Advisory Opinion

Advisory Opinion No. 2014-600055

Taiwan
Demandant   WALL, Corbett

Tokyo, Japan
Attorney   NOMURA, Yoshitaro

Tokyo, Japan
Demandee   GOOGLE JAPAN INC.

Tokyo, Japan
Attorney   ONO, Seiji

Tokyo, Japan
Attorney   KOBAYASHI, Hideaki

Tokyo, Japan
Attorney   KIMURA, Hiroyuki

      The advisory opinion on the technical scope of a patent invention for Patent No. 5033756 between the parties above is stated and concluded as follows.

Conclusion
      The "method and apparatus for creating and distributing real-time interactive media content through wireless communication networks and the Internet" indicated in the Drawing and explanatory document of Article (A) does not fall within the technical scope of the invention in Patent No. 5033756.

Reason
No. 1 Object of the demand and History of the procedures
      The object of the demand for the advisory opinion is to demand the advisory

opinion that "Nexus 9 pre-installed with Hangouts" (a tablet computer) (hereinafter, referred to as "Article A") shown in the explanatory document of Article A falls within the technical scope of the invention relating to Claim 1 of Patent No. 5033756 (hereinafter, referred to as the "patent invention"), according to the column of "5 the object of the demand in the advisory opinion request" dated November 18, 2015, the paragraph of "(3) description of the invention of Patent No. 5033756" in "6 Statement of the demand," and paragraph 4-1 of "4 Details of response" in "Response letter to the inquiry" dated May 1, 2015.

Furthermore, the history of procedures relating to the case is as follows.

October 15, 2008	Patent application relating to the patent (divisional application)
June 5, 2012	Decision to grant a patent
July 6, 2012	Registration of the patent
November 18, 2014	Request for the advisory opinion of the case
February 12, 2015	Inquiry
May 1, 2015	Response letter to the inquiry (the demandant)
July 16, 2015	Written reply (the demandee)

No. 2 The patent invention

The patent invention, according to descriptions of the patent specification, is described in Claim 1 of the scope of claims for patent as follows. (Although codes "(A)"-"(F)" are added by the demandent for separate description, those are used merely for convenience.)

"(A) A handheld apparatus comprising:

  at least one output device that includes a visible raster display presenting output to an operator;

  at least one input device that includes an array of switches receiving input from the operator;

  a wireless transmitter;

  a processing circuit that controls operation of at least the one output device, at least the one input device, and the wireless transmitter; and

(B) a program that can be executed by the processing circuit,

  wherein the program, when the operator operates the handheld apparatus, indicates information relating to operation through the visible raster display so as to assist the

operator;

(C) presents expression of first content to operator through the output device given by (a) a remote server that is separated in space from the handheld apparatus or (b) a removable memory device,

(D) receives second content that temporally overlaps with the presentation of the first content according to a relationship decided by the operator and an identifier of at least one recipient through the input devices from the operator, and

(E) sends the expression of the second content and the identifier of at least the one recipient to the remote server that is separated in space from the handheld apparatus, through the wireless transmitter, and

(F) the handheld apparatus being configured to make the remote server send further expression presenting the first content and the second content arranged while keeping the relationship decided by the operator, so as to allow at least the one recipient to receive the further expression."

No. 3 Article A

"Nexus 9 pre-installed with Hangouts" (a tablet computer) shown in the explanatory document of Article A is as follows.

([Note] For reasons of indication, in the following b, an icon of Hangouts, an icon of a microphone, and an icon of a handset are respectively indicated as "○,""△," and "□.")

"(a) Nexus is

 (i) a handheld apparatus that is 200-263.9 mm in height, 114-177.6 mm in width, 7.95-8.9 mm in thickness, and 130-145 g in weight, and is supposed to be used by being held in a hand, and

 (ii) includes a display and a speaker that are output devices;

 (iii) a display-cum-touch panel, a microphone, a video camera, and the like that are input devices;

 (iv) a wireless chip (a wireless transmitter) that can use WiFi and/or a 3G channel or an LTE channel; and

 (v) a CPU (a processing circuit) called Qualcomm, Snapdragon, S4 pro, and the like (that control operation of those output devices, the input devices, and wireless transmitter).

(b) On a display of Galaxy Nexus pre-installed with Hangouts, for example, the icon ○ is indicated, and if the icon is selected by touching with a finger, Hangouts is started. If the icon △ is selected, the microphone is switched to be turned on/off. Also, if the icon

□ is touched with a finger, Hangouts is finished. These operations indicate that the icons play a role as an operation guide.

(c) Through the display or the speaker of the Nexus, to AKIRA (an operator),

(a) moving image content given from Google's server that is a remote server separated in space from the Nexus is indicated in the display, and music content is heard from the speaker.

