Trial decision

Invalidation No. 2016-800070

Tokyo, Japan

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The case of trial regarding the invalidation of Japanese Patent No. 4766085, entitled "TAPE DRIVE DEVICE, RECORDING MEDIUM, AND RECORDING/READING METHOD" between the parties above has resulted in the following trial decision.

Conclusion

The trial of the case was groundless.

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

Reason

No. 1 History of the procedures

1. History of applications for the patent

August 1, 2008	Filing of application (Original Filing Date: March 17, 1999)
December 21, 2010	Notice of reasons for refusal (drafting date)
February 21, 2011	Written opinion, Written amendment
May 10, 2011	Decision to grant a patent (drafting date)
June 24, 2011	Registration of establishment

2. History of invalidation trial of the case

June 10, 2016	Written demand for trial
August 29, 2016	Written reply
October 19, 2016	Notice of trial matters
December 5, 2016	Oral proceedings statement brief (Demandant, Demandee)
December 19, 2016	Oral proceedings
December 26, 2016	Written statement (Demandee)
January 17, 2017	Written statement (Demandant)

No. 2 Allegations of the parties

1. The demandant's allegation

(1) Object of the demand

The demandant demands the decision, "The patent for the invention relating to Claims 5, 6, and 7 in the scope of claims of Japanese Patent No. 4766085 shall be invalidated. The costs in connection with the trial shall be borne by the demandee."

(2) Gist of reasons for invalidation

The patent invention (hereinafter referred to as "Patent invention 1," "Patent invention 2," and "Patent invention 3," and generally referred to as "Patent invention") relating to Claims 5, 6, and 7 in the scope of claims of Patent No. 4766085 is an invention described in Evidence A No. 1 distributed before the application for the patent was filed, and violates the provisions of Article 29(1)(iii) of the Patent Act. The patent should be invalidated under the provisions of Article 123(1)(ii) of the Patent Act.

<Evidences A submitted by the demandant>

Evidence A No. 1	National Publication of International Patent Application No. H7-500445
Evidence A No. 2	Kenkyusha's New English-Japanese Dictionary (5th edition)
Evidence A No. 3	Kojien 6th edition p. 471
Evidence A No. 4	McGraw-Hill Dictionary of Scientific and Technical Terms 3rd edition p. 1884

2. The demandee's allegation

(1) Object of the reply

The demandee demands the decision, "The demand for trial of the case was

groundless. The costs in connection with the trial shall be borne by the demandant."

(2) Gist of the reply

Patent inventions 1 to 3 are not the invention described in Evidence A No. 1 and do not fall under Article (1)(iii) of the Patent Act. No reasons for invalidation under the provisions of Article 123(1)(ii) of the Patent Act exist in the Patent inventions 1 to 3.

<Evidence B submitted by the demandee>

Evidence B No. 1 Notice of reasons for refusal of December 21, 2010

(Japanese Patent Application No. 2008-200148)

No. 3 The patent invention

The Patent invention is as follows.

"[Claim 5]

A recording medium comprising:

a tape cassette including a magnetic tape; and

a memory attached to said tape cassette, said memory being provided for storing management information for managing recording/reading to/from said magnetic tape and identifying said tape cassette,

use-recognition information, which is one of the pieces of management information indicating a purpose of use corresponding to said tape cassette, is stored in a read-only area in said memory which cannot be altered by a user.

[Claim 6]

The recording medium described in Claim 5, identification information of said tape cassette is stored in said memory and said magnetic tape.

[Claim 7]

The recording medium described in Claim 5, said use-recognition information indicate that said magnetic tape only additional writing or reading is allowed."

The Patent invention is separately described as follows. (Hereinafter referred to as "Constituent component A" to "Constituent component G.")

(Patent invention 1)

D A recording medium comprising:

A a tape cassette including a magnetic tape; and

B a memory attached to said tape cassette, said memory being provided for storing management information for managing recording/reading to/from said magnetic tape and identifying said tape cassette,

C use-recognition information, which is one of the pieces of management information indicating a purpose of use corresponding to said tape cassette, is stored in a read-only area in said memory which cannot be altered by a user.

