

Appeal Decision

Appeal No. 2020-12930

Appellant Tomy's Star Co., Ltd.

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The case of appeal against the examiner's decision of refusal regarding Japanese Patent Application No. 2019-160189 entitled "METHOD FOR ANALYZING CUTTING TECHNIQUE" has resulted in the following appeal decision.

Conclusion

The appeal of the case was groundless.

Reason

No. 1 History of the procedures

The present application is an application filed on September 3, 2019. A reason for refusal dated December 10, 2019 was notified, and a written opinion was submitted and a written amendment was filed on January 31, 2020, but an examiner's decision of refusal dated June 5, 2020 was issued. In response to this, an appeal against the examiner's decision of refusal was filed on September 15, 2020 with a written amendment dated at the same time.

No. 2. The Amendment

1. Contents of the Amendment

(1) Claims 1 to 5 in the scope of claims made by a written amendment submitted on January 31, 2020 (hereinafter referred to as "before the Amendment") are as follows.

"[Claim 1]

A method for analyzing a cutting technique used for a selected section, the method comprising:

a first step of from a photograph, an image, an illustration or a sketch of front, side and rear views of an analysis target;

then, a second step of selecting a section to be analyzed among a plurality of sections;

then, a third step of analyzing, using at least one of analysis items, suitable for the selected section selected in the second step, based on the naturally straight hairstyle in the naturally dry state estimated in the first step, which the analysis items are;

A analysis on outline shape or appearance

B cut-line analysis

C analysis on volume position or volume line

D analysis on silhouette or appearance

E analysis on parting (dividing line) position or presence of parting

F section width or shape analysis

G analysis on method of connecting face lines and sections or method of connecting the sections,

and obtaining an analysis result; and

then, a fourth step of deriving information on the cutting technique from the analysis result.

[Claim 2]

The method for analyzing a cutting technique according to Claim 1, wherein the information on the cutting technique is at least one of the following information:

(A) slice

(B) stem

(C) cut line

(D) parting (dividing line)

(E) dividing section and a width thereof.

[Claim 3]

A preliminary analysis method for a photograph, an image, an illustration or a sketch of a front view of an analysis target in the method for analyzing a cutting technique according to Claim 1, the method comprising:

estimating the naturally straight hairstyle in the naturally dry state; and

performing, on the photograph, the image, the illustration or the sketch of the front view of the analysis target, for the estimated naturally straight hairstyle in the naturally dry state, at least the following A among:

A drawing a front silhouette line

B drawing a median line

C drawing a length auxiliary line separately for (a) or (b), depending on an inclination of a lower outline of a side

(a) when the lower outline of the side is straight or rises forward, drawing a length auxiliary line parallel to the median line from an outer corner of an eye

(b)when the lower outline of the side is down forward, drawing a length auxiliary line from an outer line of a cheekbone

D drawing a mark at a position on the front silhouette line, where the length auxiliary line and the front silhouette line are the widest and is set as the front volume position

E when the hair begins to move inward from the front volume position and a direction is stable, drawing a straight line in that direction until it crosses the front volume position and the length auxiliary line, and marking a crossing point as an ear-to-length point.

[Claim 4]

A preliminary analysis method for a photograph, an image, an illustration or a sketch of a side view of an analysis target in the method for analyzing a cutting technique according to Claim 1, the method comprising:

estimating the naturally straight hairstyle in the naturally dry state; and

performing, on the photograph, the image, the illustration or the sketch of the side view of the analysis target, for the estimated naturally straight hairstyle in the naturally dry state, at least the following A among:

A drawing a horizontal silhouette line

B drawing an ear-to-ear line

C drawing a rear volume position

D drawing a volume line.

[Claim 5]

A preliminary analysis method for a photograph, an image, an illustration or a sketch of a rear view of an analysis target in the method for analyzing a cutting technique according to Claim 1, the method comprising:

estimating the naturally straight hairstyle in the naturally dry state; and

performing, on the photograph, the image, the illustration or the sketch of the rear view of the analysis target, for the estimated naturally straight hairstyle in the naturally dry state, at least the following A among:

A drawing a rear-silhouette line

B drawing a rear volume position

C drawing a volume line."

(2) Claims 1 to 5 in the scope of claims after the Amendment are as follows. (Underlined text indicates areas the amended parts.)

"[Claim 1]

A method for analyzing a cutting technique used for a selected section, the method comprising:

a first step of estimating a naturally straight hairstyle in a naturally dry state as viewed from front, side, and rear from a photograph, an image, an illustration or a sketch of front, side and rear views of an analysis target;

then, a second step of selecting a section to be analyzed among a plurality of sections;

then, a third step of analyzing, using at least one of analysis items suitable for the selected section in the second step, based on the naturally straight hairstyle in the naturally dry state estimated in the first step, which the analysis items are;

A analysis on outline shape or appearance

B cut-line analysis

C analysis on volume position or volume line

D analysis on silhouette or appearance

E analysis on parting (dividing line) position or presence of parting

F section width or shape analysis

G analysis on method of connecting face lines and sections or method of connecting the sections,

and obtaining an analysis result; and

then, a fourth step of deriving information on the cutting technique from the analysis result.

[Claim 2]

The method for analyzing a cutting technique according to Claim 1, wherein the information on the cutting technique is at least one of the following information:

(A) slice

(B) stem

(C) cut line

(D) parting (dividing line)

(E) dividing section and a width thereof.

[Claim 3]

A preliminary analysis method for a photograph, an image, an illustration or a sketch of a front view of an analysis target in the method for analyzing a cutting technique according to Claim 1, the method comprising:

estimating the naturally straight hairstyle in the naturally dry state; and

performing, on the photograph, the image, the illustration or the sketch of the front view of the analysis target, for the estimated naturally straight hairstyle in the naturally

dry state, at least the following A among:

A drawing a front silhouette line

B drawing a median line

C drawing a length auxiliary line separately for (a) or (b), depending on an inclination of a lower outline of a side

(a) when the lower outline of the side is straight or rises forward, drawing a length auxiliary line parallel to the median line from an outer corner of an eye

(b) when the lower outline of the side is down forward, drawing a length auxiliary line from an outer line of a cheekbone

D drawing a mark at a position on the front silhouette line, where the length auxiliary line and the front silhouette line are the widest and is set as the front volume position

E when the hair begins to move inward from the front volume position and a direction is stable, drawing a straight line in that direction until it crosses the front volume position and the length auxiliary line, and marking a crossing point as an ear-to-length point.

[Claim 4]

A preliminary analysis method for a photograph, an image, an illustration or a sketch of a side view of an analysis target in the method for analyzing a cutting technique according to Claim 1, the method comprising:

estimating the naturally straight hairstyle in the naturally dry state; and

performing, on the photograph, the image, the illustration or the sketch of the side view of the analysis target, for the estimated naturally straight hairstyle in the naturally dry state, at least the following A among:

A drawing a horizontal silhouette line

B drawing an ear-to-ear line

C drawing a rear volume position

D drawing a volume line.