For example, on the display of the Nexus held by AKIRA (the operator) with Hangouts, the face and body motion of MARI (a recipient) are indicated through Google's server, and the yelling and singing voice of MARI are heard from the speaker, thereby performing expression (presenting expression of first content).

(d) For example, AKIRA (the operator), while watching and hearing the moving image of gestures and the singing voice of MARI (the first content) (which are heard from the Nexus) (the presentation of the first content), according to that (according to a temporal relationship decided by the operator), plays a guitar (interactively with the presentation of the first content) to input music and a moving image in the Nexus through the microphone and the video camera (through the input devices), and gives identification information for identifying the recipient such as a Google account of the recipient (MARI) (so as to make the music and moving image reach the recipient).

(e) (In the Nexus,) Through the wireless chip (through the wireless transmitter), "from Galaxy nexus to Google's server, expression of the second content (the guitar music and the moving image message of AKIRA) and opposite partner information (identified by the identifier which is the Google account name) of MARI or KEN who is a partner sharing the music and moving image are sent,

(f) for example, by using the Nexus and Hangouts, AKIRA plays the guitar according to the yelling and singing voice of MARI (the expression and message of the first content) heard from the display and the speaker of the Nexus (in the temporal relationship adjusted by the operator), and inputs the music (the second content) through the microphone and the video camera of the Nexus, and so as to send the vocal message of MARI and the guitar message of AKIRA keeping its temporal timing (messages of the first content and the second content and an index of the temporal relationship adjusted by the operator) to KEN (a recipient) through Google's server (the remote server), the Nexus and Hangouts of AKIRA send the messages to Google's server.

Furthermore, in a case where AKIRA (using the Nexus and Hangouts) and MARI share a moving image of YouTube given by the Google's server (for example, a music video), and while watching the moving image, AKIRA and MARI respectively play the guitar and perform a vocal according to the music of the music video, and see and hear the

music video and a situation of partners, the invention is also embodied."

According to the paragraph "4-1" of "4 Details of response" in "Response letter to the inquiry," "Galaxy Nexus" on page 4 in the explanatory document of Article (A) is an error of "Nexus," so that "Galaxy Nexus" is replaced with "Nexus." Also, it is understood that "Galaxy Nexus" on page 8 in the explanatory document of Article (A) is an error, so that "Galaxy Nexus" is replaced in the same way.

As described in "No. 1 Object of the demand and History of the procedures," the object of the demand for the advisory opinion is to demand the advisory opinion that "Nexus 9 pre-installed with Hangouts" (a tablet computer) (hereinafter, referred to as "Article A") falls within the technical scope of the invention relating to Claim 1 of Patent No. 5033756 (hereinafter, referred to as the "patent invention").

Therefore, in the description of the explanatory document of Article (A), "Nexus" is replaced with "Nexus 9," and "Nexus" described in statement of the demand is replaced with "Nexus 9."

Then, Evidence A No. 2-1, Evidence A No. 2-2, and Evidence A No. 7 (relating to "Nexus 7"); Evidence A No. 4 and Evidence A No. 9 (relating to "Nexus 10"); and Evidence A No. 16 (relating to "Galaxy Nexus") which are cited as evidence, are not adopted as evidence. Then, in (i) of a described in the explanatory document of Article (A), matters relating to size can be replaced as "228.25 mm in height, 153.68 mm in width, 7.95 mm in thickness, and 425 g or 436 g in weight," according to Evidence A No. 3 described in relation to "Nexus 9." In v of a described in the explanatory document of Article (A), of matters relating to a processor, "Qualcomm, Snapdragon, S4 pro, and the like" can be replaced with "NVIDIA Tegra K1 Dual Denver" according to Evidence A No. 3 described in relation to "Nexus 9."

Furthermore, according to paragraph 4-2 (A) of "4 detail of response" in "Response letter to the inquiry," although a structure relating to YouTube in f described on pages 9-10 in the explanatory document of Article (A) may not be subjected to determination, a part relating to YouTube in (f) is recognized as a part from "AKIRA (using the Nexus and Hangouts) and MARI..." on page 10 in the explanatory document of Article (A), so that the part is excluded from the subject of the determination.

Furthermore, a case of a video call between AKIRA, MARI, and KEN described in (c) to (f) in the explanatory document of Article (A), as described that "for a case in which the operator operates the handheld apparatus, for example, the following situation may be thought of (hereinafter, the same case is expected)" (Footnote 13 on page 4), is a

virtual case and is not based on concrete evidence, so that the case of the video call is not subjected to comparison and determination.