(Patent invention 2)

F The recording medium described in Claim 5,

E identification information of said tape cassette is stored in said memory and said magnetic tape .

(Patent invention 3)

H The recording medium described in Claim 5,

G said use-recognition information indicate that said magnetic tape only additional writing or reading is allowed.

No. 4 Judgment by the body

The reasons for invalidation are examined as follows.

1. Invention described in Evidence A No. 1 (National Publication of International Patent Application No. H7-500445)

Evidence A No. 1 describes the following matters with drawings on the "Memory device for magnetic tape cassette." Underlines are added by the body.

A. "This invention concerns an electronic memory device for a magnetic tape cassette and a recording and/or reproducing apparatus suitable for this, in particular a memory device for magnetic tape cassette for VTR with digital processing of digitally coded video/audio signals. The magnetic tape cassette has a housing containing one or more reels of magnetic tape as well as the electronic memory device which can be connected to the recording and/or reproducing device in the case of being placed therein and which can be controlled by data processing and a control circuit, and the memory device contains information for preventing and/or enabling certain operating states of the recording and/or reproducing device." (p. 2 lower right column l.3-l.15)

B. "FIG. 1 illustrates an embodiment example for the memory content of the electronic memory device in the case of an empty cassette.

FIG. 2 illustrates an embodiment example for the memory content of the electronic memory device in the case of a cassette used by a private user for the first time.

FIG. 3 illustrates an embodiment example for the memory content of the electronic memory device in the case of a cassette destined to be loaned or sold.

FIG. 4 illustrates a magnetic tape cassette with a memory device contained within it.

The electronic memory illustrated in FIGS. 1 through 3 is divided into connected units of differing lengths, for example, into bytes each with a length of 8 bits, or into groups of bytes.

The first byte contains, in a manner actually already known, information about the cassette itself, the type of cassette, the length of magnetic tape contained therein, or the type of the magnetic tape cassette, for example, x3f (x for hexadecimal representation) in this case. This information does not change.

Information on the use of the cassette is stored in the second byte. This information can be altered just once when the cassette is first used, and afterwards this information cannot be altered.

With the memory content of a blank cassette shown in FIG. 1, 00, for example, is entered here, whereby this identification at the same time permits a one-off alteration of the entry. In a blank cassette the remainder of the memory content is unimportant and therefore arbitrary; it may remain, for example, constant at 00.

The memory content of a cassette used for the first time in a camcorder by a private user shown in FIG. 2 is characterized at the second position, for example, by the entry. A cassette used for the first time in a VTR could then, for example, be characterized by 02, and a cassette used for the first time in an audio recorder by 03.

The following memory section in FIGS. 1 and 2 serves for the characterization of a combination of the starting point, finishing point, and duration of a respective recording. Here, for example, a data record consisting of the starting time in minutes

and seconds, the finishing time in minutes and seconds, and several bytes for additional information is represented. Such a data record is provided for each recording on the magnetic tape. On the other hand, for example, a prerecorded cassette, destined to be loaned or sold, can be characterized by xff at the second position. The memory content illustrated in FIG. 3 for the case of a prerecorded cassette deviates in that further information positions are inserted between the first two bytes and the following data records. These contain, for example, a serial number with which the cassette on which a certain program has been recorded can be unambiguously identified, and, for example, information on the type of playback authorization (authorization) at another memory position." (p. 3 upper right column l. 12-lower right column l. 14)

C. "2. Personally Recorded Cassette

If the identification in the second memory section indicates that it is a cassette in private use, then the subdivision of the following memory sections is defined.