[Claim 5]

A preliminary analysis method for a photograph, an image, an illustration or a sketch of a rear view of an analysis target in the method for analyzing a cutting technique according to Claim 1, the method comprising:

estimating the naturally straight hairstyle in the naturally dry state; and

performing, on the photograph, the image, the illustration or the sketch of the rear view of the analysis target, for the estimated naturally straight hairstyle in the naturally

dry state, at least the following A among:

- A drawing a rear-silhouette line
- B drawing a rear volume position
- C drawing a volume line."

2. Acceptability of amendment

In the Amendment, "estimating a naturally straight hairstyle in a naturally dry state as viewed from front, side, and rear" is added to "a first step of from a photograph, an image, an illustration or a sketch of front, side and rear views of an analysis target" recited in Claim 1 before the Amendment, and thus "a first step of estimating a naturally straight hairstyle in a naturally dry state as viewed from front, side, and rear from a photograph, an image, an illustration or a sketch of front, side and rear views of an analysis target" is obtained.

Claims 2 to 5 are dependent on Claim 1, and there is no change in the recitation as a result of the Amendment.

Here, the recitation "a first step of from a photograph, an image, an illustration or a sketch of front, side and rear views of an analysis target" in Claim 1 before the Amendment is not meaningful because there is an omission between the words "from" and "a first step of", as pointed out in the examiner's decision of refusal that, "the recitation is unclear as Japanese language".

Thus, the history from the filing of the application to the Amendment in Claim 1 is as follows: Claim 1 at the time of the filing of the application is recited as, "a first step of estimating a naturally straight hairstyle in a naturally dry state as viewed from front, side, and rear from a photograph, an image, an illustration or a sketch of front, side and rear views of an analysis target"; with the written amendment filed on January 31, 2020 (hereinafter referred to as "Amendment 1"), the part "estimating a naturally straight hairstyle in a naturally dry state as viewed from front, side, and rear" has been deleted, and amended to "a first step of from a photograph, an image, an illustration or a sketch of front, side and rear views of an analysis target" recited in Claim 1 before the Amendment; and with the Amendment, "estimating a naturally straight hairstyle in a naturally dry state as viewed from front, side, and rear" was again added, to obtain "a first step of estimating a naturally straight hairstyle in a naturally dry state as viewed from front, side, and rear from a photograph, an image, an illustration or a sketch of front, side and rear views of an analysis target" as recited in Claim 1 after the Amendment.

Then, in Claim 1 before the Amendment, the omitted words between "from" and

"a first step of" are clearly the words "estimating a naturally straight hairstyle in a naturally dry state as viewed from front, side, and rear" in Claim 1 as recited in the application.

Therefore, it is clear that the Amendment is made to correct an erroneous statement caused by the omission of words resulting from the Amendment 1 by correcting the recitation in Claim 1 at the time of filing, and does not add any new matter.

Hence, the Amendment does not violate the requirements defined in Article 17-2(3) and (4) of the Patent Act. The Amendment was made for the purpose of correcting an error listed in Article 17-2(5)(3) of the Patent Act.

Therefore, the Amendment was made legally.

No. 3 Reasons for refusal of the examiner's decision

The reason for refusal of the original decision is that the "method for analyzing a cutting technique" recited in Claim 1 of the Application is not "a creation of a technical idea utilizing a law of nature," and therefore does not fall under the definition of "invention" as defined in Article 2 of the Patent Act. Thus, the patent cannot be granted, for it does not fall under the category of "inventions that is industrially applicable" as defined in the main paragraph of Article 29(1) of the Patent Act.

No. 4 Judgment by the body

1. Matters Described in the Specification of the Present Application

(1) The invention recited in Claim 1 after the Amendment (hereinafter referred to as the "Amended Invention ") is as defined in 1(2) of No.2 above.

The Specification of the present application is described as follows.

[Technical Field]

[0001]

The present invention relates to a method for analyzing a cutting technique adopted in a hairstyle of an analysis target.

[Background Technology]

[0002]

Cosmetology schools teach students the cutting techniques used to create several typical hairstyles. However, they merely teach a part of the hairstyles available. Graduates are seen working at hair salons to improve their skills by learning cutting techniques from experienced hair stylists to be able to apply those skills to create various hairstyles.

[0003]

When a customer shows a photograph, saying "I would like you to cut my hair like

this.", at a hair salon, inexperienced hair stylists often do not know what cutting techniques to apply to achieve the desired look.

[0004]

More than 200 million hairstyles exist depending on how the hair is divided into sections such as bangs and top, and what cutting techniques are used for each section. It is a challenging task for inexperienced hair stylists and students to create hairstyles that look exactly like that in the photograph.

In addition, systematic learning techniques and analysis methods based on design logic of hairstyling have not existed to date, which makes the training of hair stylists time-consuming.

[0005]

Patent Document 1 proposes a method for designing hairstyles with numerical values and signs using a development diagram, but does not provide any method for creating a development diagram from a photograph brought by the customer. There is a description of cutting in Patent Document 1, but no mention of specific cutting techniques used for specific hairstyles, and it only describes a hairstyle that could be finished as per the created development diagram.

[0006]

Further, no attempt has been made to estimate and analyze naturally straight hairstyles in their naturally dry state from photographs.

[0007]

Experienced hair stylists only empirically derived cutting techniques from various hairstyles they had learned in the past, and for inexperienced hair stylists it becomes a challenge to derive cutting techniques from photographs.

[Prior Art References]

[Patent Documents]

[0008]

[Patent Document 1] JP-A-2004-209284

[Summary of Invention]

[Problem to be solved by the invention]

[0009]

The purpose of the present invention is to provide a method for analyzing a cutting technique for analyzing a front photograph, a side photograph, and a rear photograph of a hairstyle of an analysis target, and using the cutting technique for the analysis target.

[Means for solving the problem]

[0010]

In order to solve the above problem, the present invention relates to a method for analyzing a cutting technique used for a selected section, the method including:

a first step of estimating a naturally straight hairstyle in a naturally dry state as viewed from front, side, and rear from a photograph, an image, an illustration or a sketch of front, side and rear views of an analysis target;

then, a second step of selecting a section to be analyzed among a plurality of sections;

then, a third step of analyzing, using at least one of analysis items suitable for the selected section selected in the second step, based on the naturally straight hairstyle in the naturally dry state estimated in the first step, which the analysis items are;

A analysis on outline shape or appearance

B cut-line analysis

C analysis on volume position or volume line

D analysis on silhouette or appearance

E analysis on parting (dividing line) position or presence of parting

F section width or shape analysis

G analysis on method of connecting face lines and sections or method of connecting the sections,

and obtaining an analysis result; and

then, a fourth step of deriving information on the cutting technique from the analysis result.

[Effects of the Invention]

[0011]

According to the present invention, a cutting technique analysis to be adopted from a photograph, an illustration or a sketch of an analysis target can be provided.