However, concerning "Hangouts," a paragraph of "Summary" in Evidence A No. 10 describes that "it is also possible to share a screen and perform cooperative work with a person in a remote place in cooperation with Google Drive," and similarly, in Evidence A No. 14 relating to "Hangouts," a paragraph "Case 1 Conversation with a person far away at any time" in page 1 describes that "'Hangouts' of Google+ is a complimentary video chat service using the Internet. (...an omission of inter parts...) Furthermore, the simultaneous participation of the maximum 10 people is possible, and it is featured in enabling use for one to one conversation between family members or friends, a group activity of a school, and a meeting on business too," and on page 2, "Hangouts" is described as "Case 2 Use as a high quality video conference system." Similarly, in Evidence A No. 15 relating to "Hangouts," page one-third describes that "video call: if using a "video hangout" function of Hangouts, a conversation with a maximum of 10 people while looking at faces of each other is possible. It is easy to invite a specified friend and group." According to those descriptions, "Hangouts" is acknowledged as an application having a function of performing conversation (including a conference and the like) between a plurality of persons while looking at face images of each other. Therefore, the "Nexus 9" pre-installed with "Hangouts" is acknowledged to have a function of performing a conversation between a plurality of persons while looking at face images of each other.

In a column of "bucky February 19" in Evidence A No. 11 relating to a communication system of "Hangouts," it is described that a plurality of client terminals communicate with each other through Google's server (Google server). Then, it is acknowledged that the communication between a plurality of units of "Nexus 9" pre-installed with "Hangtouts" is carried out through Google's server. Therefore, "Nexus 9 pre-installed with Hangouts" has a function of presenting content received from the Google's server, to participants (operators) through output devices.

Furthermore, pages 10-11 of Evidence A No. 14 relating to "Hangouts" describe that when starting Hangouts, by indicating a menu ("1 Indicate a menu"), tapping [Hangouts] from the menu ("2 Indicate a screen of Hangouts"), inputting the name of a user whom you want to invite or tapping a profile photo to invite the user, tapping "Hangouts start" ("3 Invite a user"), and waiting for the participation in Hangouts of the invited user ("4 Wait for participation"), if the invited user participates, Hangouts is started ("5 Hangouts is started"); and that if the user is invited to Hangouts, a notification is delivered to the user, and if tapping the notification, the application of

Google+ is started, and if tapping [Participate in Hangouts], the user can participate in the invited Hangouts ("Participate in the invited Hangouts").

Here, it is self-evident that the transmission/reception of content is possible between the user invited to "Hangouts" and the inviting user, so that the user invited to "Hangouts" is supposed to be a recipient of the content inputted by the inviting user. Furthermore, it is obvious that information corresponding to "a name of the user whom you want to invite" or "a profile photo" functions as identification information for identifying the recipient of the content. Then, "Nexus 9 pre-installed with Hangouts" has a function of making a participant (an operator) input the identification information for identifying the recipient through the input devices, by inputting "the name of the user whom you want to invite" or tapping "the profile photo."

Furthermore, concerning "Hangouts," in the paragraph of "Summary" in Evidence A No. 10, as it describes that "it is also possible to share a screen and perform cooperative work with a person in a remote place in cooperation with Google Drive," "Hangouts" can support cooperative work with a plurality of persons. The "cooperative work" includes work regarding a temporal relationship between contents as important, such as a chorus, an ensemble, and a dance, so that use forms of "Hangouts" include an action that one participant inputs another content so as to keep a temporally overlapping relationship decided by himself/herself with content received from the other participant. Then, "Nexus 9 pre-installed with Hangouts" has a function of making the participant (the operator) input another content that temporally overlaps with the content received according to the temporal relationship decided by the participant (the operator).

Furthermore, in the description of Evidence A No. 14 relating to "Hangouts," after inputting the name of the user whom you want to invite or tapping the profile photo to invite the user and then tapping "Hangouts start" ("3 Invite a user"), you wait until the invited user participates in Hangouts (4 Wait for participation). Also, according to the description of Evidence A No. 11, it is self-evident that the identification information for identifying the recipient is sent to Google's server, and Google's server sends information indicating that the user is invited to the invited user. Considering (v) of (a) in the explanatory document of Article (A), it is self-evident that the identification information for identifying the recipient is set through "the wireless transmitter." Then, "Nexus 9 pre-installed with Hangouts" has a function of sending the identification information for identifying the recipient to Google's server through "the wireless transmitter."

Furthermore, in the description of Evidence A No. 14 relating to "Hangouts," it is indicated that Hangouts is started after the participation of the invited user; the

inviting user inputs content; and the contents are sent to the invited user. From the description of Evidence A No. 11, it is self-evident that the content is sent directly to Google's server. Furthermore, considering (a) of (v) in the explanatory document of Article (A), it is self-evident that the content is sent through "the wireless transmitter." Then, "Nexus 9 pre-installed with Hangouts" has a function of sending the content to Google's server through "the wireless transmitter."

As described above, it is understand that "Hangouts" is an application having the function of performing conversation (including a conference and the like) between a plurality of persons while they look at face images of each other, and in order to establish the conversation while looking at face images of each other, face images and voices of the participants participating in the conversation are transmitted/received to/from each other. Then, it is acknowledged that the content sent from one participant to Google's server is sent to other participants as it is by Google's server. The transmission of Google's server is the function of Google's server, and is not the function of Nexus 9 or "Hangouts" pre-installed in Nexus 9.

