

Appeal Decision

Appeal No. 2018-11883

Appellant Maple Association Co., Ltd.

Patent Attorney SATO, Tominori

The case of appeal against the examiner's decision of refusal of Trademark Application No. 2017-86243 has resulted in the following appeal decision:

Conclusion

The appeal of the case was groundless.

Reasons

1 The trademark in the Application

The trademark in the Application consists of the standard characters of "AI 介護 (Kaigo; Nursing care)", and the application for its registration was filed on June 26, 2017 by setting services belonging to Class 44 as described in the application as the designated services. Thereafter, the designated services were amended to Class 44 "Beauty salon services; barbershops; providing bath houses; garden tree planting; garden or flower bed care; fertilizer spreading; weed killing; vermin exterminating (for agriculture, horticulture or forestry); massage and therapeutic Shiatsu massage; chiropractics; moxibustion; treatment for dislocated joints, sprain, bone fractures or the like (Judo-seifuku); acupuncture; providing medical information; physical examination; dietary and nutritional guidance; animal breeding; veterinary services; beautification for animals; nursing care; rental of potted plants; farming equipment rental; rental of medical apparatus and instruments; rental of fishing equipment and instruments; rental of apparatus and instruments for use in beauty salons or barbers' shops; rental of lawnmowers." by the Written Amendment filed on February 16, 2018 in the original examination.

2 Gist of reasons for refusal stated in the examiner's decision

The examiner's decision acknowledged and determined that "the trademark in the Application consists of the standard characters of 'AI 介護' (Kaigo; Nursing care) including characters of 'AI' that mean 'artificial intelligence' and the characters of '介護'

written in a string. Meaning of 'nursing care using artificial intelligence' is easily recognized from the trademark in the Application. Therefore, even if this is used for the services regarding nursing care using the artificial intelligence in the designated services of the present application, it is only recognized from the trademark in the Application that the service regarding the nursing case is the service described above. It is acknowledged that the trademark in the Application only simply displays the quality (content) of the service. Therefore, because the trademark in the Application falls under Article 3(1)(iii) of the Trademark Act and there is a possibility that the trademark in the Application is liable to be misleading as to the quality of the services when the trademark in the Application is used for services other than the above service, the trademark in the Application falls under Article 4(1)(xvi) of the Trademark Act" and refused the present application.

3. The notice of examination of evidence by the body

As a result of ex officio examination of evidence by the body regarding whether or not the trademark in the Application falls under Article 3(1)(iii) of the Trademark Act and Article 4(1)(xvi) of the same Act, the facts as indicated in the attachment were found. Therefore, the Appellant was notified of the facts by the notice of examination of evidence dated on May 24, 2019 under the provisions of Article 150(5) of the Patent Act which is applied mutatis mutandis in the provisions of Article 56(1) of the Trademark Act, and an opinion against this was requested within a designated period.

4 Gist of Appellant's opinion against the notice of examination of evidence

The Appellant stated the opinion as follows in response to the notice of examination of evidence in 3 described above.

(1) Among the evidence indicated in the notice of examination of evidence, specific meaning of "AI 介護 (Kaigo; Nursing care)" does not specifically indicate the quality and the content of the designated service of the present application to be actually provided. Therefore, the information is not sufficient as evidence materials in the field of the designated services of the present application.

(2) Therefore, the term "AI 介護 (Kaigo; Nursing care)" only evokes vague meaning, and it is hardly said that this is understood and recognized as a term that specifically and directly indicates the quality and the content of the goods.

5 Judgment by the body

(1) Regarding applicability of Article 3(1)(iii) of the Trademark Act

As described in 1 above, the trademark in the Application consists of the characters of "AI 介護". The characters of "AI" in the configuration are generally known as an abbreviation of "artificial intelligence", and the characters of "介護 (Kaigo; Nursing care)" are generally known as a word having the meaning of "to take care of the elderly and the sick and help their daily lives" (both are from "Kojien 7th edition" Iwanami Shoten, Publishers.).

Then, as indicated in the attachment, in newspaper article information and Internet information of the field related to "nursing care", the characters of "AI" are used as the meaning of "artificial intelligence". Furthermore, the characters of "AI 介護 (Kaigo; Nursing care)" are used together with, for example, description such as "It is intended to achieve a comfortable bath for the elderly and reduction in loads of caregivers ... by using artificial intelligence (AI)", or "AI (Artificial intelligence) has started to be widely used in nursing places". Actual circumstances are found in which nursing care using AI is actually performed, such as a nursing-care robot, nursing care plan creation assistance, or the like in nursing places.

Then, the characters of "AI 介護" configuring the trademark in the Application easily evoke the meaning of "nursing care using artificial intelligence (AI)".

Therefore, it is reasonable to say that, even if the trademark in the Application consisting of the characters of "AI 介護" is used for "nursing care" in the designated services, traders and consumers coming into contact with this only recognize "nursing care using artificial intelligence (AI)", and only recognize that the quality of the service is simply displayed in a common way. Therefore, the trademark in the Application falls under Article 3(1)(iii) of the Trademark Act.

