Invention. Furthermore, the "sugar" stated in Cited Invention and the "monosaccharides" stated in the Invention are common with each other for "saccharides."

C The statement "a dairy treat product ..., wherein the product is obtained by mixing raw materials, spooning/scraping the mixture into molds, placing the mixture in a refrigerator to set, and demolding the resulting pieces" in Cited Invention does not include any chewing gum base. Thus, it corresponds to the statement "a composition ..., wherein the sweetener component and the probiotic component are mixed with each other, and the composition is substantially free of a chewing gum base" in the Invention.

Thus, the Invention and Cited Invention correspond in the following corresponding features and differ in the following Different features 1 and 2. (Corresponding features)

"A composition comprising:

(a) a probiotic component comprising bacteria including a genus selected from Bifidobacterium and Lactobacillus; and

(b) a sweetener component comprising saccharides, wherein

the sweetener component and the probiotic component are mixed with each other, and

the composition is substantially free of a chewing gum base."

#### (Different feature 1)

With respect to "saccharides," in the Invention, the saccharides are "monosaccharides selected from a group consisting of sorbitol, mannitol, glucose, mannose, fructose, and mixtures thereof," whereas Cited Invention does not include such a specific feature.

# (Different feature 2)

With respect to "Bacteria including a genus selected from Bifidobacterium and Lactobacillus," the Invention states "comprising strains isolated from resected and washed canine or feline gastrointestinal tract," whereas Cited Invention does not include such a specific feature.

(3) Judgement

# A Regarding Different feature 1

(A) Examination 1

As also stated in the above (2)B, it is a matter of scientific common sense that "sugar" includes "monosaccharides" in addition to "disaccharides." In addition, in Cited Document 1, it is stated that "the sugar may be of any type or form" (paragraph [0019]). Thus, a person skilled in the art would easily analogize or conceive of inclusion of "monosaccharides" from the statement of including "sugar." It is also well known that monosaccharides include "sorbitol," "mannitol," glucose," "mannose," and "fructose."

Then, Cited Document 1 states that "a fine grade sugar reduces the water activity in the foodstuff. Reduction of water activity is a benefit in ensuring that the active components of probiotic and colostrum are protected over the shelf life of the product" (paragraph [0019]). Thsh, it can be said that Cited Document 1 states or suggests that "sugar" is useful for protecting the active component of "probiotic" over the shelf life of the product; i.e., "useful for managing the stability of the probiotic component" (paragraph [0015]) in the specification of the Invention.

In Cited Document 2, furthermore, there are the statements: "Presently, probiotic compositions are produced using cultured, concentrated LAB that are dried or lyophilized and then mixed with stabilizing ingredients such as proteins and sugars including, but not limited to raffinose, soybean oligosaccharides, fructooligosaccharides, galactooligosaccharides, galactosyl lactose and palatinose, lactulose, lactitol, xylitol, sorbitol, mannitol, trehalose, glucose, sucrose, fructose, maltose, milk, milk powders, whey protein concentrates, casein, casein hydrolysates, lactoferrin, whey, lactoperoxidase, lactoglobulins, glycomacropeptides, lacto-saccharides, and lactolipids." (see, the above (1)B(A)a.); and "The present inventors have surprisingly discovered that certain edible oils not only protect LAB viability better than prior art stabilizing ingredients such proteins and sugars, but actually enhance viability, resulting in a prebiotic effect." (see, the above (1)B(A)b.). Thus, it can be said that stabilizing a "probiotic" by a component, such as "sugar" containing "glucose," has been well known in the art since before the priority date of the application.

Therefore, the statement "the sweetener component is useful for managing the stability of the probiotic component" (paragraph [0015]), which is a working effect due to inclusion of the monosaccharides of the Invention, has been known since before the priority date of the present application. Thus, it can be recognized that the stability of the probiotic component can be attained also in a case that "monosaccharide" such as glucose is employed as "sugar" of Cited Invention.

In general, selection of materials or constituent components is a matter of design that can be appropriately decided by a person skilled in the art. As stated above, the specification of the present application does not state the effect of including (selecting) "monosaccharide" but not "disaccharide." Therefore, it is merely a design matter that could be appropriately determined by a person skilled in the art to employ "disaccharide" or "monosaccharide" such as glucose.

As stated above, a person skilled in the art could easily make the configuration relating to Different feature 1 of the Invention by applying a well-known technique to Cited Invention to select sorbitol, mannitol, glucose, mannose, or fructose, which are monosaccharides, as saccharides.

# (B) Examination 2

Paragraph [0020] of Cited Document 1 states that <u>"A further ingredient of the foodstuff of the present invention may be sorbitol</u>. The sugar and/or sorbitol content of the foodstuff may be provided in any amount, preferably from 5-50%, more preferably from 35-45% (weight by weight per cent on a dry matter basis)." Thus, Document 1 also states the inclusion of "sorbitol" (hereinafter, referred to as a "matter stated in Cited Document 1").

Then, it is a matter of technical common sense that "sorbitol" is "monosaccharide," or a "sweetener component." Thus, in Cited Invention, a person skilled in the art could easily conceive of inclusion of "sorbitol," or inclusion of a "sweetener component" including "monosaccharide" consisting of "sorbitol".