Furthermore, it is self-evident that the processor (CPU) which is the processing circuit executes an OS and an application to materialize a required function while controlling input/output devices and a communication function; namely, the OS and the application "Hangouts" make the processing circuit control the input/output devices and the communication function.

Then, (b) in the explanatory document of Article (A) is replaced with the description that the OS and the application "Hangouts" "indicate various icons for supporting the operator through the output devices, when the operator/participant operates Nexus 9."

Furthermore, on the one-third page in Evidence A No. 3 relating to Nexus 9, it is described that as a specification of "a screen," "8.9 inches IPS LCD TFT" is used; namely, an IPS system liquid crystal panel is used. Therefore, "the display" in (ii) and (iii) of (a) in the explanatory document of Article (A) is replaced with "a liquid crystal panel."

As mentioned above, according to the matters described in the explanatory document of Article A and each Evidence A, the body acknowledges "Nexus 9 pre-installed with Hangouts" (a tablet computer) which is Article (A) as follows.

"(a)Nexus 9 is
 (i) a handheld apparatus that is 228.25 mm in height, 153.68 mm in width, 7.95 mm in thickness, and 425 g or 436 g in weight, and is supposed to be used by being held in a

hand, and

(ii) includes a display and a speaker that are output devices;

(iii) a liquid crystal display-cum-touch panel, a microphone, a video camera, and the like that are input devices;

(iv) a wireless chip (a wireless transmitter) that can use WiFi and/or a 3G channel or an LTE channel;

(v) a CPU (a processing circuit) called NVIDIA Tegra K1 Dual Denver (which controls the operation of the those output devices, the input devices, and wireless transmitter); and

(b) an OS and an application "Hangouts" that can be executed by the CPU,

wherein the OS and the application "Hangouts" indicate various icons for supporting an operator through the output devices, when the operator operates Nexus 9,

(c) present content received from Google's server to the operator through the output devices,

(d) make the operator input another content that temporally overlaps with the presentation of the content through the input devices according to a relationship decided by the operator,

(d') make the operator input identification information identifying a recipient through the input devices,

(e) send another content from Nexus 9 to Google's server through the wireless transmitter, and

(e') send the identification information identifying the recipient from Nexus 9 to Google's server through the wireless transmitter.

No. 4 Allegations of the parties
1 The demandant's allegation

The demandant alleges that "as indicated in the attached explanatory document of Article A, 'Nexus 9 pre-installed with Hangouts' (a tablet computer) which is Article A includes all of constituent components of the handheld apparatus stipulated in Patent No. 5033756 (hereinafter, referred to as the 'patent invention'), so that 'Nexus pre-installed with Hangouts' falls within the technical scope of the patent invention." (Page 3, line 26 to Page 4, line 3 in the advisory opinion request)

2 The demandee's allegation

The demandee alleges in the written reply as outlined below.

(1) Although the demandant tries to explain by providing a case of a video call between AKIRA, MARI, and KEN in the explanatory document of Article A, as described in the explanatory document of Article A that "for a case in which the operator operates the handheld apparatus, for example, the following situation may be thought of (hereinafter, the same case is expected)." (Footnote 13 on Page 4), the case of the video call between AKIRA, MARI, and KEN is a virtual case, is not based on concrete evidence, and is insufficient for proof. (Page 3, lines 6-11, in the written reply)

(2) An identifier of a recipient is not inputted (a constituent component (D)) (Page 3, line 16 to Page 4, line 19 in the written reply)

The constituent component (D) of the invention is prescribed as "receives second content that temporally overlaps with the presentation of the first content according to a relationship decided by the operator and an identifier of at least one recipient through the input device from the operator."

In the constituent component (A), it is prescribed as "at least one input device that includes an array of switches receiving input from the operator," so that it is understood that the constituent component (D) prescribes that the identifier of the recipient is inputted through the input devices receiving input from the operator.

Furthermore, in the constituent components (E) and (F), as "the remote server" and "the recipient" are distinguished and prescribed, it is understood that "the recipient" of the invention is a different main body from "the remote server."

However, in the video conference by Hangouts, only the image/voice of the operator is inputted in Article (A), and the information indicating the recipient (the identifier) is not inputted. This is also obvious from the fact that the operator does not input the information about the recipient through the input devices in any of moving images in Evidence A No. 16 submitted by the demandant, when the second content (the image/voice) is inputted.

If it is necessary to input the information about the recipient of the content with the content (the image/voice) in the video conference by Hangouts, a certain amount of time is required for inputting the information about the recipient of the content in the operator, and a significant time lag is generated in each conversation, so that it is self-evident that Hangouts is not established as a video conference system.