In addition, because the cutting technique analysis is systematized, even students and inexperienced hair stylists can easily analyze the cutting technique.

(2) Outline of the Amended Invention

According to the aforementioned description in (1), the outline of the Amended Invention is as follows.

A Technical Field

It relates to a method for analyzing a cutting technique adopted in a hairstyle of an analysis target. (Paragraph [0001])

B Background Technology

Cosmetology schools teach students the cutting technique used to create several

typical hairstyles, but they merely teach a part of the hairstyles, and graduate students working at hair salons attempt to improve their skills.

Some customers show a photograph saying, "I would like you to cut my hair like this ". However, only experienced hair stylists can derive the cutting technique from various hairstyles they have learned in the past, and it is not easy for a less experienced hair stylist to derive the cutting technique from the photograph.

The proposed method for designing a hairstyle using numerical values and signs with development diagrams doesn't provide a method for creating development diagrams from a photograph brought by the customer. There is a description of cutting in JP-A-2004-209284, but no mention of specific cutting techniques used for specific hairstyles, and it only describes a hairstyle that could be finished as per the created development diagram.

No attempt has been made to estimate and analyze a naturally straight hairstyle in a naturally dry state from the photograph. (Paragraphs [0002] to [0007])

C Problem to be solved by the invention

The purpose of the Amended Invention is to provide a method for analyzing a cutting technique for analyzing a front photograph, a side photograph, and a rear photograph of a hairstyle of an analysis target, and using the cutting technique for the analysis target. (Paragraph [0009])

D Means for solving problem

The problem is solved by the method for analyzing a cutting technique according to the Amended Invention.

E Effects

According to the Amended Invention, a cutting technique analysis to be adopted from a photograph, an illustration or a sketch of an analysis target can be provided.

In addition, because the cutting technique analysis is systematized, even students and inexperienced hair stylists can easily analyze the cutting technique. (Paragraph [0011])

2. Applicability to Invention (Requirements Defined in Main Paragraph of Article 29(1) of the Patent Act)

Article 2(1) of the Patent Act specifies that "The term "invention" as used in this Act means the highly advanced creation of technical ideas utilizing the laws of nature." and the main clause of Article 29(1) of the Patent Act specifies that "A person that invents with industrial applicability may obtain a patent for that invention, unless the invention is as follows:"

Therefore, the patent cannot be granted if the invention according to the patent application does not utilize the laws of nature, such as a merely mental activity, a purely academic law, or an artificial arrangement, because the invention does not correspond to an "invention" as defined in Article 2(1) of the Patent Act, and does not meet the requirements defined in the main paragraph of Article 29(1) of the Patent Act.

Therefore, it is examined below whether the Amended Invention utilizes the laws of nature.

(1) Amended Invention

As described above in "(2) in 1 of No. 2", the Amended Invention is a "method for analyzing a cutting technique adopted for a selected section". The method includes the following four steps, from the first step to the fourth step.

"a first step of estimating a naturally straight hairstyle in a naturally dry state as viewed from front, side, and rear from a photograph, an image, an illustration or a sketch of front, side and rear views of an analysis target"

"a second step of selecting a section to be analyzed among a plurality of sections"

"a third step of analyzing at least one of analysis items suitable for the selected section selected in the second step, based on the naturally straight hairstyle in the naturally dry state estimated in the first step, which the analysis items are;

A analysis on outline shape or appearance

B cut-line analysis

C analysis on volume position or volume line

D analysis on silhouette or appearance

E analysis on parting (dividing line) position or presence of parting

F section width or shape analysis

G analysis on method of connecting face lines and sections or method of connecting the sections,
and obtaining an analysis result", and

"a fourth step of deriving information on the cutting technique from the analysis result"

For each of the above first step to fourth step, it is examined whether the law of nature is utilized.

(2) Regarding first step

The first step is to estimate "a naturally straight hairstyle in a naturally dry state as viewed front, side and rear" from "a photograph, an image, an illustration or a sketch of front, side, and rear views of an analysis target".

The specification and drawings of the present application describe the first step as follows:

"[0026]

<Embodiment>

Before beginning the analysis of the outline, front silhouette, rear silhouette and inner silhouette (hereinafter referred to as "main analysis"), a preliminary analysis for the front, side, and rear photographs of the analysis target is conducted.

The analyst does not analyze the photographed hairstyle with permanents itself, but rather begins the analysis by estimating the hairstyle that has become naturally straight in a naturally dry state after the permanents are removed.

A beauty professional can easily estimate the approximate position of the silhouette line when the hairstyle is a naturally straight hairstyle in a naturally dry state, even from a photograph in which the permanents are applied.

[0027]

(Preliminary analysis)

1 Preliminary analysis method using front photograph

See Fig. 1.

A front photograph of the analysis target is prepared, and if ears 5 are hidden by hair, ears 5 are drawn. Although it is not essential to draw the ears 5, it is preferable to draw the ears 5 because the position of the ears 5 serves as a guide when drawing the front silhouette line 3, etc.

From the front photograph of the analysis target, a naturally straight hairstyle in a naturally dry state is estimated, and the aforementioned front photograph is processed as follows:

[0028]

A Drawing front silhouette line 3. In that drawing, the front silhouette line 3 can be accurately drawn by drawing horizontal ear marks b at the positions next to ears 5, which are estimated to be where the front silhouette line 3 passes. This is because the front silhouette line 3 always passes next to ears. In the front photograph of the model that the customer brings in for cutting reference, it might be a front photograph with a slightly tilted face, and in order to draw the front silhouette line 3 accurately, it is better to draw the front silhouette line 3 more accurately by drawing the ear side marks b as an

auxiliary.

It should be noted that, naturally, the front silhouette line 3 does not come to the inside of the skull in estimating the front silhouette line 3 when the hairstyle is naturally straight hairstyle in a naturally dry state. The position of the front silhouette line 3 is the position where the thickness of the hair is added with respect to the skull when it becomes a naturally straight hairstyle in a naturally dry state.

[0029]

B Drawing median line 1

The median line 1 is the center line of the face that bisects the head through the apex of the chin, the apex of the nose, and the apex of the head a to the back of the head. Since the apex of the head a is present on the median line 1, there is no particular need to mark it. However, as mentioned above, some front photographs that clients bring in for cutting reference have the face tilted slightly. It is better to draw a mark at the apex of the head a, so that the median line 1 can be drawn accurately and the analysis can proceed easily.

[0030]

C Depending on the inclination of the lower outline of the side, the length auxiliary line 2 is drawn separately for cases (A) and (B). When the inclination of the lower outline of the side is not clearly visible from the front photograph, it is better to examine the inclination of the lower outline of the side by referring to the side photograph.

[0031]

(A)-When the lower outline of the side is straight or rises forward, the length auxiliary line 2 parallel to the median line 1 from the outer corner of the eye is drawn.

For the analysis target in Example 1, shown in Fig. 2, the lower outline of the side rises forward and the length auxiliary line 2 is drawn from the corner of the eye as in Fig. 1.