(2) Appellant's allegation

The Appellant alleges that "the term 'AI' in the configuration of the trademark in the Application is a term having the meaning of 'pronunciation of Roman characters of 愛 (Ai; love)', and there is a case where the entire configuration gives rise to the meaning of 'nursing care with love'. Alternatively, even if it is considered to apply artificial intelligence to not only journalization but also an accounting process of nursing care business, usage of robots for nursing care works, and a technique for managing and reporting the nursing care business, the term 'AI' does not indicate the quality and the content of the designated services of the present application. Furthermore, corroborating information indicating that the term 'AI 介護' is actually used as the meaning described in the original examination in the field of nursing care is not presented. Therefore, the term 'AI 介護' only evokes vague meaning, and it is hardly said that this is understood and recognized as the word that specifically and

directly indicates the quality and the content of the goods".

However, as described in (1) above, according to use examples of the characters of "AI" and "AI 介護 (Kaigo; Nursing care)" in the newspaper article information and the Internet information in the field related to "nursing care", the trademark in the Application only gives recognition of the meaning "nursing care using artificial intelligence (AI)" in relation with "nursing care" in the designated services thereof, and it is reasonable to understand that the trademark in the Application cannot be recognized as a mark identifying the source of service.

Accordingly, the Appellant's allegation cannot be accepted.

(3) Summary

As described above, because the trademark in the Application falls under Article 3(1)(iii) of the Trademark Act, the trademark in the Application cannot be registered.

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

September 2, 2019

Chief administrative judge: TOMISAWA, Mika

Administrative judge: OMATA, Katsumi

Administrative judge: KISHINO, Katsuya

Attachment of the facts indicated in the notice of examination of evidence

Use examples of the characters of "AI" and "AI 介護 (Kaigo; Nursing care)" in fields related to "nursing care" (underlines are added by chief administrative judge)

1 Newspaper article information

(1) January 18, 2019 Nikkei Marketing Journal (Ryutsu Shimbun) page 11

Under the title of "AI nursing (AI 介護) robot is coming to Japan, U.S. company starts rental from August", it is described that "Aeolus Robotics, Inc. (CA, USA) that develops robots introduces a human-type robot mounting artificial intelligence (AI) in Japan. Aeolus Robotics proposes to introduce the robots for applications for assisting works of caregivers, for example, helping clearance or taking care of the elderly as aiming at the nursing care business that is troubled by a shortage of workers".

(2) July 5, 2018 The Yomiuri Shimbun Tokyo morning edition page 28

Under the title of "Comfortably taking bath using AI nursing (AI 介護) robots A professor at University of Toyama looking for cooperative firms in order to achieve the practical use = Toyama", it is described that "The characteristics of this robot are that the seat back is automatically deformed according to the physical size using artificial intelligence (AI), and this aims at a comfortable bath for the elderly and reduction in loads of caregivers".

(3) November 10, 2017 Nihon Keizai Shimbun morning edition page 15

Under the title of "NICHIIGAKKAN CO., LTD. and NEC Corporation cooperate with each other in 'AI nursing care (AI 介護)' and assist care plan creation", it is described that "NICHIIGAKKAN CO., LTD. and NEC Corporation agreed to develop the artificial intelligence (AI) in cooperation. The AI developed by NEC is made to read nursing-care insurance data owned by NICHIIGAKKAN, and creation of a nursing care plan made for persons in need of nursing care is assisted".

(4) October 3, 2017 NIKKEI BUSINESS DAILY page 16

Under the title of "Accelerate use of AI nursing care (AI 介護), Care Design Institute Inc, financed 230 million yen", it is described that "Development of technology for automatically creating a nursing care service plan using artificial intelligence (AI) is started".

2 Internet information

(1) On the website of "NISSEN DIGITAL HUB" managed by "NISSEN INC.", under the title of "Report regarding a place where nursing care robots mounting AI are actively used", it is described that "Robots and artificial intelligence (AI) have started to be widely used in nursing places. Can leading technologies solve a serious labor shortage? Then, can AI nursing care (AI 介護) robots take care of the hearts of the

elderly in need of nursing care?". (<https://nissenad-digitalhub.com/articles/ai-for-nursing-care-robot/>)

(2) In the website of "The Tokyo Shimbun", under the title of "Expert at nursing care using AI nursing care (AI 介護)", it is described that "In 2018, artificial intelligence (AI) has been expanded into various fields in society. The waves of AI introduction enter the sites of nursing care. AI learns the 'professional technique' of nursing care to use it in education, AI presents a care plan useful for self-reliance support, and an AI camera is used to prevent accidents of the elderly".

(<https://www.tokyo-np.co.jp/article/living/life/201812/CK2018123002000114.html>)

(3) On the website of "FUYO Kaihatsu Co., Ltd.", under the title of "AI nursing care (AI 介護) software, '安診ネット カイゴ (Anshin netto kaigo)' is certified as a target of IT introduction grant", it is described that "安診ネット カイゴ (Anshin netto kaigo) is AI nursing care (AI 介護) software using a cloud. This software contributes to reduce papers and reduce labor by operating the ICT in nursing care facilities".

(http://www.anshinnet.net/uploads/ck/admin/files/201806/news%20release_180605.pdf)

(4) On the website of "THE BRIDGE" managed by "PR TIMES Inc.", under the title of "Demonstration experiment conducted by Welmo Inc. providing AI nursing care (AI 介護) and Fukuoka City, satisfaction levels of care managers are investigated from nursing care data in the city", it is described that "On August 27, Welmo Inc., which is a nursing-care-related venture company, released to start demonstration experiment of care manager support using AI in cooperation with Fukuoka City".

(<https://thebridge.jp/2018/08/welmo-got-partnership-with-fukuoka-city>)