Therefore, in Article (A), the second content and the identifier of the recipient are not given through the input devices, so that Article (A) does not satisfy the constituent component (D) of the invention.

(3) The identifier of the recipient is not sent to the remote server (the constituent
    component (E)) (page 4, line 20-page 5, line 23 in the written reply)

   The constituent component (E) is prescribed as "sends the expression of the
second content and the identifier of at least the one recipient to the remote server that is
separated in space from the handheld apparatus, through the wireless transmitter; and."
As described in (2), in Article (A), the information corresponding to the identifier of the
recipient is not given through the input devices. Also, when the video conference is
performed by Hangouts, in Article (A), although data corresponding to the second
content are sent to Google's server corresponding to "the remote server," the
information corresponding to the identifier of the recipient is not sent at that time.

   In Hangouts, the information about the participants in the video conference is
already stored in Google's server when setting up the video conference. A terminal of
each participant in the video conference sends content of a voice/video to Google's
server, and Google's server receiving the content refers to the stored information about
the participants and simultaneously sends the contents to the participants.

   As mentioned above, in Article (A), when sending the information
corresponding to the second content, the identifier of the recipient is not sent to the
remote server, so that Article (A) does not satisfy the constituent component (E).

   Regarding this point, on page 2 in "Response letter to the inquiry" dated May 1,
2015, the demandant alleges that "concerning the point that the sending side sends the
identification information identifying the recipient when sending the expression of the
second content to the remote server, it is common sense (known techniques) as a digital
information communication method by a computer, and is not described in Evidence A.
Namely, in packet communication which is communication means on the Internet,
information/content and the like are sent while identification information is added to
every packet. At that time, if the identification information identifying the recipient is
not added, needless to say, the information/content cannot be sent.

   However, as mentioned above, the video conference using Hangouts, the
information about the recipient is already stored in Google's server. Article (A) on the
operator side is required to just send the information to Google's server, and the need of
sending the information about the recipient from Article (A) separately is nil, so that the
allegation of the demandent is groundless."

(4) "Further expression presenting the first content and the second content arranged
    while keeping the relationship decided by the operator" is not sent. (the constituent

component (F)) (page 5, line 26-page 9, line 2 in the written reply)

(A) The meaning of "the relationship"

The constituent component (F) is prescribed as "the handheld apparatus configured to make the remote server send further expression presenting the first content and the second content arranged while keeping the relationship decided by the operator, so as to allow at least the one recipient to receive the further expression."

It is understood that "the relationship" indicates "the relationship decided by the operator" described in the constituent component (D). In the constituent component (D), it is prescribed that "second content that temporally overlaps with the presentation of the first content according to a relationship decided by the operator," so that it is understood that "the relationship" in the constituent component (F) means a relationship relating to the temporal overlapping of the first content and the second content.

(B) In Article (A), the temporal relationship of the first content and the second content is not maintained.

If receiving (video/voice) content (first content) from one participant, Google's server managing Hangouts sends the content to other participants (recipients) as it is, and does not adjust transmission timing of the first content according to another content (second content) received from other participants.

Namely, in Hangouts, due to transmission delay between Google's server and the terminal of each participant, a temporal gap between the presentation of the first content and the input of the second content on the operator's terminal differs from a temporal gap of the reception of the first content and the second content on the recipient's terminal.

Namely, the remote server sends the first content (content inputted from a third person other than users 1 and 2) at time T1, to the user 1 (the operator) and 2 (the recipient) who are other users, and at the terminals of the user 1 and the user 2, the first content is respectively received at times T2 and T3, and displayed on a screen. Then, if the user 1 (the operator) inputs second content at time T4, the second content is sent to Google's server, and then Google's server receives the second content at time T5. The Google's server sends the content to the second user. The second content is received by the terminal of the user 2 at time T6.

Thus, due to the transmission delay between Article (A) and Google's server, a temporal relationship of the first and second contents on the user 1 is decided by T4 and T2, whereas a temporal relationship of the first and second contents on the user 2 is decided by T6 and T3, and these are different. Therefore, on the recipient (the user 2), the temporal relationship of the first content and the second content is not maintained.

As mentioned above, in the video conference using Hangouts, the transmission delay between the server and the terminal is generated, the first content (the moving image and singing of MARI) and the second content (the guitar music or moving image of AKIRA) are not sent to the recipient while keeping their timing or tempo on the operator, so that "further expression presenting the first content and the second content arranged while keeping the relationship decided by the operator" is not sent to the recipient.

(C) Configuration relating to YouTube

(omitted)

(D) Summary

Therefore, in Article (A), "expression presenting the first content and the second content arranged while keeping the relationship decided by the operator" is not sent, so that Article (A) does not satisfy the constituent component (F) of the invention.