[0032]

(B) When the lower outline of the side is down forward, the length auxiliary line 2 parallel to the median line 1 from the outer cheekbone is drawn.

[0033]

D The position on the front silhouette line 3 where the length auxiliary line 2 and the front silhouette line 3 are the widest is set as the front volume position B and a mark is drawn.

[0034]

E When the hair flow goes in and out beyond the front volume position B and the direction is stable, a straight line is drawn in that direction until it intersects the length

auxiliary line 2, and a mark with an intersection as the ear length point A is drawn.
The above points and lines are used in main analysis, which will be described later."

【图1】

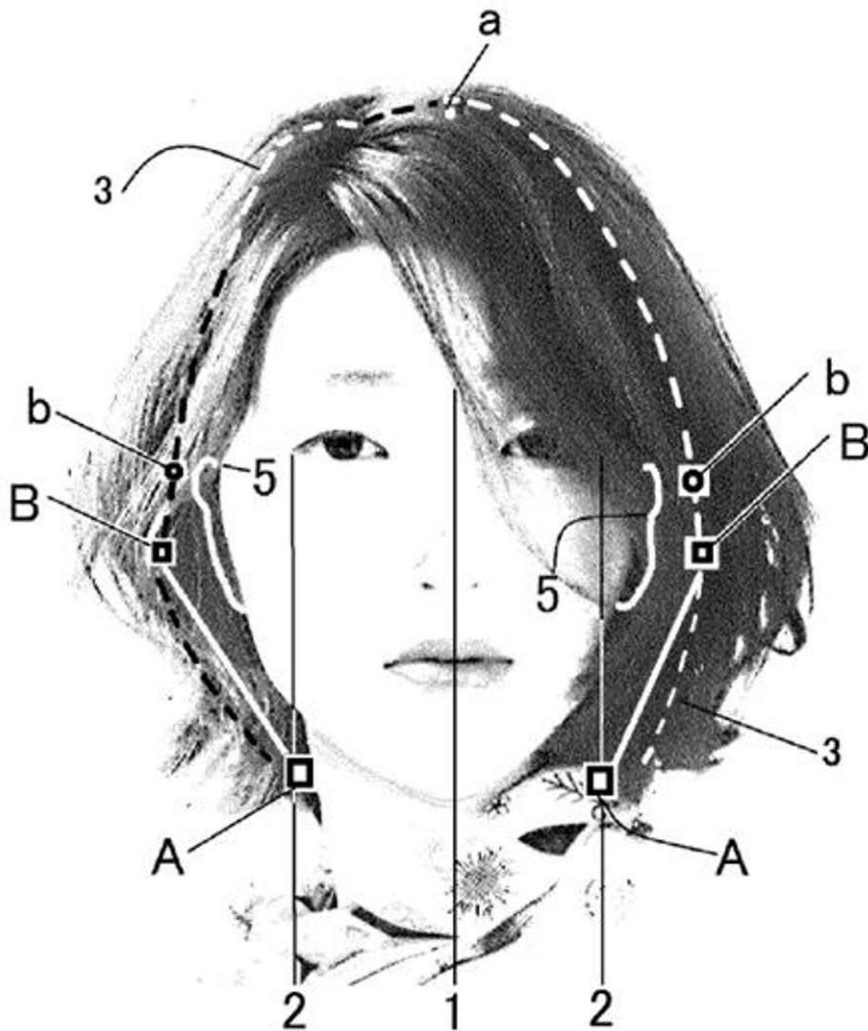


图1 Fig. 1

"[0035]

2 Preliminary analysis method using side photograph

From a side photograph of the analysis target, a naturally straight hairstyle in a naturally dry state is estimated, and the side photograph is processed as follows:

A Drawing horizontal silhouette line 4

When the face in the side photograph is tilted and the side photograph is not accurate, it is better to add an auxiliary mark to the apex of the head a to help draw the horizontal silhouette line 4.

B Drawing ear-to-ear line 7

The ear-to-ear line 7 is a line passing through the tip of the left and right ears 5 and the apex of the head a, as described above. When the ears 5 are hidden by hairs, the ears 5 are drawn. The auxiliary drawing of the apex of the head a can also be used as a reference when drawing the ear-to-ear line 7.

C Drawing rear volume position C.

D Drawing volume line 9.

Naturally, the volume line 9 always passes through the front volume position B and the rear volume position C. When it is difficult to locate the volume line 9, the volume line 9 can be easily drawn by referring to the front volume position B obtained by the previous preliminary silhouette analysis method and marking the front volume position B at the corresponding position in the side photograph.

It should be noted that, the volume positions (B and C) and the volume line 9 in the estimated naturally straight hairstyle in a naturally dry state vary greatly depending on the hairstyle of the analysis target."

【図2】

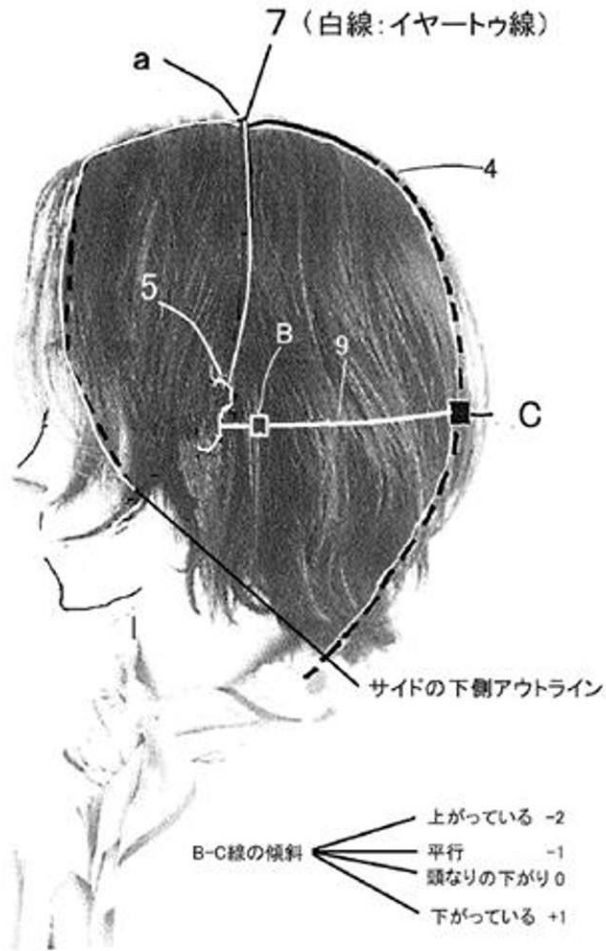


図2	Fig. 2
白線:イヤートウ線	White line: ear-to-ear line
サイドの下側アウトライン	Lower outline of side
B-C線の傾斜	Inclination of B-C line
上がっている	Rise up
平行	Parallel
頭なりの下がり	Downward from head
下がっている	Go down

"[0036]

3 Posterior silhouette preliminary analysis using rear photograph

Assuming a naturally straight hairstyle in a naturally dry state from the rear photograph of the analysis target, the following processing is performed on the rear photograph.