2. 1 Recording Protection

Protection against unwanted overwriting or erasure of already existing recordings is achieved by a recording device always performing a comparison between the current tape position and the entries in the memory. The recording function is triggered only when this comparison indicates no possible overwriting. If, however, a possible overwrite is detected, then the recording function can be completely blocked, or triggered only after inquiry followed by confirmation. Furthermore, a complete blocking of the recording function for each individual recording can also be effected through a corresponding entry in the memory position provided for additional data. This entry can be carried out and deleted again by the user with the aid of a corresponding function on the recorder or camcorder. This function described in this way thereby replaces, in an essentially more flexible form, the mechanical erasure blocking in the form of a break-off tab or a slider usually employed up until now." (p. 3 lower right column l. 22-p. 4 upper left column l. 18)

D. "3. Prerecorded Cassette

In the case of a cassette marked as being prerecorded, it is possible in principle, for example, to only trigger the playback, thus reliably preventing an unwanted erasure.

In order to reduce the risk of theft for such cassette, a special entry may be necessary at the position provided for the usage authorization (so that the playback function of a reproduction device is triggered). This entry might not, for example, be present on cassettes displayed on the shelves of a video hire store and might be first carried out at the check-out. However, as such an entry can be manipulated with the aid of suitable devices, it is even more advisable to delete all data records relating to the content in the case of the cassettes displayed on the shelves. Such a cassette is practically worthless. Only at the check-out is the cassette then identified by means of the serial number and the data records are reloaded, for example, from the memory of a computer.

Not only is it possible to generally authorize the playback of a cassette by means of an appropriate entry. Furthermore, just certain functions can be authorized for the playback. With compatible HDTV/TV recordings, it is, for example, possible to just permit the TV playback with lower resolution; for recordings with stereo sound and surround sound, the playback of the surround sound can be blocked. Further, it is also possible to design a memory position within the memory device as a counter for the number of playbacks permitted.

In addition to the typical entries for a prerecorded cassette, individual playback blocks can also be activated by the user as in the case of a cassette recorded personally by him/himself. After the cassette has been returned, such blocking entries, if necessary with password number, may have remained in the memory device. However, it is also possible, without any further ado, to remove these from the memory device entirely with a total block after return or upon renewed authorization at the check-out.

4. Prerecorded Cassette with Increased Protection (Comparison with Subcode)

It is conceivable that by using suitable resources, the content of the memory device could be altered by unauthorized persons, and in particular the content of the

memory positions characterizing the authorization can be altered. Increased protection can be created in that with a prerecorded cassette, the entire content of the memory device or parts thereof are continuously recorded as a so-called subcode along with the recording of the wanted signal.

If the playback is then only released when the content of the memory device coincides with the recorded subcode, then it is sufficient to alter specifically the content of the memory device at one or a few positions in order to block playback." (p. 4 upper right column l. 4 to lower right column l. 6)

E. "FIG. 4 shows a magnetic tape cassette with a housing. The magnetic tape cassette contains two reels of magnetic tape 8, 9 onto which a magnetic tape 10 is wound. Apart from that, the magnetic tape cassette contains a memory device 11 as described in the foregoing which can be connected or coupled to a read and/or write facility provided in a magnetic tape device on the side 12 facing the outer wall of the magnetic tape cassette." (p. 4 lower right column l. 13-l. 20)

F. "A further means for blocking is rendered possible by the comparison of the memory content with the subcode stored on the magnetic tape.

For example, playback is then only executed if a certain part of the subcode coincides with a certain entry in the memory. It is of course advantageous if each cassette is numbered; this number is available in the memory on the one hand and, on the other, is recorded in the subcode with each recording. Thus, the cassette housing (=memory) and the recorded tape then belong together." (p. 5 upper right column l. 4-l. 18)

According to the above described matters and drawings, the magnetic tape cassette in Evidence A No. 1 describes the following matters.

(1) According to A, E, and FIG. 4, the magnetic tape cassette has a magnetic tape and a memory device.

(2) According to A, B, and FIGS. 2 to 3, the memory device contains information for preventing and/or enabling certain operating states of the recording and/or reproducing device, and the electronic memory in the memory device is divided into bytes.

The first byte of the electronic memory in the memory device contains information about the cassette itself, the type of cassette, the length of magnetic tape contained therein, or the type of the magnetic tape cassette (for example, x3f). This information does not change.

(3) According to B and FIGS. 2 to 3, information on the use of the cassette is stored in the second byte of the memory in the memory device. This information is altered once when the cassette is first used.