(5) Article (A) does not control the operation of the remote server (the constituent component (F)) (page 9, lines 3-16)

The constituent component F prescribes a requirement that "the remote server sends further expression presenting the first content and the second content arranged while keeping the relationship decided by the operator, so as to allow at least the one recipient to receive the further expression." It is obvious that the requirement prescribes the operation of the remote server, not the handheld apparatus, from the wording.

However, Article (A) is the handheld apparatus, does not control the operation of Google's server which is the remote server, and does not perform the control to "send further expression presenting the first content and the second content arranged while keeping the relationship decided by the operator, so as to allow at least the one recipient to receive the further expression" in Google's server, and the demandant does not clarify this point.

Therefore, from this viewpoint, it is obvious that Article (A) does not satisfy the constituent component (F) of the invention.

No. 5 Comparison and judgment

1 Regarding sufficiency of each constituent component

(1) Regarding the constituent component (A)

a. "Handheld apparatus"

"a handheld apparatus which is 228.25 mm in height, 153.68 mm in width, 7.95 mm in thickness, and 425 g or 436 g in weight, and is supposed to be used by being held

in a hand" in (i) of (a) of Article (A) satisfies "a handheld apparatus" of the constituent component (A).

b. "Output device"

In Paragraph [0024] in the description and other materials of the patent, as an item of equipment of "the handheld apparatus," "a visible raster display device 24 (for example, an LCD panel)" is described, so that it is obvious that "the visible raster display" of the patent invention includes an LCD panel; namely, a liquid crystal panel.

Therefore, "a display and a speaker which are output devices" in (ii) of (a) of Article (A) satisfy "at least one output device that includes a visible raster visual display presenting output to an operator" of the constituent component (A).

c. "Input device"

The constituent component (A) is "at least one output device that includes a visible raster visual display presenting output to an operator; and at least one input device that includes an array of switches receiving input from an operator." "The input device" is specified to "include an array of switches receiving input from an operator," and is specified as a device different from "at least one output device that includes a visible raster visual display."

Then, in Paragraph [0024] in the description and other materials of the patent, as the equipment of "the handheld apparatus," "an array of switches 21 for input" is described. Concerning the "array of switches 21," in Paragraph [0048], it is described that "the device is actuated by the array of the switches 21 (this can be actuated by pressing a corresponding array of buttons)." Furthermore, in Fig. 1, it can be seen that "the handheld apparatus" has the array of the switches 21 separately from "the visible raster display device" (24), so that it is reasonable to understand that the handheld has "the array of the switches" separately from "the visible raster display."

On the other hand, in "a liquid crystal panel-cum-touch panel" in (iii) of (a) of Article (A), "a touch panel" for input also serves as "a liquid crystal panel" which is the output device, and does not exist separately from "the liquid crystal panel." Also, "the touch panel" itself is not equipped with "the array of the switches." Furthermore, it is self-evident that "a microphone, a video camera, and the like" in (iii) of (a) of Article (A) are not equipped with "the array of the switches."

Therefore, "a liquid crystal display-cum-touch panel, a microphone, a video camera, and the like which are input devices" in (iii) of (a) of Article (A) do not satisfy "at least one input device that includes an array of switches receiving input from an

operator" of the constituent component (A).

d. "Wireless transmitter"

"a wireless chip (a wireless transmitter) which can use WiFi and/or a 3G channel or an LTE channel" in (iv) of (a) of Article (A) satisfies "a wireless transmitter" of the constituent component (A).

e. "Processing circuit"

"a CPU (a processing circuit) called NVIDIA Tegra K1 Dual Denver (which controls the operation of the those output devices, the input devices, and wireless transmitter)" in v of a of Article A satisfies "a processing circuit that controls operation of at least the one output device, at least the one input device, and the wireless transmitter" of the constituent component (A), except for the point mentioned in c.

From the foregoing (especially, c.), Article (A) does not satisfy the constituent component (A).

(2) Regarding the constituent component (B)

"An OS and an application 'Hangouts'" of Article (A) corresponds to "a program" of the constituent component C. Therefore, a point "provided with an OS and an application 'Hangouts' which can be executed by the CPU" of Article (A) satisfies a point "equipped with a program that can be executed by the processing circuit" of the constituent component (B).

Also, a point that "the OS and the application 'Hangouts' indicate various icons for supporting an operator through the output devices, when the operator operates Nexus 9" of Article (A) satisfies a point that "the program indicates information relating to operation through the visible raster display so as to assist the operator, when the operator operates the handheld apparatus" of the constituent component (B).

Therefore, Article (A) satisfies the constituent component (B).

(3) Regarding the constituent component (C)

"Google's server" and "content" of Article (A) respectively correspond to "a remote server separated in space from the handheld apparatus" and "first content."

Therefore, the point that "presents content received from Google's server to the operator through the output devices" of Article (A) satisfies the point that "presents

expression of first content given by" "(a) a remote server that is separated in space from the handheld apparatus to the operator through the output devices" of the constituent component (C).