A Drawing rear silhouette line 8.

Similar to the preliminary analysis method using the front and side photographs, when the analysis target in the rear photograph is photographed tilted, drawing the apex of the head a may help in drawing the rear silhouette line 8.

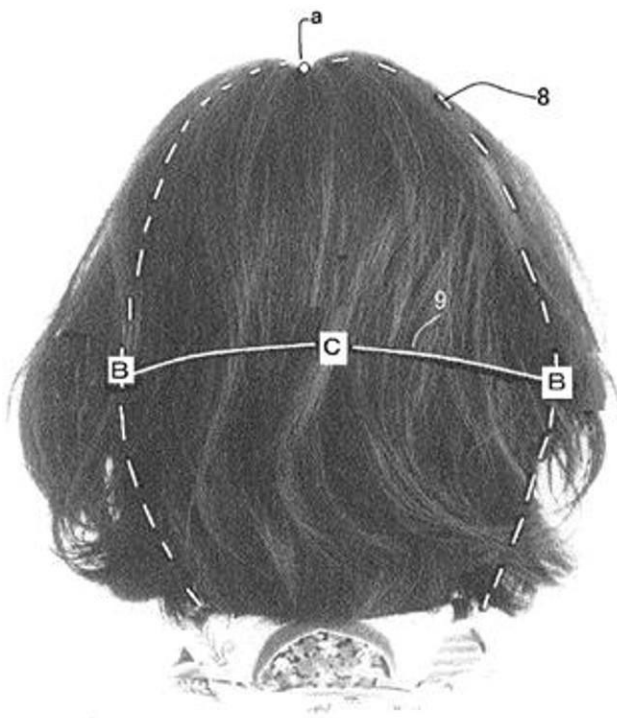
B Drawing rear volume position C

When it is difficult to locate the rear volume position C, the rear volume position C obtained by the preliminary analysis method using the side photograph may be used as a reference.

C Drawing volume line 9

When it is difficult to locate the position of the volume 9, it is drawn referring to the front volume position B obtained by the preliminary analysis method using the front photograph and the rear volume position C obtained by the preliminary analysis method using the side photograph."

【83】



☒ 3 Fig. 3

"[0037]

The photographs used in the preliminary analysis method preferably include all front, side, and rear photographs of the analysis target. However, when photographs in all directions are not available, the analysis can be performed from partial photographs. In this case, only some of the following analysis items in main analysis are analyzed.

When, for example, only a front photograph is available, it is also possible to analyze all the analysis items in main analysis by drawing illustrations instead of the side and rear photographs that suit the hairstyle obtained from the front photograph, and this is also included in the present invention.

Furthermore, all illustrations or sketches without using photographs are included in the present invention.

The photographs, illustrations or sketches need not exist as a paper medium, may be an image on a display, such as a tablet device."

As described above, according to the description of the specification and the drawings of the present application, the "first step" in the Amended Invention corresponds to the "preliminary analysis" described in the specification, wherein the analyst estimates the "front silhouette line of the naturally straight hairstyle in a naturally dry state" from "a photographs, an image, an illustration or a sketch of the front photograph of the analysis target". Also, the analyst estimates the "horizontal silhouette line of the naturally straight hairstyle in a naturally dry state" from "a photograph, an image, an illustration or a sketch of the front photograph of the analysis target". Also, the analyst estimates the "rear silhouette line of the naturally straight hairstyle in a naturally dry state" from "a photograph, an image, an illustration or a sketch of the front photograph of the analysis target". A beauty professional can easily estimate the approximate position of the silhouette line when the hairstyle is a naturally straight hairstyle in a naturally dry state even if permanents are applied.

In the specification of the present application, when estimating each silhouette line, it is possible to estimate more accurately by drawing the position of the ear, the side mark of the ear, the apex of the ear, etc. However, this is not essential and a beauty professional can easily estimate the silhouette line.

Therefore, the "first step" of the Amended Invention specifies that the analyst visually inspects "a photograph, an image, an illustration or a sketch of front, side, and

rear views of an analysis target" and estimates the "naturally straight hairstyle in a naturally dry state from the front, side and rear views" by his/her own brain. It is an estimation based on human visual perception and perception results, and since it is the human mental activity itself, it does not utilize the laws of nature.

The appellant claims that the "naturally straight hairstyle" refers to the physical condition of the hair and "estimating a naturally straight hairstyle in a naturally dry state" in the "first step" means to perform an operation of physical transformation such as unraveling and stretching the wavy hair that has been subjected to permanents, irons, or frizz, so as to reconstruct (estimate) the physical condition of the hair, which is called the "naturally straight hairstyle in a naturally dry state", so that the laws of nature is utilized.

However, the analyst utilizes, as knowledge, the physical properties of hair that "unraveling, stretching, and naturally drying the wavy hair that has been subjected to permanent, iron, or frizz will result in a naturally straight hairstyle in a naturally dry state," and does not perform a physical operation of unraveling, stretching, and naturally drying the wavy hair. Therefore, the first step does not utilize the laws of nature.

The appellant also claims in paragraph [0028] that the silhouette line is estimated based on the skull and in paragraph [0029] that marking the apex of the head allows to draw the median line accurately and analysis can proceed easily. Here, at the apex of the head a, the skin is exposed as a common technical knowledge, and the position of the skull can be identified, which helps to estimate the naturally straight hairstyle in a naturally dry state. The appellant claims that the preliminary analysis in paragraphs [0027] to [0037] is nothing but a method of estimating the "naturally straight hairstyle in a naturally dry state", which is the physical condition of the result of physical transformation.

However, the estimation of the "naturally straight hairstyle in a naturally dry state" with reference to the skull and the apex of the head is merely an estimate of the "naturally straight hairstyle in a naturally dry state" based on knowledge that "the front silhouette line does not come inside the skull, and the position where the thickness is added when the hairstyle is naturally straight in a naturally dry state with reference to the skull is considered as a position of front silhouette line", "the median line is the center line of the face that bisects the head through the apex of the chin, the apex of the nose, and the apex of the head to the back of the head" and "the apex of the head is usually exposed to the skin", and does not measure the position or shape of the skull from the photograph, the image, the illustration or the sketch or detect the apex of the head by technical means. Therefore, the first step does not utilize the laws of nature.

(3) Regarding second step

The second step is to "select a section to be analyzed from a plurality of sections".

In the specification of the present application, the "section" is described as follows:

[0018]

(Section) An area divided into a certain range for cutting head with hair. When divided into two sections, it is called a two-section cut, when divided into three or more sections, it is called a three-section cut, and when divided into multiple sections, it is called a multi-section cut. In cosmetic terminology, the section is named such as side section, top section, over section, middle section, and under section. Each section is a unit area for a predetermined cutting technique.

