

**PATENT COURT
THE THIRD DEPARTMENT
DECISION**

Case No. 2000Heo5438 Final Rejection(Patent)

Plaintiff: Inho PARK
Counsel for Plaintiff: Deokrok LEE, Patent Attorney

Defendant: Commissioner of the Korean Intellectual Property Office
("KIPO")
KIPO Litigator: Seungjoon BAEK

Closure of Hearing: August 31, 2001

Order

1. The Plaintiff's claim is dismissed.
2. The trial costs shall be borne by the Plaintiff.

Tenor of Claim

The decision of the Intellectual Property Tribunal ("IPT") issued on June 30, 2000 in Case No. 99Won1988 shall be cancelled.

Reasoning

1. Background Facts

[Evidence: Plaintiff's Exhibit Nos. 2 and 3; Defendant's Exhibit Nos. 1 and 2]

PATENT COURT DECISIONS

A. Procedural History in KIPO

1) The Plaintiff filed an application for an invention titled “Comprehensive Management Method for Household Garbage Recycling” under the Application No. 97-16748 (“Invention”). On April 30, 1999, however, KIPO issued a final rejection on the grounds that the Invention is not patentable under Article 29(1) of the Korea Patent Act (“KPA”) because the Invention constitutes mental activities such as an agreement between human beings relating to management of administrative tasks, and thus lacks industrial applicability.

2) Thereupon, the Plaintiff filed an appeal against the final rejection with the IPT. The IPT examined the appeal case as Case No. 99 Won 1988 and on June 30, 2000, rendered a decision dismissing the Plaintiff’s appeal for the reasons set forth in Section C below.

B. Summary of the Invention

The Invention relates to a comprehensive management method for household garbage recycling to facilitate segregation and collection of garbage. The claimed scope of the Invention is “a comprehensive management method for household garbage recycling based on statistical data of accumulated information obtained from each of the following steps: a competent authority distributes to each person who discards garbage barcode stickers containing identification of the person and a schedule calendar showing discarded garbage; each of the persons discards garbage by putting accurately segregated garbage in a designated garbage bag according to prescribed rules, wherein a barcode sticker containing the person’s identification is required to be affixed on the garbage bag; a collector processes the discarded garbage by accurately segregating and collecting the garbage according to days of the week, transporting the garbage to a collection place, and sorting the garbage into garbage for recycling and garbage for landfill or

incineration; and the barcode affixed on an improperly segregated garbage bag is read and a correction order is issued to the corresponding person who discarded the garbage.”

C. Summary of Grounds of the IPT Decision

The Invention relates to a comprehensive management method for household garbage recycling comprising the following four steps: distributing, by a competent authority, barcode stickers containing identification information of a person who discards garbage and a schedule calendar showing discarded garbage to each of the persons who discard garbage (step 1); discarding garbage, by the persons, by affixing the barcode stickers on garbage bags (step 2); segregating and collecting the discarded garbage by a collector (step 3); and during processing of the segregated and collected garbage, reading the barcode affixed on an improperly segregated garbage bag and issuing a correction order to the corresponding person who discarded the garbage (step 4). In order to achieve the objectives of the Invention, each of the four steps is essential.

However, step 4 is a step where the collector issues a corrective order to a person who improperly segregated garbage, and thus cannot be deemed a technical idea that uses laws of nature. Furthermore, even in view of the overall constitution, the Invention is similar to guidelines for garbage processing that occurs among the competent authority, persons who discard garbage, and collectors and thus cannot be viewed as a technical idea that uses laws of nature. Therefore, the Invention does not correspond to an invention having industrial applicability.

2. Whether the IPT Decision Is Legally Proper

A. Summary of Plaintiff's Grounds for Appeal

1) Step 4 of the Invention, which recites “during processing of the segregated and collected garbage, reading the barcode affixed on an improperly segregated garbage bag and issuing a correction order to the corresponding person who discarded the garbage,” is a creation of a technical idea that uses laws of nature. Even if it is assumed that step 4 is not a creation of a technical idea, as long as steps 1 to 3 are a creation of technical ideas, the Invention as a whole, including step 4, is obviously deemed a creation of technical ideas. And even when one of the steps of an invention is not a technical idea, the invention as a whole cannot be deemed invalid. Therefore, the Invention corresponds to an invention having industrial applicability under the main body of Article 29(1) of the KPA.

2) The Invention is a business model invention for “a comprehensive management method for household garbage recycling” and requires machinery or computers that can perform the method inherent in each of the steps. Therefore, the overall constitution of the Invention is a useful creation of technical ideas having industrial applicability in the waste disposal industry.