In the constituent component (C), "(a) a remote server that is separated in space from the handheld apparatus" and "(b) a removable memory device" are connected by "or," so that it is sufficient if satisfying either one of (a) or (b).

Therefore, Article (A) satisfies the constituent component (C).

(4) Regarding the constituent component (D)
a. The point that "receives second content that temporally overlaps with the presentation of the first content according to a relationship decided by the operator... through the input devices from the operator."

"Another content" of Article (A) corresponds to "second content" of the constituent component (D).

Therefore, the point that "makes the operator input another content that temporally overlaps with the presentation of the content according to a relationship decided by the operator" of Article (A) satisfies the point that "receives second content that temporally overlaps with the presentation of the first content according to a relationship decided by the operator ...through the input device from the operator" of the constituent component (D).

b. The point that "receives...second content...and an identifier of at least one recipient through the input device"

It will be examined below whether the above description specifies that "second content" and "an identifier of a recipient" are simultaneously received as one set of data or that both are respectively received at any timing.

The description and other materials of the patent describe the following. "[0034]

In step 115, the system presents a rendition of the selected background music through the acoustic output transducer 23, and receives operator content from the operator through the acoustic input transducer 22. Step 116 allows the operator to sing, for example, while listening to the background music. This allows the operator to temporally overlap operator content with the presentation of the background music and to control the temporal relationship of this overlap.

[0035]

Steps 115 and 116 reiterate until step 117 determines that the creation of operator content is complete. The process then continues with step 103. Alternatively, the method may continue with steps that allow the operator to identify one or more recipients and to send a message with the just-created operator content to those recipients. One way in which a message may be sent is described below. Preferably, if the method proceeds directly to steps that allow the operator to send a message, a step is provided that allows the operator to refrain from sending the message.

[0036]

Preferably, the server 30 stores on the storage device 33 a representation of the message that includes the operator content but does not include the background music selected by the operator. (remainder omitted)"

"[0043]

e) Send

In step 144, the operator selects a previously created message to send. In step 145, the operator identifies one or more recipients. In a preferred implementation for use with a cellular telephone, the operator is able to press one or more buttons on the telephone to specify a telephone number or to select a recipient from a list of telephone numbers or e-mail addresses that was previously established by the operator and stored by server 30 in the storage device 33. In an alternative implementation, the operator is also able to specify an e-mail address by pressing buttons on the telephone according to known techniques to specify alphanumeric characters. Optional step 146 allows the operator to identify some additional content to be included with the message (such as text or a visual image that introduces the message to the recipient). The process then continues with step 103.

[0044]

In step 147, server 30 sends a representation of the message to each recipient identified in step 145 using a delivery method that is appropriate for each recipient. (remainder omitted)"

As described above, in the description and other materials of the patent, it is described that the operator content ("the second content") is received from the operator thorough the acoustic input transducer ("the input device");

(a) preferably, the message (the operator content") is sent to the server and stored; the previously created message (the operator content) is selected; the telephone number and the like ("the identifier of the recipient") are received from the operator through the

buttons on the telephone ("the input device"); the selected message is sent to the recipient; and

(b) alternatively, the operator specifies the recipient and sends the operator content to a reception destination. Namely, as a basic embodiment, it is described that "the second content" is received from the operator through "the input device," and after "the second content" is sent to the remote server, the selection of "the second content" and "the identifier of the recipient" are received from the operator through the input device, and then the selected "second content" is sent to the recipient. As an alternative embodiment, it is described that following the input of "the second content," "the identifier of the recipient" is received from the operator through "the input device," and "the second content" and "the identifier of the recipient" are sent to the server.

Consequently, it is reasonable to understand that the description "...receives second content...and an identifier of at least one recipient through the input device" of the constituent component (D) includes the above basic embodiment and the alternative embodiment.

Namely, it is understood that the description "...receives second content...and an identifier of at least one recipient through the input device" of the constituent component (D) does not specify that "the second content" and "the identifier of the recipient" are simultaneously received as one set of data, but it is sufficient, if having a function of respectively receiving (inputting) those at any timing through the input device.

Also, in the description of the constituent component (D), it cannot be said that receiving (inputting) "the second content" and "the identifier of the recipient" as one set of data whenever inputting is concretely specified, so that it cannot be limitedly understood that "the identifier of the recipient" is inputted (the alternative embodiment), when inputting (whenever inputting) "the second content."

On the other hand, according to "(d) makes the operator input another content that temporally overlaps with the presentation of the content according to a relationship decided by the operator, (d') makes the operator input identification information identifying a recipient through input devices" of Article (A), Article (A) has a function of making the operator respectively input another content and the identification information identifying the recipient, through the input devices. "Identification information identifying a recipient" of Article (A) corresponds to "an identifier of a recipient" of the patent invention.