The information characterized by the entry in the second byte is altered by the device using the cassette first when used as a personally recorded cassette. A cassette used for the first time in a VTR is characterized by 02, and a cassette used for the first time in an audio recorder by 03. A prerecorded cassette is characterized by xff.

(4) According to B, and FIGS. 2 to 3, the electronic memory in the memory device has a data record consisting of several bytes arranged in bytes following the second byte.

For a prerecorded cassette, further bytes are inserted between the second byte and the data record, and contain a serial number with which the cassette can be unambiguously identified, and information on the type of playback authorization.

(5) According to C and FIG. 2, for a personally recorded cassette, protection against unwanted overwriting or erasure is achieved by a recording device always performing a comparison between the current tape position and the entries in the memory. The recording function is triggered only when this comparison indicates no possible overwriting. Thus, the "entry" is always compared with the actual tape position, and is considered to be located in the "data record" arranged in the bytes following the second byte.

The above C also describes, "Furthermore, a complete blocking of the recording function for each individual recording can also be effected through a corresponding entry in the memory position provided for additional data." The "corresponding entry" indicates each of the entries (access-authorized, overwrite-protected, and playback-protected) in the additional data in FIG. 2. It can be thought that entries in a data record can be characterized individually. It can be recognized that the "entry" can be substituted for the "corresponding entry."

The "corresponding entry in the memory position provided for additional data" can be altered (writable/erasable); according to the description in C, "can be carried out and deleted again by the user with the aid of a corresponding function on the recorder or camcorder." Therefore, the data record (bytes following the second byte) "can be altered."

(6) According to D and FIG. 3, for a prerecorded cassette, a special entry may be arranged at the position (of the electronic memory in the memory device), for authorizing playback of the cassette or number of playbacks permitted. In light of B and FIG. 3, the special entry is recognized to be located in the fifth byte, which is a byte group next to the second byte.

The entry might not be present on cassettes displayed on the shelves of a video hire store and might be carried out at the check-out, and can be altered.

(7) According to D, for a prerecorded cassette, increased protection can be created with a "subcode."

According to D and F, the entire content of the memory device are continuously recorded in the magnetic tape as a so-called subcode. Playback of the cassette is allowed only when the subcode coincides with a certain entry in the memory. According to B and FIG. 3, the "certain entry" corresponds to a cassette number (a serial number with which the cassette can be unambiguously identified), and is recognized to be stored in the 3rd and 4th bytes which are a byte group next to the second byte. As described above, the subcode may contain all of the information stored in the memory device, and may store information stored in all of the bytes of the electronic memory in the memory device, on the magnetic tape.

The description on the subcode in F relates to reproduction. The term "subcode" is described only in "4. Prerecorded Cassette with Increased Protection (Comparison with Subcode)" in the above description D. The "subcode" is used in a prerecorded cassette, accordingly.

(8) According to D, for a prerecorded cassette, blocking entries for activating individual playback blocks are recorded additionally, and they can be erased (variable). The blocking entries are described as follows, "individual playback blocks can also be activated as in the case of a cassette recorded personally by him/himself," and can be recognized as information in data records.

Therefore, Evidence A No. 1 describes, as follows, the "personally recorded cassette" (hereinafter referred to as "Cited invention 1"), and the "prerecorded cassette" (hereinafter referred to as "Cited invention 2").

<Cited Invention 1>

A magnetic tape cassette having a magnetic tape and a memory device,

the memory device including a memory containing information for prohibiting and/or allowing a predetermined operation state of a predetermined recording and/or reproducing device,

the memory in the memory device being divided into bytes,

the first byte in the memory in the memory device storing invariable information about the cassette itself, the type of cassette, the length of magnetic tape contained therein, or the type of the magnetic tape cassette,

the second byte in the memory in the memory device storing information on the use of the cassette, which can be altered just once when the cassette is first used and altered depending on the device using the cassette first,

and configured to store variable entries necessary for preventing overwriting or erasure in the recording and/or reproducing device in the bytes (data records) following the second byte in the memory in the memory device.