In the specification, there is also an example in which the analysis is performed separately in the case of dividing into two sections and the case of dividing into three sections as in "2 Cutting technique analysis using analysis target as front silhouette" in the "(main analysis)" below. The degree to which the sections are divided can be determined as appropriate based on the estimated naturally straight hairstyle in a naturally dry state, and the section dividing in the following example is merely an example.

The specification of the present application also describes the following items regarding the second step.

"[0040]

1 Cutting technique analysis using analysis subject as outline

For the outline analysis, the hairstyle is divided into the following sections (1) to (4).

Depending on the complexity of the hairstyle of the analysis target, the sections can be further subdivided into smaller sections, or more roughly sectioned if the hairstyle is simple.

(1) Outline analysis for backside and back center sections above and below ears (paragraph [0041])

(2) Cutting technique analysis for side outline (on ears, from sideburns to temples) (paragraph [0044])

(3) Cutting technique analysis No. 1 for face line (from sideburns to temples at the front corner) (paragraph [0047])

(4) Cutting technique analysis No. 2 for face line (from ear-to-ear line to thick collar) (paragraph [0049])"

"[0057]

2 Cutting technique analysis using analysis subject as front silhouette

First, (1) it is analyzed whether the panel should be taken out and cut as "two sections" as shown in Fig. 10 or whether the panel should be taken out and cut as "three sections" as shown in Fig. 9 from the shape of the entire silhouette line views from the front while performing sectioning analysis. This analysis item corresponds to "F section width or shape analysis" of the present invention.

When it is analyzed that it should be cut as three sections, (2) the side middle section is analyzed and then the width of the side middle section is determined.

Then, (3) analysis of the side under section and (4) analysis of the top section are performed."

"[0078]

3 Cutting technique analysis using analysis subject as side or rear photograph

The photograph used for the analysis is a side or rear photograph."

Back middle section analysis (paragraph [0079])

(2) Back-over section analysis (paragraph [0091])

(3) Back-under section analysis (paragraph [0097])

"[0105]

4 Cutting technique analysis using analysis subject as inner silhouette

The back section and the face line are primarily analyzed by using the front photograph."

According to the above-mentioned specification of the present application, the second step is for the analyst to divide the hair into sections based on the estimated naturally straight hairstyle in a naturally dry state of the analysis target and depending on the simplicity, complexity, etc. of the analysis target's hairstyle, and to select the area in the head for which the cutting technique is to be analyzed. Therefore, it is the mental activity itself of a human being such as the analyst, and does not utilize the laws of nature.

(4) Regarding third step

The third step is to analyze at least one of analysis items from A to G suitable for the selected section selected in the second step, based on the naturally straight hairstyle in a naturally dry state estimated in the first step, and to obtain an analysis result.

The specification and the drawings of the present application describe the third step as follows.

"[0023]

(Analysis item) The "analysis item" described here refers to the subject to be analyzed. For example, when the cut line is obtained as an analysis result from the shape of the silhouette line, the analysis item is "analysis on outline shape or appearance".

A analysis on outline shape or appearance

B cut-line analysis

C analysis on volume position or volume line

D analysis on silhouette or appearance

E analysis on parting (dividing line) position or presence of parting

F section width or shape analysis

G analysis on method of connecting face lines and sections or method of connecting the sections."

Here, when " backside and back center sections above and below ears" is selected in the second step, the analysis item suitable for this section is "A analysis on outline shape or appearance" as described above. The specification and the drawings of the present application describe the analysis on this section as follows.

"[0041]

(1) Outline analysis for backside and back center sections above and below ears

A Analysis on lower outline shape of back and appearance

Fig. 4(A) is a diagram illustrating a lower outline shape as viewed from rear.

The area to be analyzed is the backside and back center sections above and below the ears, indicated by shading, and the cutting technique used for the panel taken out from this area is analyzed.

The analysis subject is the lower outline shape of the naturally straight hairstyle in a naturally dry state estimated from the rear photograph. This analysis item is the analysis item corresponding to "A analysis on outline shape or appearance" of the present invention.

It should be noted that the silhouette lines in Fig. 4(A) are simplified for illustration.

As shown in Fig. 4 (C), the lower outline appearance is classified into the following three:

a) Lower outline shape is clearly visible

b) The lower outline shape is blurred and rough

c) there is weight (in layers) on the lower outline.

[0042]

Next, as shown in 1) to 4) in Fig. 4(A), the lower outline shape viewed from rear is classified into the following four:

- 1) round
- 2) rise forward
- 3) straight
- 4) down forward."

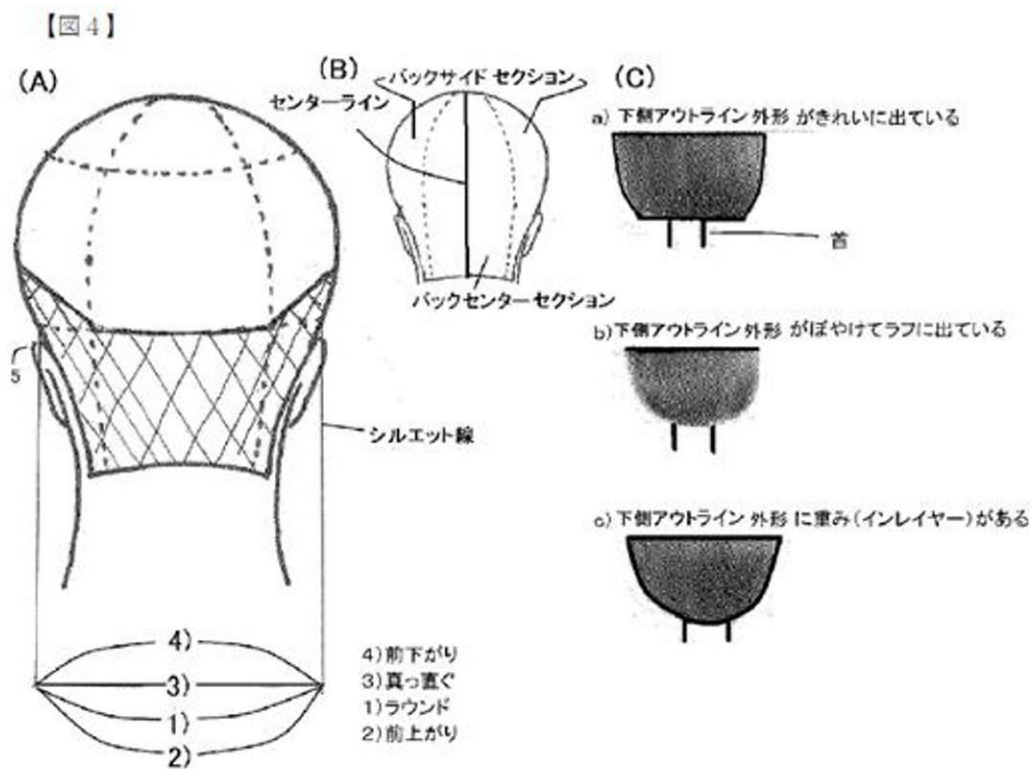


図4	Fig. 4
センターライン	Center line
バックサイドセクション	Backside section
バックセンターセクション	Back center section
シルエット線	Silhouette line
前下がり	Rise forward
真っ直ぐ	Straight
ラウンド	Round
前上がり	Down forward
下側アウトライン外形がきれいに出ている	Lower outline shape is clearly visible
下側アウトライン外形がぼやけてラフに出ている	Lower outline shape is blurred and rough
下側アウトライン外形に重み(インレイヤー)がある	There is weight (in layers) on lower outline shape

As described above, according to the specification and drawings of the present application, the third step is for the analyst to classify the naturally straight hairstyle in the naturally dry state estimated in first step into types for the section selected in second step according to the analysis item suitable for the section. Therefore, it is the mental activity itself of a human being such as the analyst, and does not utilize the laws of nature.