B. Judgment

1) Standards for judging an invention under the KPA

In order for an invention to be patentable under the KPA, the invention should be first acknowledged to have “industrial applicability” {main body of Article 29(1) of the KPA} and the term “invention” under the KPA means a “highly advanced creation of technical ideas utilizing laws of nature” (Article 2, Item 1 of the KPA). Accordingly, if an invention described in a claim constitutes or uses any law other

than laws of nature, an artificial decision or agreement, a mathematical formula, or mental activities of a human being, it does not fall within the scope of an invention under the KPA.

In addition, whether laws of nature are used within the scope of the invention under the KPA should be determined based on a claim as a whole. Thus, even if a portion of an invention described in a claim uses laws of nature, if it is determined that the claim as a whole does not use laws of nature, it does not constitute a patentable invention under the KPA. In contrast, even if a portion of an invention described in a claim does not use laws of nature, if it is determined that the claim as a whole uses laws of nature, the claim constitutes a patentable invention under the KPA.

2) Whether the Invention falls within the scope of a patentable invention under the KPA

a) As seen above, the Invention comprises four steps: (i) distributing barcode stickers and a schedule calendar, by a competent authority, to each person who discards garbage (step 1); (ii) discarding garbage, by each of the persons who discard garbage, by affixing the barcode stickers on garbage bags according to prescribed rules (step 2); (iii) collecting and processing the garbage by a collector (step 3); and (iv) if a garbage bag is improperly segregated, issuing a correction order to the corresponding person who discarded the garbage by reading the barcode affixed on the garbage bag (step 4). Ultimately, the Invention aims to comprehensively manage household garbage using statistical data accumulated from information obtained in the course of each of the steps above.

b) First, whether each of the steps of the Invention uses laws of nature is reviewed.

First, step 1 above includes the means of “barcode stickers” and “schedule calendar.” As a whole, however, the means are

PATENT COURT DECISIONS

used merely as a tool and distributing the barcode stickers and calendar by the competent authority is in accordance with an artificial decision made based on mental activities of a human being. Thus, step 1 cannot be deemed as using laws of nature. “Next, step 2 above includes the means of “garbage bags.” As a whole, however, the means are used merely as a tool and the acts of the persons who discard garbage by affixing barcode stickers having their identifications on garbage bags and discarding designated garbage that is accurately segregated in the garbage bags based on the prescribed rules are merely factual acts that are performed based on mental activities of human beings according to pre-established rules. Thus, step 2 cannot be deemed as using laws of nature.

Further, step 3 above merely constitutes factual acts of accurately segregating and collecting discarded garbage by the collector based on his or her own judgment, transporting the garbage to a collection place, and processing the garbage by sorting, which are performed based on mental activities of a human being. Thus, step 3 cannot be deemed as using laws of nature either.

Finally, step 4 includes the means of reading barcodes through a computer, etc. However, issuing a corrective order to a person who segregated garbage improperly is not an act that is performed by a system connected to computer hardware according to the checked information. Rather, considered as a whole, the means are merely used as a tool and constitute a human act based on mental activities of a human being in issuing the corrective order to the corresponding person by reading the barcode. Thus, step 4 cannot be deemed as using laws of nature.

- c) Next, whether the Invention as a whole uses laws of nature is reviewed.

“The Invention includes the means of barcode stickers, calendar,

garbage bags, and hardware and software for reading barcodes using computers, etc. However, each of the above steps constituting the elements of the Invention does not include any specific means of using a combination of hardware and software above. Furthermore, each of the steps uses the means only as a tool and thus merely constitutes mental activities of human beings. In addition, viewed as a whole, the Invention, which is directed to comprehensively managing household garbage based on statistical data accumulated from information obtained in the course of each of the steps above, cannot be practiced per se, but can only be practiced when the applicable laws and regulations are in place, and merely constitutes an artificial decision made pursuant to an agreement among the competent authority, persons who discard garbage, and collector, or a mental judgment or artificial decision made by the competent authority based on the agreement. Accordingly, the Invention cannot be deemed as using laws of nature.

- d) Whether the Invention falls under a business model invention.
- “Generally, a business model invention refers to a novel invention implemented using information technology, and in order for an invention to fall under the business model invention, information processing by software should be specifically performed by using hardware on a computer. However, each of the steps of the Invention is not processed on-line but off-line, and moreover, a system connecting the software and hardware is not specifically implemented. Thus, the Invention does not fall within the scope of such general business model invention.

C. Sub-conclusion

The Invention is not deemed to be a creation of technical ideas using laws of nature and thus does not fall within the scope of an

PATENT COURT DECISIONS

invention that has industrial applicability. Accordingly, the Invention is not patentable due to violation of the main body of Article 29(1) of the KPA and the IPT decision reaching the same conclusion is proper.

3. Conclusion

Therefore, the Plaintiff's claim lacks any merit.

September 21, 2001

Presiding Judge	Jinseong LEE
Judge	Youngil YOO
Judge	Doohyeong LEE