<Cited Invention 2>

A magnetic tape cassette having a magnetic tape and a memory device,

the memory device including a memory containing information for prohibiting and/or allowing a predetermined operation state of a predetermined reproducing device,

the memory in the memory device being divided into bytes,

the first byte in the memory in the memory device storing invariable information about the cassette itself, the type of cassette, the length of magnetic tape contained therein, or the type of the magnetic tape cassette,

the second byte in the memory in the memory device storing information on the use of the cassette, which can be altered just once when the cassette is first used,

the third and fourth bytes in the memory in the memory device storing a predetermined entry (cassette number) for comparison with a subcode stored in the magnetic tape, to allow playback of the cassette only when the subcode and the predetermined entry coincide with each other,

the fifth byte in the memory in the memory device storing a special variable entry for authorizing playback of the cassette or the number of times the cassette is reproduced,

and the subsequent bytes (data records) in the memory in the memory device storing variable block entries,

and configured to store all of the information stored in the memory in the memory device, on the magnetic tape.

2. Comparison / judgment

(1) Regarding Cited invention 1

The Patent invention (Constituent components A to D) is compared with the Cited invention 1.

a. The "magnetic tape cassette having a magnetic tape" in the Cited invention 1 corresponds to the "tape cassette with a magnetic tape housed therein" in the Constituent component A.

Thus, The Cited invention 1 has a configuration corresponding to the Constituent component A.

b. The "magnetic tape cassette having ... a memory device, the memory device including a memory containing information for prohibiting and/or allowing a predetermined operation state of a predetermined recording and/or reproducing device"

in the Cited invention 1 is considered to include information for managing recording or reproduction on a magnetic tape, and corresponds to the "recording medium comprising a memory attached to said tape cassette, said memory being provided for storing information for managing recording/reading to/from said magnetic tape" in the Constituent component B.

The "management information" in the Patent invention 1 includes, according to [0018] in the patent specification, "manufacturing information and serial number information of each tape cassette, the tape thickness and length, the tape material, information relevant to a record of using recorded data in each partition, user information, and the like" The information stored in the first byte in the Cited invention 1, "the cassette itself, the type of cassette, the length of magnetic tape contained therein, or the type of the magnetic tape cassette" can be a part of the "management information" in the Constituent component B at least.

However, the management information for "identifying the tape cassette" in the Constituent component B is, according to [0005], [0009], [0014], [0130], and [0131] in the patent specification, a serial number of the tape cassette, for example, and allows reading or recording to/from a magnetic tape only when the "identification information" recorded in the memory and the magnetic tape coincide with each other. Therefore, in the Cited invention 1, the same (identification) information is not recorded in the memory and the magnetic tape.

Thus, the Cited invention 1 does not include a configuration corresponding to the Constituent component B.

Regarding this point, the demandant alleges, in p. 19 to p. 21 of the oral proceedings statement brief as of December 5, 2016, that "The cassette number in Evidence A No. 1 is used in a further blocking procedure. The further blocking procedure is recognized as a general procedure to be applied regardless of the type of cassette, and can be employed in a personally recorded cassette."

However, in Evidence A No. 1, the cassette number relates to the subcode.

The subcode is limited to the "prerecorded cassette with increased protection," according to D. According to F, Evidence A No. 1 includes a description about the subcode used for executing blocks of reproduction, while it includes no description about use for recording control or application to a personally recorded cassette (for example, specific description about the location where the cassette number is stored in the memory). There is no description indicating that the "conceivable that by using suitable resources, the content of the memory device could be altered (the alternation of the memory portion) by unauthorized persons " (see the above D), which is the reason for using the cassette number or subcode for the personally recorded cassette, can be expected in the personally recorded cassette. Therefore, the configuration of using a cassette number and subcode for a personally recorded cassette cannot be found in the whole of Evidence A No. 1.