The appellant claims that the analysis methods from A to G are none other than physical analysis. However, the analyst decides and classifies the estimated naturally straight hairstyle in a naturally dry state corresponding to which type as shown in Figs. 4(A) and 4(C), and does not use any technical means for classification of the types of hairstyles, so that it is considered that the third step does not utilize the laws of nature.

(5) Regarding fourth step

The fourth step is to derive information on the cutting technique from the analysis results in the third step.

The fourth step described above, which is related to the analysis result of the "Backside and back center sections above and below ears" in (4), is described as follows in the specification of the present application.

"[0043]

The following information on the cutting technique of the stem angle can be derived from the analysis result.

When the slice to be taken from the panel is horizontal,
Analysis result [1]: in the case of a) and 1) round or 2) rise forward, the analysis indicates that the technique of cutting at the position where the panel is tilted down and falls naturally is adopted.

Analysis result [2]: in case of a) and 3) straight or 4) down forward, the analysis indicates that the technique of cutting on one side with the panel tilted down is adopted.

Analysis result [3]: in case of b) and 3) straight, the analysis indicates that the technique of cutting lifting the panel slightly from the position where the hair naturally falls is adopted.

Analysis [4]: in case of b) and 1) round or 2) rise forward, the analysis indicates that the technique of cutting after pulling the stem forward is adopted.

Analysis result [5]: in case of b) and 4) down forward, the analysis indicates that the technique of cutting after pulling the stem backward is adopted.

Analysis result [6]: in case of c) and 3) straight, the analysis indicates that the technique

of cutting after pulling the stem in the direction of the tendency of hair growth is adopted. Analysis result [7]: in case of c) and 1) round or 2) rise forward, the analysis indicates that the technique in which the stem is cut after over-directing it to the rear side from the center line on the back (see Fig. 4) is adopted.

Analysis Result [8]: in case of c) and 4) down forward, the analysis indicates that the technique in which the stem is cut after over-directing it to the front from the center line on the back (see Fig. 4) is adopted."

Further, the specification of the present application describes the "cutting technique" as follows.

"[0024]

(Cutting technique) A typical cut includes a series of actions wherein the panel of hair is taken out of the scalp with a specific slice, pulled at a specific angle (stem), and cut at a specific cutting line (such as layer, gradation, concave).

Moreover, the parting (dividing line) also has a significant impact on the impression of the hairstyle, and cutting is performed taking the dividing line into consideration.

Furthermore, the head can be divided into multiple sections (top section, back-under section, and other areas) and various cutting techniques can be adopted for each panel taken out from each section. A variety of hairstyles can be created in this manner. The cutting techniques derived in the present invention are as follows:

- (A) slice
- (B) stem
- (C) cut lines for gradation, same, layers, square, concave, etc.
- (D) parting (dividing line)
- (E) dividing section and a width thereof

These are factors having a significant impact on the shape and appearance of the hairstyle. Other cutting techniques include hair-tip cutting technique (such as thinning, shaggy), and do not prevent linking with further cutting techniques in addition to those listed in (A) to (E) above."

As described above, according to the description of specification of the present application, in the fourth step, the cutting technique is associated with the combination of types classified in the third step, and it is possible to derive what type of cutting technique was used for the section selected in second step. Then, the fourth step is for the analyst to estimate what kind of cutting technique was adopted according to the types classified in

the third step. Therefore, it is the mental activity itself of a human being such as the analyst, and does not utilize the laws of nature.

The appellant claims that the "cutting technique" itself utilizes the laws of nature, the hairstyle is determined depending on how the hair is cut and can be reproduced. For example, when it comes to a layered cut, the cutting technique is theoretically explained. It is possible to provide the physical explanation of how the panel is taken out and how it is cut. Even a student can reproduce the hairstyle. The Amended Invention is an attempt to analyze the cutting technique by reversing it, and the analysis of A to G is physical analysis. Therefore, the appellant claims that the laws of nature have been utilized.

Nevertheless, if the hair is actually cut by a specific "cutting technique", it can be said that the laws of nature for cutting hair with scissors is used. However, the Amended Invention is a human mental activity which is a thinking process of the analyst to determine what type of cutting technique should be used from "a photograph, an image, an illustration or a sketch of front, side and rear views of an analysis target" to obtain the same hairstyle, and the analysis of A to G does not use technical means and is not physical analysis. Therefore, the Amended Invention does not utilize the laws of nature.

(6) Summary of the applicability of the Amended Invention

As described above in (2) to (5), each of the steps from the first step of to the fourth step is the human mental activity itself, and therefore, the "method of analyzing a cutting technique", including the first step of to the fourth step of the Amended Invention, is the human mental activity itself, and does not utilize the laws of nature.

(7) Claims of appellant related to judgment

A The appellant cites the "Judgment of the Intellectual Property High Court of Japan, August 28, 2008, 2008 (Gyo-ke) 10001" and based on "even if there are parts in the matters used to define the invention that do not make use of the laws of nature, if the invention claimed in the claim is judged to be using the laws of nature as a whole, the claimed invention is said to be making use of the laws of nature", and thus claims that the Amended Invention utilizes the laws of nature.

The above judgment states, concerning the meaning of "invention" in Article 2 of the Patent Act, that "Article 2(1) of the Patent Act defines an invention as "a highly advanced creation of a technical idea utilizing the laws of nature". Therefore, no matter how concrete, beneficial, and useful the technical idea for the purpose of solving a certain problem, if it does not include any means that uses the laws of nature for solving the problem, such a technical idea will not be applicable as an "invention" under Article 2(1)

of the Patent Act.

Incidentally, human beings behave freely and are capable of self-determination. It is usually impossible to foresee or expect repetitive typologies for the behavior of human beings. Therefore, even if it has beneficial and useful effects on specific human mental activities (including all activities such as social activities, cultural activities, work, use of leisure time), in decision-making and in forms of behavior, it will not be applicable as an "invention" under Article 2(1) of the Patent Act because specific human mental activities, decision-making and forms of behavior cannot be said to directly utilize the laws of nature.