Therefore, the point that "makes the operator input another content...through the input device, and makes the operator input identification information identifying a

recipient through input devices" of Article (A) satisfies the point that "receives second content...and an identifier of at least one recipient through the input devices" of the constituent component (D).

Therefore, Article A satisfies the constituent component (D).

(5) Regarding the constituent component (E)

As described in b. of (4), in the description and other materials of the patent, as the basic embodiment, it is described that "the second content" is received from the operator through "the input devices," and after "the second content" is sent to the remote server, the selection of "the second content" and "the identifier of the recipient" are received from the operator through the input devices, and then the selected "second content" is sent to the recipient; and as the alternative embodiment, it is described that following the input of "the second content," "the identifier of the recipient" is received from the operator through "the input devices," and "the second content" and "the identifier of the recipient" are sent to the server.

Therefore, concerning the description "sends the expression of the second content and the identifier of at least the one recipient to the remote server that is separated in space from the handheld apparatus, through the wireless transmitter" of the constituent component (E), it is reasonable to understand that the description includes the basic embodiment and the alternative embodiment.

On the other hand, according to "(e) sends another content from Nexus 9 to Google's server through the wireless transmitter, and (e') sends the identification information identifying the recipient from Nexus 9 to Google's server through the wireless transmitter" of Article (A), Article (A) has a function of sending each of another content and the identification information identifying the recipient from Nexus 9 to Google's server through the wireless transmitter.

Therefore, "sends another content from Nexus 9 to Google's server through the wireless transmitter, and sends the identification information identifying the recipient from Nexus 9 to Google's server through the wireless transmitter" of Article (A) satisfies "sends the expression of the second content and the identifier of at least the one recipient to the remote server that is separated in space from the handheld apparatus, through the wireless transmitter" of the constituent component (E).

Therefore, Article (A) satisfies the constituent component (E).

(6) Regarding the constituent component (F)

a. The point that "The handheld apparatus" is configured to make "the remote server" "send further expression."

      In "the handheld apparatus configured to make the remote server send further expression presenting the first content and the second content arranged while keeping the relationship decided by the operator, so as to allow at least the one recipient to receive the further expression" of the constituent component (F), "the handheld apparatus" makes "the remote server" "send," and it is obvious that "the handheld apparatus" sets (controls) "the remote server" to work.

      On the other hand, considering Evidence A, Article (A) just sends the inputted content to "Google's server" as it is, and concrete evidence of performing causative control on "Google's server" is not indicated.

      Therefore, Article (A) does not satisfy the point that "the handheld apparatus" "is configured" to "make the remote server" "send further expression." of the constituent component (F)

b. The point that "the remote server" " sends further expression presenting the first content and the second content arranged while keeping the relationship decided by the operator, so as to allow at least the one recipient to receive the further expression."

      The fact that "the remote server" "sends further expression presenting the first content and the second content arranged while keeping the relationship decided by the operator, so as to allow at least the one recipient to receive the further expression" of the constituent component (F) is a matter specifying the configuration of "the remote server," but "Nexus 9" relating to Article (A) is the handheld apparatus, not "the remote server," so that it is obvious that "Nexus 9 "cannot include the configuration of "the remote server."

      Furthermore, as mentioned in Paragraph "No. 3 Article (A)," "Hangouts" is an application having a function of performing conversation (including a conference and the like) between a plurality of persons while looking at face images of each other, and in order to establish the conversation while looking at face images of each other, it is understood that face images and voices of the participants participating in the conversation are transmitted/received to/from each other. Therefore, in "Hangouts," for example, if assuming participants as A, B, and C, first content inputted by the

participant A is sent to the participant B and the participant C according to timing at which the first content is received by Google's server, and second content separately inputted by the participant B is sent to the participant A and the participant C according to timing at which the second content is received by Google's server, so that it cannot be said that a temporal relationship of the first content and the second content received by the participant C is equal to a temporal relationship of the reception of the first content and the input of the second contents by the participant B, and concrete evidence for indicating the equality is also not indicated.

Therefore, Article (A) does not satisfy the point that "the remote server" " sends further expression presenting the first content and the second content arranged while keeping the relationship decided by the operator, so as to allow at least the one recipient to receive the further expression" of the constituent component (F).

Therefore, Article A does not satisfy the constituent component (F).

No. 6 Closing

As described above, Article (A) ("Nexus 9 pre-installed with Hangouts" (a tablet computer)) is not equipped with the constituent components (A) and (F) of the present invention, so that Article (A) does not fall within the technical scope of the patent invention.

Therefore, the advisory opinion shall be made as described in the conclusion.

October 22, 2015

Chief administrative judge: OTSUKA, Ryohei
Administrative judge: HAYASHI, Tsuyoshi
Administrative judge: HAGIWARA, Yoshinori