Thus, it is reasonable that the matters relating to a cassette number in Evidence A No. 1 are limited to a prerecorded cassette. The demandant's allegation cannot be accepted.

c. According to the [Problem to be solved by the invention] and [Means for solving the problem] in the patent specification (see [0003] to [0008]), when a "magnetic tape" with larger capacity than a CD-R is used for a WORM recording medium, "stores use-recognition information in a memory" for managing recording and/or reading to/from a magnetic tape, in order to improve maintainability of data recorded on the magnetic tape, and is configured so that control means of a tape drive device "executes operation (recording/reading) on the magnetic tape on the basis of the use-recognition information" in recording/reading data to/from the magnetic tape in the tape drive device. Therefore, the "use-recognition information" in the Patent invention 1 is information for controlling recording operation or reading operation of a magnetic tape on the tape drive device. The demandant alleges also that the use-recognition information indicates the use of a tape cassette as well as controlling recording or reading on a magnetic tape (see p. 9 of Oral proceedings statement brief of December 5, 2016).

The "information on the use of the cassette" in the Cited invention 1 is recognized to divide the byte next to the second byte in the memory into bytes when stored in the second byte in the memory (see C); however, Evidence A No. 1 does not specifically describe how the information on the use of the cassette acts on the operation of the recording device (for example, referring to the information on the use of the cassette when the recording device executes recording or reproduction on a tape). Thus, it cannot be recognized that the "information on the use of the cassette" in the Cited invention 1 corresponds to the "use-recognition information" in the Patent invention 1.

Regarding the "second byte" where the "information on the use of the cassette" is stored" in the Cited invention 1, information in the "second byte" can be altered just once when the cassette is first used, and afterwards cannot be altered. The "second byte" is recognized to correspond to a kind of "ROM area." However, it cannot be a "read-only area which cannot be altered by a user" from the fact that the information is altered when used by the user (different information can be written depending on a recording/reproducing device selected to be used first).

The "entry" in the data record in the Cited invention 1, which is compared in the recording device, to prevent overwriting or erasure, corresponds to the "use-recognition information" in the Patent invention 1. Here, the data record is located in the bytes following the second byte, and the bytes are variable.

Thus, in The Cited invention 1, the information (entry) corresponding to the "use-recognition information" in the Patent invention 1 is recognized only in the variable area in the memory. Accordingly, the Cited invention 1 does not include a configuration corresponding to the Constituent component C.

Regarding this point, the demandant alleges, in p. 9 to p. 12 of the oral proceedings statement brief as of December 5, 2016, and p. 7 to p. 9 of the written statement as of January 17, 2017, that "Evidence A No. 1 describes that recording and reproduction on the magnetic tape of the cassette are controlled on the basis of the

information stored in the second byte."

However, Evidence A No. 1 includes no specific description on using (referring to) the information stored in the second byte in controlling recording and reproduction, and describes only that the memory is divided by the information stored in the second byte and that the recording device always compares a current tape position with entries in the memory. If, as the demandant acknowledges, the "entry in the memory" is the "starting time in minutes and seconds and the finishing time in minutes and seconds" (see p. 7 l. 15-l. 17 in the written statement as of January 17, 2017), the entry is not the information stored in the second byte. Thus, it cannot be recognized that Evidence A No. 1 describes the information stored in the second byte to control recording and reproduction.

The demandant alleges, in p. 15 to p. 16 of the oral proceedings statement brief as of December 5, 2016, and p. 9 of the written statement as of January 17, 2017, that "The second byte is referred first even when recording or reproduction is controlled on the basis of the information in an area following the third byte, and the control is conducted on the basis of the information. The presence of the information in the area following the third byte cannot deny that the information recorded on the second byte corresponds to the "use-recognition information."

However, Evidence A No. 1 includes no specific description on referring to the information stored in the second byte in controlling recording and reproduction.

Thus, it cannot be said that Evidence A No. 1 contains the matters alleged by the demandant. The demandant's allegation cannot be accepted, accordingly.

d. The "magnetic tape cassette" in the Cited invention 1 includes a tepe and a memory for managing a tape and recording or reproduction on the tape, and corresponds to the "recording medium" in the Constituent component D.

Thus, the Cited invention 1 includes a configuration corresponding to the Constituent component D.

Therefore, the Patent invention 1 and the Cited invention 1 are in correspondence and different in the following points.