On the other hand, all creation of a technical idea for the purpose of solving any problem is not irrelevant to the human mental activity, decision-making, or the forms of human behavior, and it can be said that it is customary to provide beneficial and useful for human mental activity or provide a means to assist or replace it. Therefore, it cannot be said that it is not a means for solving the problem utilizing the laws of nature, and is not an "invention" under Article 2(1) of the Patent Act just because it includes the human mental activity.

As described above, in the case when the creation of the technical idea for the purpose of solving any problem includes the human mental activity, decision-making and forms of behavior of a person as its composition, and it is closely related to the human mental activity, the creation of a technical idea should not be rejected as an "invention" under Article 2(1) of the Patent Act just because of this reason. If taking the entire recitation of the scope of claims into account and considering the description of specification, when it is interpreted that creating the technical idea that uses the laws of nature is shown as the main means for solving the problem, the invention should be considered as an "invention" under the same Article of the Patent Act."

It also states that "at the time of judged whether creating the technical idea described in the scope of claims of the application can be said to be an invention utilizing the laws of nature, it is not judged separately for each and every composition of the invention of the application, but it is judged for the entire scope of claims (it goes without saying that the specification and drawings may be taken into consideration). In addition, in this case, it should be judged whether it corresponds to the "invention" defined under Article 2(1) of the Patent Act depending on the utilization of the laws of nature is indicated as the main means in the entire composition of the creation of a technical idea for the purpose of solving the problem. Just because the entire composition of the invention, consisting of the creation of a technical idea for the purpose of solving the problem, includes a composition consisting of a human mental activity, decision-making, or form of behavior, or includes a composition closely related to the human mental activity, it should not be

used as the only reason to reject it as an invention under the "invention" defined in the same article.

...

It is clear that the invention of the present application assumes and uses the property that consonants are more easily recognized than vowels by non-native speakers of English. Then, the invention of the present application focuses on the cognitive capability for voice wherein the ability to identify consonants is high, among the naturally possessed capabilities that can be used by human beings (including the subjects who are supposed to use a dictionary for the invention in the present application), and provides a method to realize a constant effect of finding the meaning of English words repeatedly and continuously without knowing the exact spelling of the word by utilizing the high ability to identify consonants. This application shows the creation of a technical idea in which the law of nature is utilized as the main means for solving the problem, and hence it is said that the invention corresponds to the invention defined under Article 2(1) of the Patent Act".

Here, in the Amended Invention of the present application, the analyst views "a photograph, an image, an illustration or a sketch of the front, side and rear views of an analysis target" with his/her own eyes and makes an estimation and performs the analysis from the results of visual recognition. However, in visual recognition, the analyst does not use the property of the cognitive ability naturally provided to human beings. From the result of visual recognition, the analyst estimates the naturally straight hairstyle in a naturally dry state. In the process of analyzing the cutting technique, the analyst performs analysis and makes estimations using knowledge. Therefore, the Amended Invention consists only of a human mental activity and does not include any means utilizing the laws of nature, as stated in the above judgment, "when the invention does not include any means of utilizing the laws of nature, the creation of such a technical idea does not correspond to the 'invention' as defined in Article 2(1) of the Patent Act". Therefore, the Amended Invention does not utilize the laws of nature.

B The appellant cites "Judgment of the Intellectual Property High Court of Japan, October 17, 2018, 2017 (Gyo-ke) 10232". The problem to be solved by the invention in the present application is as per the paragraph [0009], "The purpose of the present invention is to provide a method for analyzing a cutting technique for analyzing a front photograph, a side photograph, and a rear photograph of a hairstyle of an analysis target, and using the cutting technique for the analysis target.". And the effect is described in paragraph [0011] that "According to the present invention, a cutting technique analysis to be adopted from a photograph, an illustration or a sketch of an analysis target can be

provided. In addition, because the cutting technique analysis is systematized, even students and inexperienced hair stylists can easily analyze the cutting technique." As it is clear that the laws of nature is utilized in the analysis process to solve the problem, the appellant claims that the Amended Invention also utilizes the laws of nature.

The above judgment states, "The steak serving method in this case includes 'a step for guiding a customer to a standing table'; 'a step for asking the customer for the quantity of steaks'; 'a step for cutting the requested quantity of steaks from a block of meat'; 'a step for cooking the cut meat'; and 'a step for carrying the cooked meat to the customer's table'. The specification of the present specification describes these steps as ... and assumes that they will be performed by a person. There is neither a description suggesting that these steps can be accomplished by mechanical processing, nor sufficient evidence to recognize that it is common technical knowledge. Then, the method of serving steak in this case is recognized to be the method specifying the procedure to be performed by a person from receiving the order up to serving it to the customer at a steak shop. Therefore, it is judged that the configuration for the implementation of the steak serving method cannot be said to provide a substantial technical means as a 'steak serving system'."

On the other hand, it also states that "The patented invention 1 includes the procedure for a person who receives the order and serves the steak at a steak shop (the steak serving method) as an element. However, it is not limited to this. By adopting the configuration related to the weighing machine consisting of the specific products or the equipment (devices) such as tags, weighing scales and seals (Print) and by fulfilling the unavoidable demands of the customers that arise at the time of implementing the steak serving method by preventing the confusion caused due to mixing orders with other customers' orders, it can be understood that the patented invention 1 solves the problem of "providing customers with a desired quantity of steak at a reasonable price". .. In light of the technical significance of the technical problem of the patented invention 1, the configuration of the technical means used to solve the relevant problems, and the effects derived from the configuration of the technical means, the patented invention 1 is a technical means to solve the problem of the patented invention 1 by preventing confusion of the meat ordered by a customer with other customers using specific articles or devices (weighing machine, etc.) such as tags, weighing machine, and seal(Print). As a whole, it can be said to fall under the category of "creation of a technical idea utilizing the laws of nature". Therefore, it can be said that the patented invention 1 in this case corresponds an "invention" as defined in Article 2(1) of the Patent Act."

Here, in the Amended Invention, the analyst views "a photograph, an image, an illustration or a sketch of the front, side and rear views of an analysis target" with his/her

own eyes and makes an estimation and performs analysis from the results of visual recognition. All the steps from the first step to the fourth step consist only of the human mental activity and do not include a specific article or device as a technical means to solve the problem. Therefore, as determined in the above judgement, "a configuration for the implementation of the steak serving method that specifies the sequence implemented by a person from taking the order up to serving the food at the steak shop cannot be said to provide a substantial technical means as a 'steak serving system'". The Amended Invention does not utilize the laws of nature.

IV Closing

As described above, the Amended Invention does not fall under "invention" as defined in Article 2 of the Patent Act. Also, it does not fall under "invention with industrial applicability" as defined in the main paragraph of Article 29(1) of the same Act. Therefore, the Amended Invention of the present application should not be granted a patent.

Accordingly, the present application should be rejected without examining Claims 2 to 5.

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

February 25, 2021

Chief administrative judge: WATANABE, Satoshi

Administrative judge: TAKASE, Tsutomu

Administrative judge: OKA, Hiroyuki