Circular Supr. Court R7.3.3　Judgements

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Summary and Analysis:

Landmark Supreme Court Rulings on March 3, 2025

On March 3, 2025, the Second Petty Bench of the Supreme Court handed down two landmark judgments regarding the infringement of network-related inventions. Judgment 1 concerns Patent No. 4734471, entitled "Display Device, Method for Displaying Comments, and Program," while Judgment 2 pertains to Patent No. 6526304, entitled "Comment Distribution System."

Both cases centered on whether the act of transmitting a program from an overseas server to users in Japan—and having them execute it—constitute patent infringement. The fundamental issues were the applicability of **Article 2, Paragraph 3, Item 1 of Patent Law** and the limits of the **principle of territoriality**.

These rulings are groundbreaking as they clarify the criteria for applying Article 2, Paragraph 3, Item 1 and define the applicable limitation of the territoriality in the digital age. This circular provides an overview of both judgments, examines their applicable range from the "physical perspective" of the statutory provisions, and explores the potential for future legal developments together with practical tips.

Article 2 (Definitions), Japanese Patent Law

(1) (redacted)

(2) (redacted)

(3) "Working" of an invention in this Law means the following acts:

(i) in the case of an invention of a product (including a computer program, etc., the same shall apply hereinafter), acts of producing, using, assigning, etc. (meaning assigning and leasing, if the product is a computer program, etc., including providing through an electric telecommunication line(s)) of the product, [or] exporting or importing, or offering for assignment, etc. (including displaying for the purpose of assignment, etc., the same shall apply hereinafter) of the product.

(ii) in the case of an invention of a process, using the process;

(iii) in the case of an invention of a process for producing a product, using, assigning, etc., exporting or importing, or offering for assignment, etc. of the product produced by the process, in addition to the acts mentioned in the preceding item.

(4) A "computer program, etc." in this Law means a computer program (a set of instructions given to a computer which are combined so as to produce a specific result, the same shall apply hereinafter) and any other information that is to be processed by a computer equivalent to a computer program.

Note, the translation of the Japanese Patent Law available at the Website of JPO uses the terms "Patent Act" instead of Patent Law, and "Section" instead of Article, likewise U.S. Patent Act 35 U.S.C.

Analysis of the definition of Article 2 (3) item 1 in the light of physical perspective:

(3) "Working" of an invention in this Law means the following acts:

(i) in the case of an invention of a product (including a computer program, etc., the same shall apply hereinafter), acts of producing, using, assigning, etc. (meaning assigning and leasing, including displaying for the purpose of assignment, etc., if the product is a computer program, etc., including providing through an electric telecommunication line(s), the same shall apply hereinafter) of the product, [redacted]

The definition of Article 2 (3) item 1 is a unique definition in the world in that the computer program is defined as a Product (Mono 物 in Japanese language). Mono means in general matter or thing present in the world or even in the universe . It is typically translated in English as Product (Erzeugnis in German), which, however, would be equivalent to German term Sache or Ding.

In the physical perspective, the program is present in and supplied through the electric telecommunication lines in Japan as an electronic signal product as far as the electronic digital signal(s) is concerned which is accessed by a user terminal located in the territory of Japan and downloaded for execution by the user terminal.

Therefore, the subject computer program falls the category of the definition of : "if the product is a computer program, etc., including providing through an electric telecommunication line(s)" ,even if the program is delivered from a server locating abroad outside the Japanese territory .

In other words, such act supplying the program from abroad falls in the definition of "working" in Japan under the provision of Article 2 (3) item 1. This logical conclusion in the light of "physical perspective" of the definition of Article 2 (3) item 1 is underlying physical logic of the Supreme Court Judgements of R7(2025)March 3 , according to our view and analysis.

Practical Tips:

Note, the core issue of infringement is whether or not "providing a computer program through an electric telecommunication line(s)" in Japan, even if the program is supplied by (or through) a server located outside Japanese territory.

According to the two Supr. Court judgements, it is very advantageous for the patent owner or applicant to exclude such infringing acts of providing unauthorized program (or animation which may be categorized as a program) from a server located outside Japan. It is therefore recommended to review the program claim or system claim based on the program execution at any user terminal located in Japan, in order to exclude any possible infringement from a third party, even if unknown wherefrom the program is sent.

A computer claim may be claimed in Japan, as you are aware of the provision of Article 2 (3) item1.

For the future application to be filed in Japan, it is recommended to include a program claim(s) and supporting example embodiments in support of such claim(s) if any system is claimed, which system is basically configured and /or operated (or executed) by a program.

As a supporting disclosure for such claim, it is recommended to have a flow chart of steps of operation and a diagram of the system illustrating in a block format.

We may offer you a draft Claims and Description and Drawings adapted to the Japanese practice, if you will supply a basic disclosure in your national format.

Please feel free to contact us for any questions you might have.

Thank you for your attention.