<Corresponding features>

"A recording medium comprising:

a tape cassette including a magnetic tape; and

a memory attached to said tape cassette, said memory being provided for storing management information for managing recording/reading to/from said magnetic tape,

use-recognition information, which is one of the pieces of management information, indicating a purpose of use corresponding to said tape cassette, is stored in said memory."

<The different feature 1>] (Regarding Constituent component B)

In the Patent invention 1, the "management information for identifying said tape cassette" is stored in the memory. However, the Cited invention 1 includes no information for identifying a cassette, and does not specify the above matter.

<The different feature 2> (Regarding Constituent component C)

The Patent invention 1 is configured to "use-recognition information, which is one of the pieces of management information indicating a purpose of use corresponding to said tape cassette, is stored in a read-only area in said memory which cannot be altered by a user." However, the Cited invention 1 is configured to store the use-recognition information in a variable area of the memory, and does not specify the

above matter.

As described above, the Patent invention 1 and the Cited invention 1 include the Different features 1 and 2. The Patent invention 1 is not identical with the Cited invention 1.

The Patent inventions 2 and 3 include all of the constituent components of the Patent invention 1, as well as other constituent components. The patent inventions 2 and 3 are not identical with the Cited invention 1, as with the Patent invention 1.

Thus, the allegation by the demandant on the Reasons for invalidation cannot be accepted.

(2) Regarding the Cited invention 2

The Patent invention 1 (Constituent components A to D) is compared with the Cited invention 2.

a. The "magnetic tape cassette having a magnetic tape" in the Cited invention 2 corresponds to the "tape cassette including a magnetic tape " in the Constituent component A.

Thus, the Cited invention 2 has a configuration corresponding to the Constituent component A.

b. The "magnetic tape cassette having ... a memory device, the memory device including a memory containing information for prohibiting and/or allowing a predetermined operation state of a predetermined reproducing device" in the Cited invention 2 is considered to include information for controlling reproduction on a magnetic tape, and corresponds to the "recording medium comprising a memory

attached to said tape cassette, said memory being provided for storing information for managing (recording/) reading (to/)from said magnetic tape" in the Constituent component B.

The "management information" in the Patent invention 1 includes, according to [0014] in the patent specification, "manufacturing information and serial number information of each tape cassette, the tape thickness and length, the tape material, information relevant to a record of using recorded data in each partition, user information, and the like" The information stored in the first byte in the Cited invention 2, (the cassette itself, the type of cassette, the length of magnetic tape contained therein or the type of the magnetic tape cassette) can be a part of the "management information" in the Constituent component B.

The management information for "identifying said tape cassette" in the Constituent component B is, according to [0005], [0009], [0014], [0130], and [0131] in the patent specification, a serial number of a tape cassette, for example, and allows reading or recording on a magnetic tape only when the information recorded in the memory and the magnetic tape coincide with each other. Therefore, the "predetermined entry (cassette number)" in the description in the Cited invention 2, "the third to fifth bytes in the memory device storing a predetermined entry (cassette number) for comparison with a subcode stored in the magnetic tape" is compared to the subcode, to allow reproduction of the magnetic tape, and corresponds to the "management information for identifying said tape cassette" in the Patent invention 1.

Thus, the Cited invention 2 includes a configuration corresponding to the Constituent component B.

c. According to the [Problem to be solved by the invention] and [Means for solving the problem] in the patent specification (see [0003] to [0008]), when a "magnetic tape" with larger capacity than CD-R is used for a WORM recording medium, "stores use-recognition information in a memory" for managing recording and/or reading to/from a magnetic tape, in order to improve maintainability of data recorded on the

magnetic tape, and is configured so that control means of a tape drive device "executes operation (recording/reading) on the magnetic tape on the basis of the use-recognition information" in recording/reading data to/from the magnetic tape in the tape drive device. Therefore, the "use-recognition information" in the Patent invention 1 is information for controlling recording operation or reading operation of a magnetic tape on the tape drive device. The demandant alleges also that the use-recognition information indicates the use of a tape cassette as well as controlling recording or reading on a magnetic tape (see p. 9 of Oral proceedings statement brief as of December 5, 2016).