As stated in the above (A), "sugar" contributes to an improvement in stability of

the probiotic component. Thus, it is obvious for a person skilled in the art that inclusion of "sorbitol" in Cited Invention contributes to an improvement in stability of the probiotic component.

As stated above, therefore, a person skilled in the art could have easily made the configuration relating to Different feature 1 of the Invention by applying the matter stated in Reference Document 1 and well-known technique to Cited Invention to attain inclusion of monosaccharide sorbitol.

#### (C) Summary

As stated in the above (A) and (B), a person skilled in the art could easily conceive of the configuration relating to Different feature 1 of the Invention in Cited Invention.

#### B Regarding Different feature 2

Cited Document 3 states that "Novel isolated strains of lactic acid bacteria having high probiotic activity in pets, selected for their ability to survive and colonize the gastrointestinal tract of pets." (see, [Claim 1] in the above (1)C(A)a), "Use according to claim 7 or 8, wherein the lactic acid bacteria are selected from the genus Lactobacillus, Bifidobacterium or Enterococcus." (see, [Claim 9] in the same), "Pet food composition intended for the health of the gastrointestinal tract of pets containing at least one isolated strain according to any of claims 1 to 6 and/or a supernatant of its culture and/or a metabolite thereof, associated with an ingestible support or a pharmaceutical matrix." (see, [Claim 18] in the same), "(Background of the Invention). The well-being of domestic animals is closely related to their feeding. Correct feeding should result in a fit and healthy pet. In addition to providing nutritional value, food composition influences the intestinal microflora equilibrium and may lead to or prevent gastrointestinal disorders. Therefore, knowledge on the gastro-intestinal tract and digestion processes of healthy animals is integral to the understanding of a practical feeding practice. As meat-eaters, cats and dogs are characterized by a short digestive tract and a rapid flow rate of the bolus of food." (see, the above (1)C(A)b.), and "Among the constituents of the gastrointestinal microflora of cats and dogs Bacteroides sp., Clostridium sp., Enterobacteriaceae, Bifidobacterium sp., Lactobacillus sp., Streptococcus sp., Staphylococcus sp., and yeasts can be recovered." (see, the above (1)C(A)c.). Accordingly, it has been well known in the art since before the priority date of the present application that pet food compositions comprise "Lactobacillus" and "Bifidobacterium" isolated from the gastrointestinal tract of cats and dogs.

Furthermore, Cited Document 4 states that "<u>A strain of Bifidobacterium isolated</u> from resected and washed human gastrointestinal tract which is significantly immunomodulatory following oral consumption in humans." (see, [Claim 1] in the above (1)D(A)a.), "... Lactobacillus salivarius is isolated from resected and washed human gastrointestinal tract, ... ." (see [Claim 28] in the same), and "... Lactobacillus salivarius subsp. Salivarius UCC 118 and <u>Bifidobacterium</u> longum infantis UCC 35624 were isolated from the ileal-caecal region of an adult human as described in Example 1. ..." (see, the above (1)D(A)b.). Accordingly, it has been well known in the art since before the priority date of the present application to isolate a strain of Bifidobacterium or Lactobacillus isolated from resected and washed gastrointestinal tract.

Furthermore, paragraph [0024] of the present specification states that "As a non-

limiting example, strains of Bifidobacterium isolated from resected and washed human gastrointestinal tract as disclosed in PCT International Publication WO 00/42168 are preferred. ... Strains isolated from resected and washed canine or feline gastrointestinal tract may be particularly useful."

Accordingly, providing "strains isolated from resected and washed canine or feline gastrointestinal tract" for "bacteria including a genus selected from Bifidobacterium and Lactobacillus," as the Invention has been well known in the art since before the priority date of the present application.

Then, "Bacteria including a genus selected from Bifidobacterium and Lactobacillus" can be "isolated from resected and washed canine or feline gastrointestinal tract" could be easily conceived by a person skilled in the art having ordinary technical knowledge including the well-known technology.

Furthermore, a working effect resulting from the fact that the bacteria of the Invention comprise "strains isolated from resected and washed canine or feline gastrointestinal tract" is only stated as "may be particularly useful" in paragraph [0024] of the present specification. It cannot be grasped as a working effect outstanding more than that even in view of the whole the present specification.

As stated above, a person skilled in the art could easily conceive of making the construction relating the different feature 2 of the Invention by application of well-known technique to Cited Invention.

C Conclusion

As stated above, the Invention could be easily made by a person skilled in the art based on Cited Invention and the well-known arts, and the appellant should not be granted a patent under the provisions of Article 29(2) of the Patent Act.

# No. 5 Conclusion

As stated above, the claim in the present application does not meet the requirements under the provisions of Article 36(6)(i) and (ii) of the Patent Act. In addition, the Invention could be easily made by a person skilled in the art. Hence, the appellant should not be granted a patent for the Invention under the provisions of Article 29(2) of the Patent Act.

Thus, the application should be rejected without examining inventions concerning other claims.

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

June 13, 2016

Chief administrative judge: AKAGI, Keiji Administrative judge: ONO, Chuetsu Administrative judge: NAKADA, Makoto