Regarding the "information on the use of the cassette" in the Cited invention 2, according to B in consideration of C, when the information is stored in the second byte in the memory, a data set of multiple bytes and further information positions (the third and fourth bytes) are inserted between the second byte and the data set. However, Evidence A No. 1 does not specifically describe how the information on the use of the cassette acts on the operation of the reproducing device (for example, referring to the information on the use of the cassette when the reproducing device executes reproduction of a tape). Thus, it cannot be accepted that the "information on the use of the cassette" in the Cited invention 2 corresponds to the " use-recognition information" in the Patent invention 1.

Regarding the "second byte" where the "information on the use of the cassette" is stored" in the Cited invention 2, information in the "second byte" can be altered just once when the cassette is first used. However, as for a prerecorded cassette, it can be recognized that a person who records information on the cassette (data distributer or firmware provider) writes information (xff) in the second byte. The "read-only" is specified in the Patent invention, in order to "prevent the user from altering" as described in [0105] of the patent specification. The user indicates a person using a recorded cassette, i.e."a video hire store (staff) that lends the cassette, a person who reproduces the hired cassette" in Evidence A No. 1. Therefore, it can be said that "the second byte" in the Cited invention 2 corresponds to the "read-only ROM area" in the Patent invention. (However, as described above, the information stored in the second

byte does not correspond to the use identification information in the Patent invention 1.)

The "special entry" in the fifth byte in the Cited invention 2 authorizes playback of the cassette or the number of times the cassette is reproduced, and triggers playback of the reproducing device, thereby corresponding to the " use-recognition information" in the Patent invention. The entry is variable, and the fifth byte is a variable area.

The information (special entry) corresponding to the "use-recognition information" in the Patent invention can be found only in the variable area of the memory. Thus, the Cited invention 2 does not have a configuration corresponding to the Constituent component C.

The demandant's allegation and the judgment regarding it are as described in "(1) c", and omitted.

d. The "magnetic tape cassette" in the Cited invention 2 includes a tape and a memory for managing a tape and recording or reproduction on the tape, and corresponds to the "recording medium" in the Patent invention 1.

Thus, the Cited invention 2 has a configuration corresponding to the Constituent component D.

Therefore, the Patent invention and the Cited invention 2 are in correspondence and different in the following points.

A recording medium comprising:

a tape cassette including a magnetic tape; and

a memory attached to said tape cassette, said memory being provided for storing management information for managing recording/reading to/from said magnetic

tape and identifying said tape cassette,

use-recognition information, which is one of the pieces of management information, indicating a purpose of use corresponding to said tape cassette, is stored in said memory.

<The different feature 2> (due to containing the same content as the above Different feature 2)

The Patent invention 1 is configured to "use-recognition information, which is one of the pieces of management information indicating a purpose of use corresponding to said tape cassette, is stored in a read-only area in said memory which cannot be altered by a user." However, the Cited invention 1 is configured to store the use-recognition information in a variable area of the memory, and does not specify the above matter.

As described above, the Patent invention 1 and the Cited invention 2 include the Different feature 2. The Patent invention 1 is not identical with the Cited invention 2.

The Patent inventions 2 and 3 include all of the constituent components of the Patent invention 1, as well as other constituent components. The patent inventions 2 and 3 are not identical with the Cited invention 2, as with the Patent invention 1.

Thus, the allegation by the demandant on the Reasons for invalidation cannot be accepted.

3. Summary

As described above, the Patent invention is not identical with the invention described in Evidence A No. 1. Thus, there are no Reasons for invalidation.

No. 5 Closing

As described above, the allegations and the means of proof by the demandant cannot invalidate the Patent relating to Claims 5, 6, and 7 of the Patent of the case.

The costs in connection with the trial shall be borne by the demandant 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 trial decision shall be made as described in the conclusion.

May 15, 2017

Chief administrative judge: MORIKAWA, Yukitoshi

Administrative judge: SAKAI, Tomohiro

Administrative judge: SEKIYA, Ryuichi